

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

C. Rev. No. 40/2011
CMA No. 38/2011

Date of Decision: 19.10.2012

Anil Kumar Maini.	Vs.	Pankaj Kumar.
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CORAM:

MR. JUSTICE J. P. SINGH.

Appearing Counsel:

For Petitioner(s)	:	Mr. D. K. Khajuria, Advocate.
For Respondent(s)	:	Mr. Vidya Sagar, Advocate.

i)	Whether approved for reporting in Press/Media	:	Optional
ii)	Whether to be reported in Digest/Journal	:	Yes

The Respondent–Pankaj Kumar filed a Suit for *Permanent Prohibitory Injunction* restraining the petitioner from interfering in the Suit land situated at Ward No. 13 Poonch. His prayer for issuance of ad-interim injunction during the pendency of the Suit was, however, declined by the Court finding him out of possession. The *prima facie* finding of the Court that the respondent was not in possession of the Suit property, was affirmed by the Appellate Court. The respondent thereafter sought permission to withdraw the Suit with liberty to file fresh Suit on the ground of

omission of Khasra Number of the Suit property in the
Plaint.

Allowing his request, the Trial Court permitted
him to file fresh Suit.

Aggrieved by the permission allowed to the
plaintiff/respondent to file fresh Suit, the petitioner/
defendant has invoked Revisional Jurisdiction of this
Court seeking setting aside of the trial Court's order.

Relying on *Jman Sukh v. Jagdish Chand*
reported as [2004] 2 CurLJ(HP) 578, the petitioner's
learned counsel would submit that there being no
formal defect in the Suit, the permission granted by the
Trial Court was liable to be set aside being
unwarranted.

Mr. Vidya Sagar, learned counsel for the
respondent-plaintiff, on the other hand, submitted that
having not been found in possession of the property,
though *prima facie* it became necessary, in the
circumstances, for the respondent to file fresh Suit
seeking adjudication of his Rights in the property in
question.

Considered the submissions of learned counsel for
the parties.

The Judgment referred to by the petitioner's
learned counsel may not be of any help to the
petitioner, for, the respondent's Application could well

be considered for its allowance in view of the provisions of *Order 23 Rule 1 Sub-rule 3 (b)* of the Code of Civil Procedure which vested discretion in the Trial Court to grant permission to a Suitor to institute fresh Suit for the subject matter of the withdrawn Suit.

Withdrawal of Suit without permission precludes a Suitor from instituting any fresh Suit in respect of the subject matter of the withdrawn Suit. Therefore, keeping in view the serious adverse consequences flowing from the withdrawal of Suit without permission to file fresh Suit, that may debar a Suitor for all times to come to seek adjudication of his Rights regarding the subject matter, the discretion vested in the Courts for grant of permission to file fresh Suit, needs to be exercised liberally, to advance the cause of Justice in dealing with the merits of the claim of a Suitor rather than showing him door on mere technicalities.

Keeping in view the facts and circumstances of the case when the respondent was not found in possession of the property and even otherwise the Suit as such would not proceed without introducing necessary amendment thereto *inter alia* to seek possession of the Suit property, even if it were to continue as such and the description of the Suit property too was not sufficient to identify it, the

permission sought by the respondent was required to be allowed permitting him to seek adjudication of his Rights claimed in the immovable property in question in terms of *Order 23 Rule 1 Sub-rule 3 (b)* of the Code of Civil Procedure.

The discretion exercised by the Trial Court in permitting the respondent to file fresh Suit withdrawing his earlier Suit ***cannot, therefore, be faulted*** in the circumstances. However, as the petitioner-defendant was dragged in the Suit which was not, as such, maintainable, the petitioner was required to be compensated for the time spent by him in the unnecessary litigation.

The Trial Court has, however, omitted to consider withdrawal and grant of permission to file fresh Suit, on terms as would have been fit in the circumstances. The error committed by the Trial Court in not considering the terms on which permission was to be granted, therefore, needs to be corrected.

The withdrawal of the Suit is, accordingly, made subject to payment of Rs.2000/- (Rupees Two Thousand) *as costs* that would compensate the petitioner-defendant for his contesting the respondent-plaintiff's Suit until it was withdrawn.

Respondent to pay costs to the petitioner ***within eight weeks.***

This Civil Revision is *disposed of* accordingly on the above terms modifying the Trial Court's order dated 04.03.2011.

(J. P. Singh)
Judge

JAMMU
Sunita.
19.10.2012