



129 **IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CR-1593-2024 (O&M)**  
**Date of decision : 22.04.2026**

SEEMA SWAMI

....Petitioner

Versus

SHASHANK KOHLI

.....Respondent

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Vivek Goyal, Advocate for the petitioner.

Mr. Parmanand Yadav, Advocate (through V.C.) and  
Mr. Ambanshu Sahni, Advocate for the respondents.

**PANKAJ JAIN, J. (ORAL)**

The present revision petition is directed against order dated 01.12.2023 passed by Civil Judge (Junior Division), Gurugram whereby application filed by the defendant/petitioner seeking rejection of the plaint, under Order VII Rule 11 CPC, stands dismissed.

2. From the records, it is discernible that the parties are in dispute w.r.t. sale of an immovable property. The plaintiff earlier filed Civil Suit No.1 of 2020 seeking decree of declaration, possession and specific performance propounding agreement to sell dated 04.09.2019 claiming that the defendant agreed to sell property in dispute in his favour for a total sale consideration of Rs.4,90,00,000/-. The suit was withdrawn after plaintiff suffered a statement to the effect that the parties have reached at a settlement

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and he does not want to pursue the suit. Order dated 22<sup>nd</sup> of March, 2022 reads as under:

“File taken up today on account of moving of application for withdrawal of case. It be registered. Plaintiff appeared and suffered a statement to the effect that in light of settlement reached between the parties, he wants to withdraw the present case and prayed that court fees may kindly be refunded. Self attested copy of his Aadhar card placed on record. He has been duly identified by his counsel.

Heard. In view of his statement, present suit stands dismissed as withdrawn. On request, court fees be refunded to plaintiff, as per rules. File be consigned to record room after due compliance.”

3. Present suit was instituted on 01.02.2023 wherein the plaintiff claimed that the agreement to sell dated 04.09.2019 stood novated by an oral settlement arrived at between the parties in February 2022. Plaintiff accordingly, sought specific performance of the said oral settlement, contending that the earlier agreement to sell stands novated and thus he is entitled to seek specific performance of the subsequent settlement.

4. Defendant filed an application under Order VII Rule 11 CPC seeking rejection of the plaint, raising bar as contemplated under Order XXIII CPC. As per the defendant/petitioner, once the plaintiff has withdrawn the earlier suit without seeking liberty to file a fresh one, he is precluded from bringing fresh suit *qua* the same cause of action.

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5. Application filed by the defendant/petitioner stands dismissed by the Civil Judge, Junior Division, Gurugram, holding that the plaintiff claims novation of the previous agreement to sell vide oral settlement. By way of present suit, he seeks specific performance of such settlement and therefore, it cannot be said that the suit has been brought *qua* the same cause of action. Thus, bar as contemplated under Order XXIII CPC will not be attracted.

6. Counsel for the petitioner has assailed the impugned order. He submits that from the contents of the affidavit, it is evident that the plaintiff himself admit of having filed the earlier suit and the fact of having withdrawn the same without seeking liberty. He refers to Para 56 of the plaint, to submit that even in the present case, cause of action pleaded is based upon agreement to sell dated 04.09.2019. Thus, Court misread the plaint and recorded a perverse finding that the suit is based upon different cause of action.

7. Per contra, counsel for the respondent would submit that from the bare reading of the prayer made in the plaint, it is evident that the plaintiff in the present suit seeks specific performance of the oral settlement, which was arrived at between the parties during the pendency of the present suit. The earlier suit was filed propounding agreement to sell dated 04.09.2019. It being a specific case of the plaintiff that the agreement to sell dated 04.09.2019 stands novated by way of oral settlement between the parties in February 2022, the Court rightly concluded that the present suit

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being based upon subsequent cause of action, is not hit by the provisions contained under Order XXIII CPC.

8. I have heard counsel for the parties and have gone through records of the case.

9. In order to appreciate the rival contentions raised by counsel for the parties, it will be apt to peruse Order XXIII CPC which reads as under:

“ORDER XXIII

**Withdrawal and Adjustment of Suits**

[1. Withdrawal of suit or abandonment of part of claim.—

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim,

It may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to

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institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.]

**[1A. When transposition of defendants as plaintiffs may be permitted.]**—Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.]

**2. Limitation law not affected by first suit.**—In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

**3. Compromise of suit.**—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise 1 [in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith 2 [so far as it relates to the parties to the suit, whether or not the

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subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

[*Explanation.*— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]

**[3A. Bar to suit.**—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

**3B. No agreement or compromise to be entered in a representative suit without leave of Court.**—(1) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court as recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

*Explanation.*—In this rule, “representative suit” means,—

- (a) a suit under Section 91 or Section 92,
- (b) a suit under rule 8 of Order I,
- (c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,
- (d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.]

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**4. Proceedings in execution of decrees not affected.**—Nothing in this Order shall apply to any proceedings in execution of a decree or order.”

10. The issue that arises for consideration before this Court is:

*“Whether present suit is based upon the same cause of action on the basis of which the earlier suit was filed?”*

11. Ld. Counsel for the respondent/plaintiff rightly referred to the prayer clause, which reads as under:

“a. Plaintiff humbly prays that a decree for declaration may very kindly be passed in favour of the Plaintiff and against the Defendant declaring that Agreement to Sell dated 4th of September 2019 stood novated and the settlement as orally agreed upon on February 2022 and the novation of the agreement dated 4<sup>th</sup> September 2022 in October 2022 is valid, subsisting and binding upon the Defendant with full force and effect and that in terms of the same defendant is bound to confer a valid, clear and marketable title in respect of the suit property in favour of the Plaintiff and to execute and register sale deed in favour of the plaintiff in respect of residential plot bearing No.21, Road A-10, measuring 420 square meters situated in residential colony known as DLF City, Phase 1 Gurugram along with construction existing thereupon and all rights appurtenant thereto upon receipt of balance sale consideration amount;

b. A decree for Specific Performance of oral settlement dated 20th February 2022 along with the novated Agreement

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to Sell dated 4th of September 2019 (novated in October 2022) entered into by the Defendant in favour of the Plaintiff in respect of aforesaid property may kindly be passed in favour of the Plaintiff and against the Defendant by directing the defendant to execute and register a formal sale deed in respect of suit property favour of the Plaintiff upon payment of balance sale consideration amount of Rs.3,50,00,000/- (Rupees Three Crores Fifty Lakhs Only) and to deliver vacant, peaceful and physical possession of the suit property to the plaintiff.

c. That in case the Defendant fails to do so, in that event this Hon'ble Court may very kindly be pleased to direct the needful to be done by appointment of commission so that clear and marketable title pertaining to suit property is conferred/ transferred in favour or the Plaintiff and vacant, peaceful and physical possession of the suit property is also delivered to the plaintiff at the spot.

d. Decree for permanent injunction may also very kindly be passed as a consequential relief in favour of the plaintiff and against the defendant restraining the Defendant from alienating the suit property described above, parting with possession of the same in favour of any third-party creating encumbrances over the same and from creating any third-party rights in respect of the same. Costs of the suit may also very kindly be granted to the Plaintiff.

e. Any other relief which this Hon'ble Court deems appropriate and suitable be also granted to the Plaintiff.”

11.1. Thus, as per the pleadings raised in the plaint, plaintiffs claims that the agreement to sell dated 04.09.2019 on the basis of which earlier suit

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was filed, stands novated. In terms of Section 62 of the Indian Contract Act, 1872, if the parties to a contract agree to substitute a new contract for original contract or to rescind or alter it, the original contract need not be performed. The plaintiff in the present plaint seeks specific performance of the novated agreement which as per him was arrived at by way of oral settlement between the parties, in February, 2022.

12. In view thereof, this Court finds that the Trial Court rightly dismissed the application filed by the defendant under Order VII Rule 11 CPC as the subsequent suit is not based upon original agreement to sell, dated 04.09.2019, but on the novated oral settlement dated 20.02.2022.

12.1. Trite it is that only contents of the plaint need to be perused for the purpose of adjudicating application under Order VII Rule 11 CPC.

12.2. Thus, finding no merit in the present revision petition, the same is ordered to be dismissed.

13. Needless to say, anything observed hereinabove shall not be construed as an expression of opinion on the merits of the case.

14. Pending application, if any, shall also stand disposed off.

**April 22, 2026**

**Dpr**

**(Pankaj Jain)**

**Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No