



\$~49

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 222/2016

SH JAIPAL

..... Plaintiff

Through: Dr. Subhash Vijayan, Eldest Son &
LR of deceased plaintiff.

versus

SH DILBAGH SINGH & ORS

..... Defendants

Through: Mr. Sumit Rana, Advocate for D-1, 2,
LR No.2 of D-3 & D-9.
Dr. S.S. Hooda, Mr. Fantreshwar Jha
& Mr. Aditya Hooda, Advocates for
D-7.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

11.12.2023

%

I.A. 24660/2023 (u/O XXIII Rule 1 Sub-Rule (3) r/w Section 151 of CPC, 1908)

1. The present Application under Order XXIII Rule 1 Sub-Rule (3) read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the legal heirs of the deceased plaintiff seeking permission to withdraw the present Suit with liberty to institute a fresh Suit as per law at an appropriate time in future in respect of the same subject matter involved in the present Suit.
2. It is submitted in the application that the Suit was filed by the Late Shri Jaipal, but on perusal of the record, it is found that the Suit is premature and lacks cause of action.
3. It is, therefore, prayed that legal heirs of the deceased plaintiff may be



permitted to withdraw the present Suit with liberty to institute a fresh Suit as per law at an appropriate time in future in respect of the same subject matter.

4. Learned counsels on behalf of the defendants have objected to the liberty being sought by the legal heirs of the deceased plaintiff on the ground that the application itself states that the Suit lacks cause of action and in these circumstances, no liberty can be granted.

5. **Submissions heard.**

6. The legal heirs of the deceased plaintiff have themselves stated in the present application that no cause of action is made out at this stage as the Suit is premature and the permission may be granted to institute the Suit at an appropriate time.

7. Clearly, it is a simplicitor withdrawal of the present Suit since the plaintiff always has a right to institute a Suit as and when the cause of action arises.

8. By way of present application, the legal heirs of the deceased plaintiff are seeking only reiteration of their right which is conferred of the plaintiff by law.

9. In view of the submissions made, the legal heirs of the deceased plaintiff are permitted to withdraw the Suit.

10. Accordingly, the present Suit is dismissed as withdrawn.

11. The application is disposed of.

CS(OS) 222/2016 & I.As. 13895/2023, 20260/2023, 20676/2023, 20677/2023, 22760/2023

12. In view of the Order passed in I.A. 24660/2023, the present Suit along with the pending applications is dismissed as withdrawn with liberty as



prayed for.

13. The next dates of hearing i.e., 09.01.2024 before the Joint Registrar and 20.03.2024 before this Court are hereby cancelled.

NEENA BANSAL KRISHNA, J

DECEMBER 11, 2023
S.Sharma