

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 10044 of 2023

Petitioner :- Wajih Hasan

Respondent :- Zaki Hasan And 2 Others

Counsel for Petitioner :- Mustaqeem Ahmad

Hon'ble Prakash Padia,J.

1. On 03.10.2023, the following order was passed:-

"1.The petitioner has preferred the present petition under Article 227 of the Constitution of India with the prayer to quash the order dated 17.08.2023 passed by the District Judge Amroha in Misc. Case No.50 of 2023 (Zaki Ahmad Vs.Wajih and others) filed under Section 24 C.P.C.

2. It is argued by learned counsel for the petitioner that an application has been filed by the petitioner on 03.04.2023 being Paper No.74Ka in Original Suit No.453 of 2021 (Wajih Hasan Vs. Imamul Madaris) stating therein that since there are certain technical errors in the suit, the same be permitted to withdraw with liberty to file fresh suit, copy of the said application is appended as Annexure no.2 to the present petition. On the aforesaid application, time was granted to the respondents-defendants to file their objections.

3. During the pendency of the aforesaid application, a transfer application was filed by Zaki Hasan under Section 24 C.P.C. in the Court of District Judge Amroha which was numbered as Misc. Case No.50 of 2023 (Zaki Ahmad Vs.Wajih and others). In the aforesaid case, a prayer has been made to connect both the suits filed by the present petitioner being Original Suit No.453 of 2021 (Wajih Hasan Vs. Imamul Madaris Inter College and others) and Original Suit No.146 of 2023 (Wajih Hasan Vs. Imamul Madaris Inter College and others). An objection to the aforesaid transfer application has been filed by the petitioner, copy of which is appended as Annexure No.8 to the petition. It is specifically mentioned in paragraph 3 of the aforesaid objection that an application to withdraw the Suit No.453 of 2021 has already been pending, therefore, the transfer application is liable to be rejected. After hearing counsel for the parties, the transfer application was allowed by the District Judge Amroha vide order dated 17.08.2023, hence the present petition.

4. It is argued that though in paragraph 2 of the aforesaid order, there is a reference of the application filed by the petitioner in Original Suit No.453 of 2021 in which a prayer has been made by the petitioner to permit him to withdraw the Suit No.453 of 2021 with liberty to file fresh suit, both the suits were connected. It is argued by learned counsel for the petitioner that once an application has already been filed by the petitioner to withdraw the Suit No.453 of 2021with liberty to file fresh suit, there was no occasion for the District Judge, Amroha to connect both the suits more specially without recording any finding on the application filed by the petitioner being application No.74Ka which was filed for withdrawal of the suit. Law in this connection is well settled by the Division Bench of this Court passed in the case of

Raisa Sultana Begam and others Vs. Abdul Qadir and others reported in A.I.R. 1966 All 318. It is held in the aforesaid case that no act is required to be done by the Court below to complete or effectuate the plaintiff's withdrawal of his suit. It has been further held that withdrawal of a suit is a unilateral act to be done by the plaintiff, requires no permission or order of the Court and is not subject to any condition, it becomes effective as soon as it is done just as a compromise does. The similar view has been taken by the Apex Court in the case of Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co. reported in A.I.R. 1968 SC 111 and this Court in the case of Ankit Soni and another Vs. Ram Ji reported in 2005 (2) AWC 1289. Very recently the similar view has also been taken by this Court in the case of Manager Prasad Verma Vs. State of U.P. and others reported in 2023 SCC Online All 784.

5. Heard learned counsel for the petitioner and perused the record.

6. In the facts and circumstances of the case, a direction was issued to the Court below before whom the Suit No.453 of 2021 is pending in which the withdrawal application dated 03.04.2023 being Paper No.74Ka is pending is directed to pass appropriate order on the application dated 03.04.2023 being Paper No.74Ka on or before 12.10.2023.

7. The Registrar (Compliance) is directed to communicate a copy of this order to the Civil Judge (Senior Division) Amroha or before whom the Suit No.453 of 2021 is pending through the District Judge Amroha by 06.10.2023.

8. Put up this matter as fresh on 13.10.2023 along with the order passed by the Court below. "

2. Pursuant to the same, report submitted by the Civil Judge (Senior Division), Amroha dated 10.10.2023 is already on record. Along-with the said report, an order dated 09.10.2023 passed by him in Original Suit No. 453 of 2021 is also appended. By the aforesaid order Application No. 74ka dated 03.04.2023 filed by the petitioner in which a prayer has been made to withdraw the aforesaid suit was allowed and the suit was dismissed as withdrawn.

3. The controversy involved in the present case is that by way of order impugned dated 17.08.2023, the suits were consolidated being Original Suit No. 453 of 2021 pending in the court of Civil Judge (Senior Division), Amroha and Original Suit No. 146 of 2023 pending in the court of Civil Judge (Junior Division), Amroha. By the order impugned the suits were consolidated and transferred in the court of Civil Judge (Senior Division), Amroha.

4. From perusal of the order dated 09.10.2023 as stated above, it transpires that Original Suit No. 453 of 2021 which was pending before the Civil Judge (Senior Division), Amroha has already been withdrawn meaning thereby as on date there is only one suit is pending being Original Suit No. 146 of 2023 which is pending in the court of Civil Judge (Junior Division), Amroha.

5. In this view of the matter, since the suit no. 453 of 2021 has already been dismissed as withdrawn, the Court is of the opinion that the order dated 17.08.2023

has now become infructuous.

6. It is made clear that since as on date only one suit is pending which is Original Suit No. 146 of 2023, the same should be heard by the Presiding Officer having territorial jurisdiction in the matter namely Civil Judge (Junior Division), Amroha.

7. With the aforesaid observations, the present revision is disposed of.

Order Date :- 13.10.2023

Swati