

Party Name : SMT. KAJOL RANI DAS Vs TAPAN DAS

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THE HONBLE MR JUSTICE U. B. SAHA

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The instant revision petition is filed challenging the order dated 21.07.2014 passed by the learned Civil Judge (Sr. Divn.), Court No.2, Agartala, West Tripura in Title Suit No. 18 of 2009 whereunder the learned Civil Judge while allowing the petitioner to withdraw the case directed her to pay the cost of Rs.20,000/- as compensation to the respondent.

Notice was issued and properly served to the respondent but none appears. On 11.02.2015 this Court specifically stated that if the respondent does not appear then the matter will be taken up in absence of the respondent. In view of the above, the matter is taken up today. Mr. Chakraborty, learned senior counsel while urging for setting aside the impugned order has referred to the observation of the learned trial Court wherein the learned trial Court noted inter alia that since there is no bar in abandonment of the suit, the application filed on behalf of the respondent stands allowed. It is also noted that the petitioner is hereby precluded from instituting any suit on the subject matter of this suit. According to Mr. Chakraborty when the petitioner as plaintiff got the relief as sought for even without intervention of the Court and wanted not to proceed with the suit as there was no cause of action for further proceeding with the suit, then the

Court has no jurisdiction to pass an order precluding her from instituting any suit on the subject matter of the suit, in question.

It appears from the record that the present petitioner as a plaintiff filed an application under Order XXIII Rule 1 of the Code of Civil Procedure for withdrawal of the suit.

Therefore, according to this Court learned trial Court has committed an error giving a finding that the plaintiff filed the application for abandonment of the part of claim.

There is a difference between withdrawal of the suit and abandonment of the part of claim. Abandonment of the part of claim means that the suit will continue. In the instant case the plaintiff would not proceed with the entire claim in the suit. More so, when the trial Court allowed the prayer for either withdrawal of the suit or abandonment of the claim then it would not be proper for the trial Court to award a heavy cost like Rs.20,000/- when an honest approach is made by the plaintiff to the Court.

Considering the entire facts and circumstances and upon going through the impugned order, this Court is of considered opinion that the learned trial Court exceeded jurisdiction which is unjust and improper.

Therefore, the impugned order is set aside so far the findings of the trial Court relating to award of the cost as well as debarring the petitioner from instituting any suit on the subject matter of the suit.

In the result, the instant revision petition is allowed.