

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 75 of 2014

1. Manohar Nandwani S/o G.M. Nandwani Aged About 48 years R/O T.P. Nagar, Korba, , Distt. Korba C.G., Present Address- House No. 07, Lalu Ram Colony, Transport Nagar, Korba, Distt. Korba C.G.

---- Appellant

Versus

1. M.L.Kesharwani S/o Munnalal Kesharwani Aged About 62 Years R/O State Bank Of India, Collectorate Branch, Bilaspur C.G., Present Address- House No. 07, Shesh Colony, Vinoba Nagar, Bilaspur, Distt. Bilaspur C.G.

---- Respondent

For Appellant – Ms. Anita Suryavanshi, Advocate.
For Respondent – Mr. Sanjay S. Agrawal, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

11/03/2015

1. Heard on I.A.No.5, an application under Order 23 Rule 1 of the CPC for withdrawal of civil suit as well as the appeal with liberty to file afresh suit in the interest of justice.
2. The application was vehemently opposed by the learned counsel for the respondent who submitted that there is no question for withdrawal of the civil suit as the civil suit has already been disposed of and no suit is pending before this Court; and the permission to withdraw the present civil appeal may only be allowed and liberty to file afresh suit in the interest of justice may not be accepted. In his support the learned counsel placed reliance on the matter of **K.S.Bhoopathy and Others versus Kokila and Others**¹ wherein Hon'ble the Supreme Court held that before granting permission for withdrawal of suit,

¹ (2000) 5 SCC 458

Court is dutybound to satisfy itself that proper grounds exist for granting such permission. On the basis of the cited case law, the learned counsel submitted that only permission to withdraw the appeal may be granted and the rest of the prayer may not be accepted.

3. Contents of the application perused, it goes to show that the suit is not pending before this Court, hence, withdrawal of the suit is not permitted by law. So far as permission to withdraw the appeal is concerned, the appellant may make this prayer before the Court regarding withdrawal of the appeal. So far as permission to file a fresh suit is concerned, on which pleadings the appellant intends to file any suit is not clear in the application; it may not be said on which ground or facts and circumstances the appellant intends to file some suit, even if the appellant files some suit before any Court of law, the general principles regarding res judicata, suit barred by any law and maintainability of the suit for any of the reason is always open for the Court concerned to examine and if there is any inability the Court concerned may within his authority given by law make suitable order for the same. In absence of any clear facts, it would be hard to ascertain on which ground the appellant will file any suit afresh.

4. Looking to the entire facts and circumstances, the application is allowed and the appellant is permitted to withdraw this civil appeal and if any suit afresh he files before any competent Court the same shall be subject to maintainability of said suit under the law.

5. Accordingly, the appeal is dismissed as withdrawn.

Sd/-
JUDGE

