

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.5922 OF 2015

ORDER:

On 10.03.2015, this Court, considering the request of the learned Standing Counsel, adjourned the matter to 13.03.2015 for instructions/counter. The learned Standing Counsel filed counter affidavit together with enquiries and served the same on 07.04.2015 on the learned counsel for petitioner. On 10.04.2015, at the request of learned counsel for the petitioner, the writ petition was directed to be listed after Summer Vacation, 2015, in the meantime, reply, if any. The learned counsel for petitioner through letter dated 17.04.2015 requests the Court to permit the petitioner to withdraw the writ petition. On 20.04.2015, the writ petition was listed under the caption "for withdrawal". The learned Standing Counsel opposed the withdrawal, at the request of the petitioner for reply, on the ground that after the writ petition was adjourned beyond Summer Vacation, the suit in O.S. No.237 of 2015 was filed in the Court of the learned II Additional Chief Judge, City Civil Court, Hyderabad, and in I.A. No.688 of 2015, the petitioner obtained ad-interim injunction restraining the respondents herein from allotting the schedule work to any other bidder. The learned Standing Counsel further submits that the petitioner is not pursuing the legal remedies with clean hands and on being unsuccessful before this Court in getting order, the petitioner has filed a suit suppressed the details and obtained interim injunction against the respondents. Therefore, he prays for imposing conditions/exemplary costs if at all the Court considers the request of petitioner to withdraw the writ petition.

Sri T.C.D. Sekhar, learned counsel for the petitioner submits that he is completely unaware of the steps taken by the petitioner in O.S. No.237 of 2015 or obtaining any order of injunction in I.A.No.688 of 2015 and request for adjournment beyond Summer Vacation was made as per the instructions of his client.

Order XXIII Rule 1 of the Code of Civil Procedure, 1908, reads as follows:

[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 a 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 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 plaintiffs.]

Admittedly the petitioner has pursued the relief of writ and remedy before the Civil Court by filing a suit. The anxiety of the petitioner was to first obtain interim order in the ongoing tender process and then join the issue with the respondents. In the case on hand, with the filing of the counter, at the instance of petitioner, the Writ Petition is adjourned beyond Summer Vacation, and, in the meantime, as already noted the injunction order, restraining the respondents from allotting the work, is obtained.

In the considered view of this Court, the petitioner is not pursuing the remedy with clean hands. The petitioner has pursued Forum hunting. The Court can consider withdrawal of a case and if the objection is stated, the withdrawal is

with terms and conditions. The value of subject tender it is stated is more than Rs.100 Crores and the request for withdrawal is permitted by imposing exemplary costs of Rs.50,000/- (Rupees Fifty thousand only) on the petitioner. The respondents are given liberty in addition to other remedies to adjust Rs.50,000/- costs now imposed by this Court from the E.M.D made available by the petitioner along with tender documents.

Accordingly, the Writ Petition is dismissed as withdrawn, subject to the above conditions. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in the Writ Petition shall stand closed.

S.V. BHATT, J

Date: 21.04.2015

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HON'BLE SRI JUSTICE S.V. BHATT

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Date: 21.04.2015

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