

Mr. Rakesh Misar a/w. Ms Mustafa Kachwala i/b. Kachwala Misar Co. i/b.
Kachwala Misar and Co. for Petitioners.
Mr. Kamallesh Prakash Mali for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 06, 2017

Heard Mr. Misar, learned Counsel for petitioners and Mr. Mali, learned Counsel for respondents No.1 and 2 at length.

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3. In support of this Petition, Mr. Misar submitted that on 10.10.2015, learned trial Judge framed following issues:

1. Is the suit property valued?
2. Whether this court has pecuniary jurisdiction to try and decide the suit?

4. He submitted that on 07.02.2016, defendant No.1 filed evidence affidavit. Plaintiffs conducted cross-examination on 17.03.2016. On 07.04.2016, plaintiffs filed present application under Order XXIII, Rule 1(3) of C.P.C. The arguments were made on application under Section 9-A of C.P.C. on 12.04.2016. Matter was adjourned to 21.04.2016 for passing orders on application under Section 9-A. It was adjourned from time to time and lastly to 03.09.2016. On 03.09.2016, plaintiffs filed present application under Order XXIII, Rule 1(3) for giving up prayer clause (b) of the Suit. He submitted that this is nothing but an after-thought with a view to getting over the objection raised by the defendants as regards pecuniary jurisdiction. He, therefore, submitted that the learned trial Judge was not justified in allowing the application.

5. On the other hand, Mr. Mali submitted that though the application is styled under Order XXIII, Rule 1(3), plaintiffs are not seeking liberty to institute fresh Suit in respect of the subject matter of the Suit or such part of the claim. In other words, the application made by the plaintiffs is essentially under Order XXIII, Rule 1(1) for abandoning prayer clause (b) of the Suit. The learned trial Judge while allowing the application also treated that application under Order XXIII, Rule 1(1) of C.P.C.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the application filed by the plaintiffs shows that

plaintiffs have prayed for permission to abandon prayer clause (b) from the Suit. Plaintiffs have not sought liberty in terms of Order XXIII, Rule 1(3) for filing fresh Suit.

7. In view thereof as also for the reasons recorded in paragraphs 7 to 10 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. Liberty is reserved to the defendants to apply for expeditious disposal of the Suit. If such application is taken out, the learned trial Judge will pass appropriate order. Order accordingly.

(R. G. KETKAR, J.)

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