

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1636 OF 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order, dated 13.10.2016, in Original Suit No.1538 of 2014 on the file of III Junior Civil Judge, City Civil Court, Hyderabad.

2. The petitioners herein filed a Memo before the Court below stating that they intend to withdraw the suit in O.S.No.1538 of 2014 as not pressed since the petition i.e., I.A.No.31 of 2015 in O.S.No.1538 of 2014 filed by them for withdrawal of the above suit with a liberty to file fresh suit has been rejected by the Court below. The Court below rejected the request of the petitioners.

3. The petitioners herein filed I.A.No.31 of 2015 in O.S.No.1538 of 2014 on the file of III Junior Civil Judge, City Civil Court, Hyderabad, to grant permission to withdraw the suit with a liberty to institute a fresh suit on the same cause of action. But the same was dismissed on the ground that the petitioners raised several pleas to reserve the right to file a fresh suit on the same cause of action. Now, the present Memo is filed stating the petitioners do not want to prosecute the proceedings and hence, they seek permission to withdraw the suit. But, the Court below declined to permit the petitioners to withdraw the suit on the ground that the order in I.A.No.31 of 2015 attained finality as it was not challenged in revision before the competent Court and that declining leave to withdraw the suit would not cause any prejudice to either of the parties, therefore, rejected the request of the petitioners to withdraw the suit.

4. No doubt, while rejecting the request of the petitioners with a liberty to file a fresh suit on the same cause of action, the Court has to record its reasons and pass orders. But, now the petitioners just reiterated the order passed by trial Court in earlier petition and sought permission to withdraw the suit as not pressed. Therefore, dismissing the suit as withdrawn without leave to file fresh suit on the same case of action would not cause prejudice either to the plaintiffs or to the defendant and dismissal of petition in I.A.No.31 of 2015 would not operate as *res judicata*. Hence, the impugned order of the trial Court is erroneous and the same is hereby set aside.

5. Accordingly, the Civil Revision Petition is allowed setting aside the order, dated 13.10.2016, in O.S.No.1538 of 2014 on the file of III Junior Civil Judge, City Civil Court, Hyderabad. Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

JUNE 09, 2017
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M. SATYANARAYANA MURTHY, J

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Date: 09.06.2017

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