

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 378 of 2019

1. Smt. Mala Dubey, W/o. Shri T.N. Dubey, aged about 60 years, R/o. Geetanjali Nagar, Street No. 6, Old Bus Stand, Bilaspur, District Bilaspur Chhattisgarh.
2. Shri T.N. Durbey, S/o. Late C.P. Dubey, aged about 65 years, R/o. Geetanjali Nagar, Street No. 6, Old Bus Stand, Bilaspur, District Bilaspur Chhattisgarh.
3. Gopal Kachhi, S/o. Late Laxman Kachhi, aged about 53 years, R/o. Chadda Baadi, Mangla, Bilaspur, aahsil and District Bilaspur Chhattisgarh.

---- Petitioners

Versus

1. Smt. Vidya Devi, W/o. Late Lakhan Lal Saraf, aged about 70 years, R/o. Kashyap Colony, Geetanjali Nagar, Bilaspur, District – Bilaspur (C.G.) (Plaintiff in the civil suit)
2. State of Chhattisgarh, Through : Collector, Bilaspur, District Bilaspur Chhattisgarh. (Defendant in the civil suit).

---- Respondents

For Petitioners	: Mr. Siddharth Dubey, Advocate
For Respondent No.1	: Mr. Vivek Shrivastava, Advocate
For State/Respondent No.2	: Mr. Anil Tripathi, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

20/07/2021

1. This petition has been brought being aggrieved by the order dated 08.03.2019, passed by the Court of learned Fourth Civil Judge,

Class-I, Bilaspur in Civil Suit No.19-A/2012, whereby allowing the application under Order 23 Rule 1 (3) of C.P.C. permission was granted to the plaintiff to withdraw the civil suit with liberty to file duly constituted civil suit.

2. It is submitted by the learned counsel for the petitioners that the petitioners were defendants in Civil Suit No. 19-A/2012. The petitioners had separately filed an application under Order 7 Rule 11 of C.P.C., in which the grounds were raised, according to which, the suit filed was not maintainable technically. Subsequently, the application that was filed by the respondent No.1/plaintiff praying for withdrawal of civil suit under Order 23 Rule 1 (3) of C.P.C., which was erroneously allowed by the trial Court granting liberty to the respondent to file duly constituted separate civil suit. The learned trial Court ought to have decided the application under order 7 Rule 11 of C.P.C. first and in case the petitioners had succeeded in that application, there would have been bar for filing civil suit on the same cause of action. The learned trial Court by the impugned order has unlawfully given liberty to the respondent No.1 to file repeat civil suit. Hence, the impugned order is unsustainable, which is liable to be set-aside.
3. Counsel for the respondent No.1 opposes the petition and the submissions made in this respect. It is submitted that the learned trial Court has held in the impugned order, that the suit filed by the respondent could not have succeeded on account of technical defect present in the plaint. Therefore, the impugned order does not suffer from any infirmity. The petition is without any substance, which may be dismissed.

4. Learned State counsel formally opposes the petition and the submission made in this respect.
5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. Order 7 Rule 11 of C.P.C. provides for rejection of plaint on the ground that are mentioned in the provision, in which, there is one of the ground is that the plaint does not disclose a cause of action. Order 23 Rule 1 of C.P.C. provides that plaintiff may at any time after the institution of the suit abandon his suit. Sub-rule (3) of Rule 1 provides that where Court is satisfied by the reason of some formal defects or that there are sufficient grounds for allowing the plaintiff to institute a fresh civil suit in that case, the plaintiff may be permitted to withdraw the suit.
7. The formal defect in the plaint can be brought to the notice of the Court by the plaintiff himself by filing an application under Order 23 Rule 1 of C.P.C. or even by defendants by filing application under Order 7 Rule 11 of C.P.C.. The defect present was apparent, which has been acknowledged by the respondent, therefore, the application was filed under Order 23 Rule 1 of C.P.C. for withdrawal of the civil suit. The learned trial Court has also made these observations about the formal defects in the civil suit. Apart from that Order 23 Rule 1 is very specific on this point that the application for withdrawal of suit can be filed at any stage of the pendency of the civil suit. The submission of the petitioners' counsel that order of rejection of plaint under Order 7 Rule 11 of C.P.C. would be a bar for filing the subsequent suit, does not

appear to be a convincing argument, because the provisions under Order 7 Rule 11 of C.P.C. does not prescribe for any such bar for filing of subsequent suit with respect to the same dispute and same cause of action. Therefore, this Court is of the view that the learned trial Court has not committed any error in passing the impugned order.

8. In view of the forgoing discussion made here-in-above, the present petition is without any substance, which is dismissed at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram