

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.531 of 2018

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Santosh Kumar Rastogi son of Late Vijay Kumar Rastogi resident of Village-
Chhoti Ballia Bazar, Police Station- Sub Division and Registry Ballia,
District- Begusarai.

... .. Petitioner/s

Versus

1. Sunil Kumar Rastogi son of Late Ram Nath Rastogi resident of Village-
Chhoti Ballia Bazar, Police Station- Sub- Division and Registry Ballia,
District- Begusarai.
2. Akhilesh Kumar Rastogi son of Late Ram Nath Rastogi resident of Village-
Chhoti Ballia Bazar, Police Station- Sub- Division and Registry Ballia,
District- Begusarai.
3. Most Madhuri Devi wife of Late Ram Nath Rastogi resident of Village-
Chhoti Ballia Bazar, Police Station- Sub- Division and Registry Ballia,
District- Begusarai.
4. Mukund Kumar Rastogi son of late Ajay Kumar Rastogi resident of Village-
Chhoti Ballia Bazar, Police Station- Sub- Division and Registry Ballia,
District- Begusarai.
5. Most Hiramani Devi wife of late Ajay Kumar Rastogi resident of Village-
Chhoti Ballia Bazar, Police Station- Sub- Division and Registry Ballia,
District- Begusarai.
6. Sunaina Devi wife of Late Vijay Kumar Rastogi resident of Village- Chhoti
Ballia Bazar, Police Station- Sub- Division and Registry Ballia, District-
Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Umanath Mishra
For the Respondent/s	:	Mr. Nikhil Kumar Agrawal
		Ms. Aditi Hansaria

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

ORAL

Date : 25-08-2022

Heard learned Counsel for the parties concerned.

2. The petitioner has filed the present application for
setting aside the order, dated 21.12.2017, passed, in Title Suit No.



415 of 2011, by learned Sub Judge, Ballia, Begusarai, by which the petition, dated 16.02.2017, filed by the petitioner-plaintiff, under Order XXIII Rule 1 (3) read with Section 151 of the C.P.C., for withdrawal of the suit with liberty to file miscellaneous case, has been rejected.

3. The contention of the petitioner is that preliminary compromise decrees were passed in Title Suit No. 24 of 1994 and Title Suit No. 222 of 2003, by learned Sub Judge-I and Sub Judge-II, Begusarai, respectively, on the ground that the aforesaid decrees were passed without notice and on the basis of forged signature of the minors and others.

4. Learned Counsel for the petitioner submits that Title Suit No. 24 of 1994 was filed on 02.02.1994 by Ajay Kumar Rastogi against the petitioner and others for partition of the properties including those of self-acquired properties of the petitioner's family, impleading the petitioner and his younger brother, as defendants, who were minors at that point of time. The petitioner was born on 15.02.1982; whereas his brother, Vishnu Kumar Rastogi was born on 02.10.1986. On 17.11.1994, without service of notice upon the petitioner and his family members, who were parties in the suit, a forged compromise petition was filed on the basis of forged signature of the petitioner, his younger brother



(both were minor at that point of time) and his old father, who had no knowledge about the institution of Title Suit No. 24 of 1994 and they neither appeared nor signed on the said compromise petition. Accordingly, on 14.10.1996, on the basis of forged compromise petition, a preliminary decree for partition was prepared/drawn. In the year 2003, another suit, bearing Title Suit No. 222 of 2003 for partition of the scheduled properties was filed fraudulently by one Pramila Devi, wife of Madan Prasad Rastogi, impleading the petitioner's father as defendant and in this suit also, without notice and on the basis of forged compromise petition, a decree was passed and though the petitioner had attained the age of majority at that point of time, but he was not impleaded as party-defendant in the suit. However, the brother of the petitioner, Vishnu Kumar Rastogi was minor, but he was also not impleaded as party-defendant in the suit. On 16.06.2004, a preliminary compromise decree was passed by Sub Judge-IV, Begusarai, in Title Suit No. 222 of 2003. The father of the petitioner died in the year 2008. In the year 2011, when the petitioner came to know that his agnates are claiming lands of the petitioner on the basis of some unknown compromise decrees, which, according to the petitioner, was void, he filed Title Suit No. 415 of 2011 and the same was admitted on 03.02.2012 and notices were issued to the



defendants. On 03.05.2012, the defendants filed their written statement, stating that the present suit against the compromise decrees is not maintainable. On 16.02.2017, the petitioner-plaintiff filed a petition, under Order XXIII Rule 1 (3) read with Section 151 of the C.P.C. for withdrawal of the suit on the ground that on the wrong advise of his Counsel, the present suit was filed for declaring the compromise decrees, passed in Title Suit Nos. 24 of 1994 and 222 of 2003, as void and also prayed for injunction therein.

5. By the impugned order, dated 21.12.2017, learned Sub Judge, Ballia, Begusarai, rejected the petition, dated 16.02.2017, filed by the petitioner-plaintiff, under Order XXIII Rule 1 (3) read with Section 151 of the C.P.C., holding that for his fault, the petitioner is solely responsible and refused to allow the petitioner to withdraw the suit.

6. Learned Counsel for the petitioner submits that on the wrong advise, the present suit challenging the compromise decrees passed in Title Suit Nos. 24 of 1994 and 222 of 2003, obtained on the basis of forged signature of the petitioner was filed, but subsequently on the basis of correct legal advise, the petitioner filed the petition for withdrawal of the suit with liberty to file miscellaneous case before the same Court, which had passed the



compromise decrees, in view of the law laid down by the Supreme Court, in the case of **Banwari Lal v. Smt. Chando Devi (through L. R.) and Another (AIR 1993 SC 1139)**. He relies on paragraphs 6, 7, 13 and 14 of **Banwari Lal** (supra), which are quoted herein below:

“6. The experience of the courts has been that on many occasions parties having filed petitions of compromise on basis of which decrees are prepared, later for one reason or other challenge the validity of such compromise. For setting aside such decrees suits used to be filed which dragged on for years including appeals to different courts. Keeping in view the predicament of the courts and the public, several amendments have been introduced in Order 23 of the Code which contain provisions relating to withdrawal and adjustment of suit by Civil Procedure Code (Amendment) Act, 1976. Rule 1 of Order 23 of the Code prescribes that at any time after the institution of the suit, the plaintiff may abandon his suit or abandon a part of his claim. Rule 1(3) provides that 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 such suit with liberty to institute a fresh suit. In view of Rule 1(4) if plaintiff abandons his suit or withdraws such



suit without permission referred to above, he shall be precluded from instituting any such suit in respect of such subject-matter. Rule 3 of Order 23 which contained the procedure regarding compromise of the suit was also amended to curtail vexatious and tiring litigation while challenging a compromise decree. Not only in Rule 3 some special requirements were introduced before a compromise is recorded by the court including that the lawful agreement or a compromise must be in writing and signed by the parties, a proviso with an explanation was also added which is as follows:

“Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.”

7. By adding the proviso along with an explanation the purpose and the object of the amending Act appears to be to compel the party challenging the compromise to question the same before the court which had recorded the compromise in question. That court was enjoined to decide the controversy whether the parties have arrived at an



adjustment in a lawful manner. The explanation made it clear that an agreement or a compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of the said rule. Having introduced the proviso along with the explanation in Rule 3 in order to avoid multiplicity of suit and prolonged litigation, a specific bar was prescribed by Rule 3-A in respect of institution of a separate suit for setting aside a decree on basis of a compromise saying:

“3-A. *Bar to suit.*— No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”

13. When the amending Act introduced a proviso along with an explanation to Rule 3 of Order 23 saying that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, “the Court shall decide the question”, the Court before which a petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction had been arrived at on basis of any lawful agreement. To make the enquiry in respect of validity of the agreement or the compromise more comprehensive, the explanation to the proviso says that an agreement or compromise “which is void or voidable under the Indian Contract Act ...” shall not be deemed to be lawful within the meaning of the said Rule. In view of the proviso read with the explanation, a Court which had entertained



the petition of compromise has to examine whether the compromise was void or voidable under the Indian Contract Act. Even Rule 1(m) of Order 43 has been deleted under which an appeal was maintainable against an order recording a compromise. As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1-A of Order 43 of the Code.

14. The application for exercise of power under proviso to Rule 3 of Order 23 can be labelled under Section 151 of the Code but when by the amending Act specifically such power has been vested in the Court before which the petition of compromise had been filed, the power in appropriate cases has to be exercised under the said proviso to Rule 3. It has been held by different High Courts that even after a compromise has been recorded, the court concerned can entertain an application under Section 151 of the Code, questioning the legality or validity of the compromise. Reference in this connection may be made to the cases *Tara Bai (Smt) v. V.S. Krishnaswamy Rao* [AIR 1985 Kant 270 : ILR 1985 Kant 2930]; *S.G. Thimmappa v. T. Anantha* [AIR 1986 Kant 1 : ILR 1985 Kant 1933] ; *Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh* [AIR 1958 Pat 618 : 1958 BLJR 651] ; *Mangal Mahton v. Behari Mahton* [AIR 1964 Pat 483 : 1964 BLJR 727] and *Sri Sri Iswar Gopal Jew v. Bhagwandas Shaw* [AIR 1982



Cal 12] where it has been held that application under Section 151 of the Code is maintainable. The court before which it is alleged by one of the parties to the alleged compromise that no such compromise had been entered between the parties that court has to decide whether the agreement or compromise in question was lawful and not void or voidable under the Indian Contract Act. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to Rule 3 and as such not lawful. The learned Subordinate Judge was perfectly justified in entertaining the application filed on behalf of the appellant and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the court could have recorded such agreement or compromise on February 27, 1991. Having come to the conclusion on the material produced that the compromise was not lawful within the meaning of Rule 3, there was no option left except to recall that order.”

7. Accordingly, the submission is that the petition for withdrawal of the suit with liberty to file miscellaneous case is bona fide based upon the correct legal advise and it is settled legal proposition that for the fault of the lawyer, the client should not suffer.



8. On the other hand, learned Counsel for the respondents-defendants submits that the respondents have no objection if the petitioner is allowed to withdraw his suit, but in view of the decision of the Supreme Court, in the case of **M/s Sree Surya Developers and Promoters v. N. Shailesh Prasad and Others (AIR 2022 SC 1031)**, the learned Trial Court ought to have rejected the plaint under Order VII Rule 11 of the C.P.C., taking into consideration the provisions of Order XXIII Rule 3A of the C.P.C., which bars the suit and stipulates that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

9. Learned Counsel for the respondents relies on paragraphs 7, 8 and 9 of **M/s Sree Surya Developers and Promoters (supra)**, which are quoted herein below:

“7. Now, so far as the main issue whether the trial court rightly rejected the plaint in exercise of powers under Order 7 Rule 11 CPC on the ground that an independent suit challenging the compromise decree would be barred in view of Order 23 Rule 3-A CPC is concerned, on plain reading of Order 23 Rule 3-A CPC, the trial court was justified in rejecting the plaint. Order 23 Rule 3-A CPC, which has been inserted by amendment in 1976 reads as under:



“**3-A. Bar to suit.**—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”

8. Therefore, on plain reading of Order 23 Rule 3-A CPC, no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. Identical question came to be considered by this Court in *R. Janakiammal* [*R. Janakiammal v. S.K. Kumarasamy*, (2021) 9 SCC 114] . It is observed and held by this Court that Rule 3-A of the Order 23 bars the suit to set aside the decree on the ground that the compromise on which decree was passed was not lawful. It is further observed and held that an agreement or compromise which is clearly void or voidable shall not be deemed to be lawful and the bar under Rule 3-A shall be attracted if compromise on the basis of which the decree was passed was void or voidable. In this case, this Court had occasion to consider in detail Order 23 Rule 3 as well as Rule 3-A. The earlier decisions of this Court have also been dealt with by this Court in paras 53 to 57 as under : (*R. Janakiammal case* [*R. Janakiammal v. S.K. Kumarasamy*, (2021) 9 SCC 114] , SCC pp. 132-36)

“53. Order 23 Rule 3 as well as Rule 3-A came for consideration before this Court in large number of cases and we need to refer to a few of them to find out the ratio of judgments of this Court in context of Rule 3 and Rule 3-A. In *Banwari Lal v. Chando Devi* [*Banwari Lal v. Chando Devi*, (1993) 1



SCC 581] , this Court considered Rule 3 as well as Rule 3-A of the Order 23. This Court held that the object of the Amendment Act, 1976 is to compel the party challenging the compromise to question the court which has recorded the compromise. In paras 6 and 7, the following was laid down : (SCC pp. 584-85)

‘6. The experience of the courts has been that on many occasions parties having filed petitions of compromise on basis of which decrees are prepared, later for one reason or other challenge the validity of such compromise. For setting aside such decrees suits used to be filed which dragged on for years including appeals to different courts. Keeping in view the predicament of the courts and the public, several amendments have been introduced in Order 23 of the Code which contain provisions relating to withdrawal and adjustment of suit by the Civil Procedure Code (Amendment) Act, 1976. Rule 1 Order 23 of the Code prescribes that at any time after the institution of the suit, the plaintiff may abandon his suit or abandon a part of his claim. Rule 1(3) provides that 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 such suit with liberty to institute a fresh suit. In view of Rule 1(4) if the plaintiff abandons his suit or



withdraws such suit without permission referred to above, he shall be precluded from instituting any such suit in respect of such subject-matter. Rule 3 Order 23 which contained the procedure regarding compromise of the suit was also amended to curtail vexatious and tiring litigation while challenging a compromise decree. Not only in Rule 3 some special requirements were introduced before a compromise is recorded by the court including that the lawful agreement or a compromise must be in writing and signed by the parties, a proviso with an Explanation was also added which is as follows:

“Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this Rule.”

7. By adding the proviso along with an Explanation the purpose and the object of the amending Act appears to be to compel the party challenging the compromise to question the same before the court which had recorded the compromise in question. That court was enjoined to decide the



controversy whether the parties have arrived at an adjustment in a lawful manner. The Explanation made it clear that an agreement or a compromise which is void or voidable under the Contract Act shall not be deemed to be lawful within the meaning of the said Rule. Having introduced the proviso along with the Explanation in Rule 3 in order to avoid multiplicity of suit and prolonged litigation, a specific bar was prescribed by Rule 3-A in respect of institution of a separate suit for setting aside a decree on the basis of a compromise saying:

“**3-A. Bar to suit.**—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”

54. The next judgment to be noted is *Pushpa Devi Bhagat v. Rajinder Singh* [*Pushpa Devi Bhagat v. Rajinder Singh*, (2006) 5 SCC 566] , R.V. Raveendran, J. speaking for the Court noted the provisions of Order 23 Rule 3 and Rule 3-A and recorded his conclusions in para 17 in the following words : (SCC p. 576)

‘17. The position that emerges from the amended provisions of Order 23 can be summed up thus:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or



refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants



challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code.'

55. The next judgment is *R. Rajanna v. S.R. Venkataswamy* [*R. Rajanna v. S.R. Venkataswamy*, (2014) 15 SCC 471 : (2015) 4 SCC (Civ) 238] in which the provisions of Order 23 Rule 3 and Rule 3-A were again considered. After extracting the aforesaid provisions, the following was held by this Court in para 11 : (SCC p. 474)

'11. It is manifest from a plain reading of the above that in terms of the proviso to Order 23 Rule 3 where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the Court before whom such question is raised, shall decide the same. What is important is that in terms of Explanation to Order 23 Rule 3, the agreement or compromise shall not be deemed to be lawful within the meaning of the said Rule if the same is void or voidable under the Contract Act, 1872. It follows that in every case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or



compromise is lawful has to be determined by the court concerned. What is lawful will in turn depend upon whether the allegations suggest any infirmity in the compromise and the decree that would make the same void or voidable under the Contract Act. More importantly, Order 23 Rule 3-A clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. This implies that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone who can examine and determine that question. The court cannot direct the parties to file a separate suit on the subject for no such suit will lie in view of the provisions of Order 23 Rule 3-A CPC. That is precisely what has happened in the case at hand. When the appellant filed OS No. 5326 of 2005 to challenge the validity of the compromise decree, the court before whom the suit came up rejected the plaint under Order 7 Rule 11 CPC on the application made by the respondents holding that such a suit was barred by the provisions of Order 23 Rule 3-A CPC. Having thus got the plaint rejected, the defendants (the respondents herein) could hardly be heard to argue that the plaintiff (the appellant herein) ought to pursue his remedy against the compromise decree in pursuance of OS No. 5326 of 2005 and if the plaint in the suit has been rejected to



pursue his remedy against such rejection before a higher court.’

56. The judgments of *Pushpa Devi* [*Pushpa Devi Bhagat v. Rajinder Singh*, (2006) 5 SCC 566] as well as *Banwari Lal* [*Banwari Lal v. Chando Devi*, (1993) 1 SCC 581] were referred to and relied on by this Court. This Court held that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone which can examine and determine that question.

57. In subsequent judgment, *Triloki Nath Singh v. Anirudh Singh* [*Triloki Nath Singh v. Anirudh Singh*, (2020) 6 SCC 629 : (2020) 3 SCC (Civ) 732] , this Court again referring to earlier judgments reiterated the same proposition i.e. the only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and separate suit is not maintainable. In paras 17 and 18, the following has been laid down : (SCC p. 638)

‘17. By introducing the amendment to the Civil Procedure Code (Amendment) Act, 1976 w.e.f. 1-2-1977, the legislature has brought into force Order 23 Rule 3-A, which creates bar to institute the suit to set aside a decree on the ground that the compromise on which decree is based was not lawful. The purpose of effecting a compromise between the



parties is to put an end to the various disputes pending before the court of competent jurisdiction once and for all.

18. Finality of decisions is an underlying principle of all adjudicating forums. Thus, creation of further litigation should never be the basis of a compromise between the parties. Rule 3-A of the Order 23 CPC put a specific bar that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The scheme of Order 23 Rule 3 CPC is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and a voluntary act on the part of the parties. The court can be instrumental in having an agreed compromise effected and finality attached to the same. The court should never be party to imposition of a compromise upon an unwilling party, still open to be questioned on an application under the proviso to Order 23 Rule 3 CPC before the court.’ ”

That thereafter it is specifically observed and held that a party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful i.e. it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable.

9. In view of the above decisions of this Court, the trial court was absolutely justified in



rejecting the plaint on the ground that the suit for the reliefs sought challenging the compromise decree would not be maintainable.”

10. The proposition of law is not in dispute. The Supreme Court, in the case of **Banwari Lal** (supra), and so many other decisions, held that for challenging the compromise decree on the ground of the same being not lawful, the party can avail the remedy before the same court, which has passed the compromise decree and separate suit is not maintainable in view of Order XXIII Rule 3A of the C.P.C.

11. In paragraphs 24, 25 and 26 of **Anil Kumar Singh v. Vijay Pal Singh and Others**, reported in **(2018) 12 SCC 584**, the Supreme Court has held as follows:

“**24.** The reason is that while making a prayer to withdraw the suit under Rule 1(1), the plaintiff does not ask for any leave to file a fresh suit on the same subject-matter. A mere withdrawal of the suit without asking for anything more can, therefore, be always permitted. In other words, the defendant has no right to compel the plaintiff to prosecute the suit by opposing the withdrawal of suit sought by the plaintiff except to claim the costs for filing a suit against him.

25. However, when the plaintiff applies for withdrawal of the suit along with a prayer to grant him permission to file a fresh suit on the same



subject-matter as provided in sub-rule (3) of Rule 1 then in such event, the defendant can object to such prayer made by the plaintiff. In such event, it is for the court to decide as to whether the permission to seek withdrawal of the suit should be granted to the plaintiff and, if so, on what terms as provided in sub-rule (3) of Rule 1.

26. Now coming to the facts of the case, we are of the considered opinion that the trial court and the Revision Court (ADJ) were justified in permitting the appellant (plaintiff) to withdraw the suit under sub-rule (1) of Rule 1. In other words, since the appellant had applied for withdrawal of the suit under Order 23 Rule 1, the trial court was justified in permitting withdrawal of the suit subject to the appellant paying costs of Rs 350 to Respondent 1 (Defendant 1). Such order, in our view, was in conformity with sub-rule (3) of Rule 1 and was rightly upheld by the Revision Court.”

12. The Supreme Court, in paragraph 25 of **Anil Kumar Singh** (supra), has held that it is for the court to decide as to whether the permission to seek withdrawal of the suit should be granted to the plaintiff and, if so, on what terms as provided in Rule 1 (3) of Order XXIII of the C.P.C., meaning thereby that there is no absolute bar in allowing the party to withdraw the suit with liberty to file miscellaneous case and/or fresh suit if the same is maintainable.



13. In view of the aforesaid discussions, both on facts as well as on law, I am of the view that the learned Court below, while rejecting the prayer of the petitioner, has not considered the law laid down by the Supreme Court, as discussed herein above.

14. Accordingly, the impugned order, dated 21.12.2017, passed, in Title Suit No. 415 of 2011, by learned Sub Judge, Ballia, Begusarai, is hereby set aside. The matter is remitted back to the concerned Court to pass a fresh order on the petition for withdrawal with liberty to file miscellaneous case filed by the petitioner in the light of the discussion held herein above.

15. This application is allowed to the extent indicated above.

16. However, there shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01-09-2022
Transmission Date	N/A

