

18 15.09.
AG 2022
M/R
KB
Ct
07

C.O. 1910 of 2022

**Smt. Amrita Kumar Biswas
Vs
Sri Ankan Mitra**

Mr. Satadeep Bhattacharya,
Mr. Jayanta Pandit, ... For the petitioner.

Mr. Sarbananda Sanyal, ... For the opposite party.

Mr. Satadeep Bhattacharya, learned advocate appearing for the petitioner, while assailing the order dated 22nd April, 2022 passed by learned Civil Judge (Junior Division), Tehatta, Nadia in Title Suit No. 11 of 201,7 submits that even after unwillingness of the plaintiff to proceed with the suit, for the inadvertent mistake committed, while drafting the plaint with prayer for granting liberty to file fresh suit afresh, the Court below has mechanically proceeded to go ahead with the suit after rejecting the prayer for withdrawal of the suit under Order 23 Rule 1 CPC.

Learned advocate for the petitioner draws the attention of the Court to the copy of the petition filed by the opposite party/plaintiff on 16th March, 2019 proposing withdrawal of the suit for the reasons mentioned therein.

Upon making reference to such petition, learned advocate for the petitioner submits that further movement of the suit is not according to law, in view

of the express unwillingness, mentioned in the petition, proposing withdrawal of the suit.

Learned advocate appearing for the opposite party submits that there has been some inadvertent mistake, while drafting the plaint, and as such the suit was proposed to be withdrawn with liberty to file fresh suit.

Upon perusal of the impugned order, in context with the copy of the petition dated 16th March, 2019, it appears that the withdrawal of the suit for the reasons mentioned therein with a prayer for obtaining leave to file suit afresh is inevitable consequence, which is conspicuously evident from the text of the petition.

That being the position, no further elaboration is necessary.

The revisional application is disposed of upon setting aside the impugned order dated 22nd April, 2022 with a direction upon the Court below to rehear the petition filed by the opposite party/plaintiff on 16th March, 2019, in context with the reasons disclosed in the petition, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment, preferably before the next date fixed.

Petitioner is directed to make communication of this order to the learned court below as well as to

the learned advocate appearing in the court below for the opposite party and the opposite party.

Liberty is granted to the opposite party to seek leave for filing supplementary affidavit in connection with the original application proposing withdrawal of the suit.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)