

IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.124 of 2022

Suryanarayan Balabantaray

.....

Appellant

Mr. Rabindra Kumar Prusty, Adv.

-Versus-

Subhashree Nayak

.....

Respondent

CORAM:

JUSTICE S. TALAPATRA

JUSTICE M.S. SAHOO

ORDER

18.07.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual/ Physical Mode).
2. By means of this appeal, the order dated 25.04.2022 as delivered in C.P. No.201 of 2019 by the Judge, Family Court, Bhubaneswar has been challenged by the respondent (the appellant herein). For the purpose of reference, the said order is reproduced hereunder:

“Order dt. 25.04.2022

The case record is posted today for further cross examination of P.W.1. Petitioner is present along with her learned counsel. Respondent is absent. Advocate D. Behera and his associates filed fresh power in favour of the petitioner on consent of the previous lawyer. Petitioner filed a petition praying to withdraw the case. As per the petition, the petitioner does not want to proceed with this case anymore and she expressed her willingness to withdraw the same. Heard. Prayer of the petitioner is allowed and the case is disposed of as withdrawn.

*Sd/- N. Jena,
Judge Family Court, BBSR”*

3. Mr. R.K. Prusty, learned counsel appearing for the appellant has submitted that the court below ought not have allowed the prayer for withdrawal in the manner, as reflected in the order dated 25.04.2022.

4. From the above extract, it would appear without any doubt that no liberty to institute fresh action has been granted to the petitioner, the respondent in this appeal. A person, who institutes any action always wields a general right to withdraw such action. But, if he wants liberty for a fresh action on the same cause, he should satisfy the Court about the grounds and in that event, the respondent in the action shall have an opportunity to oppose such withdrawal, otherwise not. But when it is a blanket withdrawal without seeking any liberty to institute a fresh action, the respondent does not have any locus standy to oppose such prayer.

5. Mr. Prusty, learned counsel has further stated that the matrimonial suit ought to have been dismissed instead of being disposed. This distinction is not quite understandable to us. Whether the action is dismissed or not, can only be found by reading of the entire text of the order. According to us, the civil proceeding has been dismissal on withdrawal.

6. In view of that, we do not find any merit in this appeal and the same stands dismissed.

7. Draw the decree accordingly.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge



