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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 620/2022, CM 29231/2022 & CM 29232/2022

SHAILLY PRABHA Petitioner

Through: Ms. Mercy Hussain, Adv.

versus

SH. RAJAN CHUGH Respondent

Through: Mr. Tejveer Singh Bhatia, Mr.
Rohan Swarup and Mr. Kiratraj Sardana,
Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

06.07.2022

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1. At the outset, learned Counsel for the respondent draws the attention of the Court to the fact that there are certain uncharitable averments directed against the Court below, contained in the petition filed by the petitioner. Learned Counsel for the petitioner apologizes for the averments and submits that the petition was not drafted by her. She agrees to unconditionally withdraw all averments, which are directed against the Court below.

2. The issue in controversy is short. Both sides have been heard and are agreeable to the disposal of this matter without serving a notice and further pendency before this Court.

3. The impugned order dated 6th June 2022 has been passed by the



learned Civil Judge in CS SCJ 1352/2021 (*Shailly Prabha v. Rajan Chugh*). It dismisses an application filed by the petitioner under Order XXIII Rule 1 of the Code of Civil Procedure, 1908 (CPC), with costs of ₹5,000/-.

4. The proceedings emanate out of a suit filed by the petitioner against the respondent, seeking a restraint against the respondent from forcibly dispossessing the petitioner, and for issuance of a mandatory injunction to the respondent to restore the electricity connection in the premises occupied by the petitioner.

5. During the pendency of the suit, the petitioner filed the application which has come to be disposed by the impugned order, under Order XXIII Rule 1 of the CPC. The application averred that electricity in the petitioner's premises had been restored on 18th January, 2022 and, that further, the respondent had filed a suit against the petitioner for possession of the suit property, which was pending before the learned Additional District Judge ("the learned ADJ"). Averring that, in these circumstances, the suit filed by the petitioner had become infructuous, the petitioner sought leave, under Order XXII Rule 1 of the CPC, to withdraw the suit.

6. The said application has been dismissed by the impugned order dated 6th June 2022, passed by the learned Civil Judge. The petitioner, aggrieved, is before this Court.

7. The impugned order of the learned Civil Judge notes the fact



that, after the application under Order XXIII Rule 1 of the CPC was filed by the petitioner on 16th March 2022, and was opposed by learned Counsel appearing for the defendant, and for Sudeep Chatterjee (who was also sought to be impleaded in the proceedings and has, therefore, been referred to in the impugned order as the “proposed defendant”), the petitioner stopped appearing in the proceedings. The order further notes the submissions, advanced on behalf of the respondent, that the petitioner had, in her plaint, expressed readiness and willingness to pay rent for the suit premises commencing October 2021 and, though the tenancy had been extended till 30th April 2022, the petitioner was defaulting in payment of rent and was, nonetheless, continuing to remain in possession of the suit property.

8. Two counter-claims also came to be filed in the suit, by the respondent and Sudeep Chatterjee. They were subsequently registered separately as CS 347/2022 and CS 348/2022. Both these suits are presently pending before the learned Civil Judge.

9. The learned Civil Judge further observes, in the impugned order that, when learned Counsel for the petitioner appeared before him on 27th May 2022, and was queried, by the Court, as to the arrears of rent which were purportedly due to be paid to the respondent, learned Counsel for the petitioner could not afford any adequate response. Equally, notes the impugned order, learned Counsel for the petitioner was “unable to provide any clear reasons as to the legal right on the basis of which she continues to reside in the suit property”.



10. Having noted as above, the learned Civil Judge, referring to the conduct of the petitioner as “inexplicable”, observes that, the claims of the respondent and Sudeep Chatterjee against the petitioner were required to be adjudicated in CS 347/2022 and CS 348/202, which sought recovery of rent along with a decree of declaration that the Lease Agreement stood terminated. It is further noted in the impugned order that the petitioner failed to appear in the aforesaid counter-claims (numbered as suits). These facts, in the opinion of the learned Civil Judge, raised *prima facie* doubts regarding the *bona fides* of the petitioner in all the three suits, i.e. CS-SCJ 1352/2021 filed by the petitioner, which she sought to withdraw, CS 347/2022 filed by Sudeep Chatterjee and CS 348/2022 filed by the respondent Rajan Chugh. The learned Civil Judge has observed that “the process of the Court and the judicial machinery has been misused by the plaintiff for safeguarding her own rights by evading accountability towards the rights of the defendant /“proposed defendant”.

11. Predicated on these findings and observations, the learned Civil Judge has held that the petitioner had not made out a case for allowing “simplicitor withdrawal” as requested by her. Resultantly, the learned Civil Judge has, by the impugned order dated 6th June, 2022, dismissed the petitioner’s application under Order XXIII Rule 1 of the CPC with costs of ₹5,000/- to be paid by the petitioner to the respondent and Sudeep Chatterjee.

12. CS SCJ 1352/2021 has, thereafter, been directed to be put up



along with CS 347/2022 and CS 348/2022 on 5th July, 2022.

13. A reading of the impugned order discloses that the learned Civil Judge has essentially proceeded in equity in rejecting the petitioner's application under Order XXIII Rule 1 of the CPC. The factors which, apparently, have influenced the learned Civil Judge to reject the application are that (i) the petitioner was unable to provide any explanation as to why she was in default of arrears of rent to the respondent, (ii) the petitioner was continuing to reside in the suit property without paying rent, (iii) the petitioner was defaulting in appearance after filing the application and (iv) counter-claims had been filed by the respondent and Sudeep Chatterjee, indicating that they were ventilating certain rights against the petitioner. These factors, according to the learned Civil Judge, indicated that the petitioner was misusing the judicial machinery to safeguard her rights and evading accountability towards the rights of the respondent and Sudeep Chatterjee.

14. Mr. Bhatia, learned Counsel for the respondent, submits that the petitioner's conduct deserves to be deprecated, at the very least. He submits that she has, on the basis of the suit filed by her, continued to remain in possession of the suit property without paying rent and has driven the respondent to file counter-claims and suits in order to recover their lawful dues. He further submits that the petitioner has also filed several transfer applications seeking transfer of the proceedings, only one of which has been disclosed in the present petition. In such circumstances, submits Mr. Bhatia, learned Civil



Judge cannot be faulted in opining that no case for simplicitor withdrawal of the suit has been made out.

15. To my mind, having perused the record, as well as the impugned order and heard learned Counsel, it is not possible to sustain, in law, the decision of the learned Civil Judge.

16. An apparent discrepancy, which immediately comes to notice, on reading of the impugned order, is that, having held that no case for simplicitor withdrawal of the suit was made out, the learned Civil Judge has proceeded to altogether dismiss the application for withdrawal of the suit with costs. If no case for simplicitor withdrawal of the suit was made out, one could have expected that the suit would be *permitted* to be withdrawn with costs. It is inexplicable as to how, having held that no case for simplicitor withdrawal of the suit was made out, the learned Civil Judge not only imposed costs but also dismissed the application for withdrawal.

17. Mr. Bhatia drew attention of the Court to Sections 35 and 35A of the CPC to submit that, at least, given the conduct of the petitioner, the costs imposed by the learned Civil Judge ought to be enhanced.

18. Before addressing other issues, I deem it appropriate to deal with the sustainability of the impugned order.

19. The considerations on which the learned Civil Judge has proceeded, to reject the petitioner's application are, in my view,



irrelevant and foreign to an application for withdrawal of the suit. A litigant to initiate a litigation is classically the *dominus litis*. The litigant is ordinarily entitled, if he so chooses, to withdraw the proceedings at any appropriate stage.

20. Order XXIII of the CPC reads thus:

“ORDER XXIII

1. Withdrawal of suit or abandonment of part of claim.—

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim.

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) 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 suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the



subject-matter of such suit or such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.”

21. The sole provision in the CPC which deals with withdrawal of suits is Order XXIII Rule 1 and, therefore, the provision may be treated as a self-contained code in that regard. Order XXIII Rule 1 (1) of the CPC permits a plaintiff to, at any time, after institution of the suit, abandon his suit or abandon a part of his claim. The proviso to Order XXIII Rule 1 deals with a situation in which the plaintiff is a minor or a person to whom the provision of Order XXIII extends and is, therefore, irrelevant for the purposes of the controversy in issue. Order XXIII Rule 1(2) deals with the formal requirement of an application seeking leave to withdraw the suit. Order XXIII Rule 1 (3) deals with the circumstances in which a Court may permit a suit to be withdrawn with liberty to institute a fresh suit in respect of the subject matter of the suit which is being withdrawn or part thereof.



Inasmuch as no such leave was sought in the present case, the said provision need not detain the Court. Order XXIII Rule 1 (4) empowers the Court to award costs while allowing a suit to be withdrawn. Order XXIII Rule 1 (5) proscribes abandonment or withdrawal of a suit or part of a claim by one of several plaintiffs without consent of the other plaintiffs and is, therefore, not relevant for the purposes of controversy in issue.

22. Clearly, therefore, Order XXIII Rule 1 does not circumscribe the right to withdraw the suit by any statutory prescription or proscription. As statutorily worded the right is absolute. Even so, as the provision uses the word “may”, a discretion does vest in a Court to either allow or disallow an application for leave to withdraw a suit. Such discretion, however, is classically required to be exercised judiciously. There are well recognized circumstances in which leave to withdraw a suit may be rejected. One such circumstance, which immediately comes to mind, is where the plaintiff and the defendant are in collusion, and the prayer for withdrawal of the suit is a collusive prayer, to prejudice the rights of the third party. There are other such instances in which a Court may, if it doubts the *bona fides* of the prayer for withdrawal of the suit, reject the prayer.

23. The considerations that have weighed with the Court in rejecting the application for withdrawal in my opinion does not justify the decision. The learned Civil Judge has, in so holding, dwelt on the suits (re: counterclaims) which have been filed by the respondent and Sudeep Chatterjee against the petitioner and the allegations by the



respondents against the petitioner that she was in arrears of rent and was continuing, nonetheless, to reside in the suit property. These are issues which forms subject matter of the suits and the counter-claims which stand filed by Sudeep Chatterjee and the respondent, as the impugned order itself notes. It is clearly stated in the impugned order that, in the said counter-claims, the respondent and Sudeep Chatterjee have sought a declaration that the Lease Deed stands terminated and have also sought arrears of rent.

24. The respondent and Sudeep Chatterjee are, therefore, ventilating their rights in the said suits which, no doubt, would be adjudicated in the fullness of time and in accordance with law.

25. These considerations, however, cannot constitute a legitimate ground to reject the petitioner's application for withdrawal of the suit. There is no other reason cited in the impugned order for rejecting the application.

26. In view thereof, I am of the opinion that no case was made out for the learned Civil Judge to reject the petitioner's application for withdrawal of the suit. Accordingly, the impugned order is quashed and set aside and the application under Order XXIII Rule 1 of the CPC filed by the petitioner, seeking withdrawal of CS SCJ 1352/2021 is allowed. CS SCJ 1352/2021 shall, therefore, stand withdrawn from the file of the learned Civil Judge.

27. However, given the circumstances, the petitioner is mulcted



with costs of ₹50,000/- to be paid by way of crossed cheque payable to the respondent within a period of four weeks from today.

28. It is made clear that this Court has not expressed any view on the allegations made by either party against the other and this order shall not influence the Court in dealing with CS SCJ 31352/2021, CS 347/2022 and CS 348/2022.

29. This petition stands disposed of accordingly. Miscellaneous applications also stand disposed of.

JULY 6, 2022
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C.HARI SHANKAR, J



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