

July 5, 2023
Sl. No.22
Court No.19
s.biswas

CO 1676 of 2023

Gobinda Karan and others
vs.
Chabirani Khanra and others

Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee

... for the petitioners

Mr. Ayan Banerjee
Ms. Debasree Dhamali

... for the opposite parties

The revisional application is directed against the Order No.8 dated April 5, 2023, passed by the learned Civil Judge (Senior Division), 1st Court, Tamluk, Purba Medinipur, in Title Suit No.10 of 2023. The order impugned has been challenged by the defendants in the suit, who had entered appearance and was contesting the same. According to the petitioners the suit should not proceed.

By the order impugned, ad interim order of injunction was extended. The application of the defendants for extension of time to file written objection and written statement were considered and allowed. June 13, 2023 was fixed for filing written objection to the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, as also for the written statement of the defendant nos.1 to 4. SR&AD of the defendant nos.5, 6 and 7 were awaited.

The court does not find any reason as to how the petitioners can be aggrieved by the said order.

The ad interim order of injunction was passed. The petitioners contested the proceeding. The petitioners sought time to file their written objection and the written statement. At this juncture, the contention of the petitioners that the earlier suit was wrongly allowed to be withdrawn with liberty to file afresh, is wholly misconceived and contrary to law.

The plaintiffs had filed a suit being OS 39 of 2022, for eviction and recovery of khas possession, before the learned Civil Judge (Junior Division), 1st Court, Tamluk. At the time of admission, it was prayed that the suit be allowed to be withdrawn with liberty to file afresh, as the prayer for declaration being essential to the suit, had not been made. The learned court below allowed such withdrawal, with liberty to file afresh. The contention of the defendants/petitioners that the withdrawal could not have been permitted without allowing them to contest the prayer, is not acceptable. It was entirely the discretion of the court whether to allow the amendment or not. Such order was never challenged before any forum. Thereafter, Title Suit No.10 of 2023 was filed before the learned Civil Judge (Senior Division), 1st Court, Tamluk, with some alterations in the prayers and valuation. The said suit was proceeded with in accordance with law. The petitioners can contest the pending suit by taking all

the points as may be available as per law. This court does not accept the contention of the petitioners.

According to the provisions of Order XXIII Rule 1(3) of the Code of Civil Procedure, withdrawal of suit is permissible where the Court is satisfied, that the suit must fail by reason of some formal defect or that there were sufficient grounds for allowing the plaintiff to institute a fresh suit on the subject-matter of such suit or such part of the claim.

The petitioners' contention that in the facts of the case, the suit would fail unless a prayer for declaration was made and the suit was properly framed, was accepted by the learned court and the suit was allowed to be withdrawn with liberty to file afresh at the very nascent stage.

Hence, the revisional application is dismissed.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)