

Item No. 18
14.06.2023
Court. No. 19
GB

C.O. 1691 of 2023

Sri Amrita Kumar Biswas
Vs.
Sri Ankan Mitra

*Mr. Satadeep Bhattacharya,
Mr. Jayanta Pandit*

... for the Petitioner.

Mr. Sarbananda Sanyal

... for the Opposite Party.

The petitioner who is the defendant in Title Suit No.11 of 2017, pending before the learned Civil Judge (Junior Division), Tehatta, Nadia has preferred this revisional application being aggrieved by an order dated April 5, 2023. By the said order, the learned court below opined that the plaintiff would be allowed to withdraw the suit with liberty to file afresh, upon examination.

Mr. Bhattacharya, learned advocate appearing on behalf of the petitioner submits that once the learned court below had rejected the application, the same amounted to dissatisfaction of the learned court with regard to the prayer for withdrawal of the suit.

However, the matter revived when the learned coordinate Bench of this Court had passed an order in C.O. 1910 of 2022 dated September 15, 2022, granting the plaintiff leave to move the learned court below seeking liberty to file a supplementary affidavit to the application for withdrawal disclosing the reasons for such withdrawal.

In the opinion of this Court, once such liberty was given to the petitioner, the same amounted to an indication that the reasons should be disclosed in further detail. Although, right of

withdrawal of a suit and to file afresh is available to the plaintiff, the said procedure can be invoked and allowed, upon the court being satisfied that the formal defects would either result in failure of the suit or there were sufficient grounds for the plaintiff to withdraw the suit and file afresh on the self-same cause of action.

It is seen that the learned coordinate Bench found that withdrawal of a suit would automatically result in consequential liberty to file afresh on the self-same cause of action, yet when the learned court was of the view that the supplementary affidavit disclosing better reasons should be filed, the plaintiff should have availed of such opportunity and filed the supplementary affidavit disclosing better reasons. The learned court below should have then proceeded with the prayer for withdrawal in terms of Order 23, Rule 1(3) of the Code of Civil Procedure and passed necessary orders on the basis of the prayer made by the plaintiff.

The plaintiff shall be at liberty to file the supplementary affidavit by way of a put up petition and pray for preponement of the suit so that necessary orders can be passed by the learned court below upon considering the prayer for withdrawal with liberty to file a fresh and upon mentioning the reasons. The order impugned is modified to the above extent.

Let such exercise be completed within a period of two months.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)