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**16.05.
2023**

Ct. No. 04

Ab

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.**

WPLRT 166 of 2022

**Sk. Siraj Ali @ Sk. Siraj Badshah
Vs.**

State of West Bengal and others.

**Mr. Naba Kumar Das,
Mr. Arindam Banerjee.
... for the petitioner.**

**Mr. Animesh Mukherjee,
Mr. Md. Ali Ahasan.
... for the private respondents.**

The tribunal application filed by the petitioner is dismissed at the nebulous stage solely on the ground that the earlier tribunal application being OA 1025 of 2022 was permitted to be withdrawn at the risk of the petitioner herein.

Obviously, the Members of the Tribunal were of the view that the moment the earlier tribunal application based on the selfsame cause of action and selfsame relief is permitted to be withdrawn without any liberty granted to the petitioner to institute a fresh proceeding in respect of the subject matter of the said application, it is barred under Order XXIII Rule 1(3) of the Code of Civil Procedure.

At the first blush, we were of the opinion that the law as applied therein does not invite any interference, but our attention is drawn to the order dated 28th April 2022 passed in OA 1025 of 2022 wherefrom it appears that the perception of the Members of the Tribunal appears to be contrary thereto and cannot be supported at all.

The said tribunal application being OA 1025 of 2022 was sought to be withdrawn as it contains an inherent defects with liberty to take proper steps in accordance with law. The moment the aforesaid prayer was made, the respondents did not raise any objection and thereafter the Tribunal proceeded to permit the petitioner to withdraw the said application in the following:

“Having considered submission of all sides the applicant is permitted to withdraw this O.A. and liberty as prayed for is granted exclusively at the risk of the applicant.”

Upon reading of the aforesaid observations it appears that the Tribunal has segregated certain portions therefrom and proceeded on the basis that the permission to withdraw was granted at the risk of the petitioner without any further relief. The quoted portion of the order would indicate that the petitioner was permitted to withdraw the said tribunal application and the liberty as prayed for was also granted exclusively at the risk of the petitioner.

The moment the liberty is granted, such liberty must be understood on the basis of the prayer/submission made before the Tribunal, which in no terms would indicate that such withdrawal was sought together with the leave to take appropriate steps before the appropriate forum in accordance with law. If the petitioner has filed a further tribunal application before the Tribunal treating it as an appropriate forum, it is an ardent duty of the Tribunal to consider the said case on merit and should not have venture to dismiss the application at the threshold.

Furthermore, the moment the prayer for withdrawal of the proceeding is made together with a leave/liberty to be granted to pursue the remedy in respect of the subject dispute, the Tribunal cannot of its own segregate such

prayer by granting a leave to withdraw and refusing the liberty to institute a fresh suit. The prayer was composite and the power vested upon the Tribunal is either to grant the prayer as a whole or to refuse such prayer. It is not permissible to divide the composite prayer and grant one of it and refuse the other.

Any how, we do not find any such situation in view of the language used in the said order, which, in our opinion, is explicit to the extent that the liberty was also granted, but it was unnecessary to put the further expression “at the risk of the applicant” without any further relief.

The order impugned, therefore, is not sustainable and the same hereby quashed and set aside.

The matter is remitted to the Tribunal to decide the same on merit.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

