

M/L 114
06.11.2024
Court. No. 5
Sourav

CO 914 of 2024

Sudhir Kumar Tewari
Vs.
Subodh Mukherjee & Ors.

Mr. Rabi Ghosh

...for the petitioner.

1. Challenging the Order No. 9 dated November 18, 2023 passed by the learned Civil Judge (Junior Division), 1st Court at Barackpore, North 24 Parganas, the instant revisional application has been filed.
2. The defendant no. 4/petitioner would submit that the plaintiff in the instant suit had filed an application before the learned 1st Civil Judge (Junior Division), Barackpore, asserting that the plaintiff is not interested to continue with the proceedings against the defendants and he will withdraw the suit and as such, he wants to stop further proceedings of the instant suit against the defendants.
3. Notwithstanding filing such application on October 18, 2023, on the subsequent date i.e., on November 18, 2023, the plaintiff filed a petition stating that he is not willing to withdraw the suit and did not press the application filed on October 18, 2023.
4. Mr. Ghosh, learned advocate representing the petitioner would submit that once an application for withdrawal of a suit is filed, the order for withdrawal becomes a formality only. As such, the plaintiff having filed an application for withdrawal, could not have

subsequently turned around and proceeded further with the suit. He would submit that the learned judge exceeded his jurisdiction in permitting the plaintiff to *not press* the application for withdrawal.

5. In support of his aforesaid contention, he places reliance on a judgment delivered by the Hon'ble High Court of Bombay in the case of ***Anil Dinmani Shankar Joshi & Deepak and another v. Chief Officer, Panvel Municipal Council, Panvel, and another*** reported in ***AIR 2003 Bombay 238***.
6. Heard the learned advocate for the petitioner. Before proceeding further in the matter, it would be relevant to take note that a petition had filed by the plaintiff on October 18, 2023. From a perusal of the aforesaid petition, it would transpire that the plaintiff had expressed that he will withdraw the instant suit and as such, had made the following prayer.

“It is therefore prayed that your Honour would be graciously be pleased to stop all the proceedings of the instant suit against the defendant and other and further, order and orders may be passed as your Honour deem fit and proper.”

7. The above will go to demonstrate that the prayer was not for withdrawal of the suit but was to stop all proceedings of the instant suit against the defendant. A perusal of the petition would also demonstrate that the plaintiff had expressed that he *will* withdraw the suit, though no formal prayer for withdrawal was made.

8. Although, the learned advocate for the petitioner has vehemently argued that from the caption of the petition it would reveal that the same was an application for withdrawal of the suit, in my view, a caption of a petition cannot control the prayers. In any event, the plaintiff on the very next date was personally present and he stated that he was not willing to withdraw the suit. Accordingly, the plaintiff's advocate "Not Pressed" the petition. The aforesaid would corroborate from the order dated November 18, 2023.
9. Having regard thereto, I do not find any irregularity farless any illegality in the order dated November 18, 2023. The judgment relied on by the petitioner also does not assist the petitioner. In the said case the question that had come up for consideration is as to whether a party has an absolute right to withdraw the suit. It is in response to the same that the Hon'ble Bombay High Court while placing reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Shiva Prasad v. Durga Prasad and another***, reported in **(1975) 1 SCC 405** had held that the Court had no power to refuse to allow the withdrawal of a suit on the ground that the person against whom the suit is sought to be withdrawn is a necessary party and having regard thereto, the order refusing withdrawal was found to be erroneous and set aside.

10. In view of the above observation, the revisional application fails and the same is accordingly dismissed.
11. There shall be no order as to costs.
12. All parties shall act on the server copy of this order duly downloaded from the official website.

(Raja Basu Chowdhury, J.)