

19.02.2024
Item No.52
RP
Ct. No.7

CO 3417 of 2023

Sri Sekhar Sarkar & Ors.
Vs.
Sri Dipankar Kumar Saha & Ors.

Mr. Mrityunjoy Goswami
Mr. Parikshit Goswami
.... For the Petitioners

This civil order is at the instance of the defendant nos.2 to 4 in a suit for declaration of title and injunction and is directed against the order no.24 dated 7th July, 2023 passed by the learned Civil Judge, Junior Division, 2nd Court, Ranaghat, Nadia in T.S. No.13 of 2022.

By the order impugned the application of the plaintiffs/opposite parties under Order 23 Rule 3 of the Civil Procedure Code, 1908 was allowed.

Learned advocate appearing for the petitioner submits that the application for amendment of a plaint was allowed and an application under Order 39 Rule 7 of the Code was allowed. He further submits that though an interim order was initially passed on an application under Order 39 Rule 1 and 2 of the Code but such order subsequently stood vacated. At this stage, the plaintiffs/opposite parties filed an application for withdrawal of the suit with liberty to file afresh. He further submits that the plaintiffs/opposite parties are trying to curtail a valuable right which has accrued in favour of the defendants by withdrawing the suit. He further submits that no reason has been assigned by the learned trial Judge while allowing the application

under Order 23 Rule 1 and 2 of the Civil Procedure Code, 1908.

After going through the application under Order 23 Rule of the Code filed by the plaintiffs/opposite parties this Court finds that the plaintiffs wanted to withdraw the suit with liberty to file afresh as there were certain formal defects in the suit. The learned trial Judge after considering the averments contained in the application for withdrawal allowed such prayer as the plaintiffs wanted to withdraw the suit on account of some technical error and incorrect pleading.

The learned trial Judge rightly held that since the trial of the suit has not yet commenced the question of curtailment of the right of the defendants does not arise. The learned trial Judge in exercise of his discretion upon being satisfied with the grounds stated in the application for withdrawal allowed the plaintiffs/opposite parties to withdraw the suit with liberty to the plaintiffs to file the suit afresh. For the aforesaid reasons, this Court is not inclined to interfere with the order passed by the learned trial Judge.

In the result, CO 3417 of 2023 is dismissed without however no order as to costs.

(HIRANMAY BHATTACHARYA, J.)