

02.02.2024
Court No. 19
Item No. 15
CP

C.O. No. 4104 of 2023

M/s. Andrew Yule & Co. Ltd.
Vs.
M/s. Truvolt Engineering Co. Pvt. Ltd. & Anr.

Mr. Gautam Chakraborty, Sr. Advocate
Mr. Pulak Ray
.....for the petitioner.

The petitioner, who was the defendant in Title Suit No. 2309 of 2022, has challenged the order dated October 12, 2023, passed by the learned Judge, 7th Bench, City Civil Court at Calcutta. By the order impugned, the learned court allowed an application for withdrawal of the suit with liberty to file afresh on the self-same cause of action. The petitioner challenges the said order on the following grounds:-

- a) No formal defect in the suit had been recorded for which, the prayer should be allowed.
- b) The petitioner's right to challenge the subsequent suit, on the ground of the same being time barred, was taken away by the order impugned. The order impugned, would amount to condonation of the delay in filing an otherwise time barred suit.

Reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of Bakhtawar Singh & Anr. Vs. Sada Kaur & Anr., reported in (1996) 11 SCC 167.

This court finds that the learned court had observed that the suit had been filed for declaration that there was no claim of deficiency in the transformer supplied and the warranty period of the transformer was over. Further, declaration that all contractual obligations were also over. Prayer was made, that the bank guarantee could not be encashed, attached and remitted. The defendant no. 1 was the bank who provided the bank guarantee. The defendant no.2 was the beneficiary of the bank guarantee. The defendant no. 2 was contesting the suit. The prayer for injunction made by the plaintiff, was rejected in the suit.

The court held that Order 23 Rule 1(3) of the Code of Civil Procedure permitted a person to withdraw any suit at any stage, if there was a formal defect in the suit or the suit would fail for some reason or the other.

The court recorded that the suit was against invocation of a bank guarantee. In such a suit, injunctions were usually not passed. Thus, the plaintiff wanted withdraw the suit and file a suit for recovery of money, which the defendant no. 2

received upon revocation of the bank guarantee. Normally, in a suit where invocation of the bank guarantee was under challenge, on the ground that the same was wrongfully invoked, the parties seeking such relief were entitled to claim recovery of money. This was the specific finding of the learned court in page 2 of the order impugned. The decisions cited by the defendant no. 2, namely, Moti Lal Dutt Vs. Kali Das Bhattacharji, reported in 36 CWN 912 and Bakhtawar Singh (supra) were considered by the learned court. In Moti Lal Dutt (supra), it was held that permission should be given to withdraw a suit, when the court was satisfied that the suit would fail due to some defect. Satisfaction has been recorded in the order impugned.

In Bakhtawar Singh (supra), the Hon'ble Supreme Court held that unless there was a formal defect, the suit should not be allowed to be withdrawn and in the facts and circumstances of the said case, the provisions of Section 14 would not be used to legitimately extend the period of limitation in filing the subsequent suit. The subsequent suit had been dismissed as barred by limitation.

Thus, it is always open for the petitioner to raise questions of defects in the subsequent suit. Whether Section 14 of the Limitation Act, would be applicable in the facts of the case, will be decided in

the said suit. However, in the facts as narrated herein, the court has recorded that in a suit against invocation of bank guarantee normally, the relief which is claimed is recovery of money from the person who had invoked the bank guarantee. Such prayer not having been made in the suit, the court allowed the suit to be withdrawn, with liberty to file afresh. The learned court recorded such reason.

Under such circumstances, I find no reason to interfere with the order impugned.

The petitioner is at liberty to contest the subsequent suit on all points.

The revisional application is accordingly disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)