

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

IA No. GA-COM/1/2024
In CS-COM/727/2024

SIMPLEX INFRASTRUCTURE LIMITED

-VS-

PRINCIPAL SECRETARY HOUSING DEVELOPMENT GOVERNMENT OF
WEST BENGAL AND ORS

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : August 9, 2024.

Appearance :

Mr. Mainak Bose, Adv.

Mr. Rupak Ghosh, Adv.

Mr. Vishwarup Acharyya, Adv.

...for the plaintiff

Mr. Suman Dutt, Adv.

Mr. Anirban Ray, Adv.

Mr. Paritosh Sinha, Adv.

Mr. Arindam Mandal, Adv.

Ms. Aishik Chakraborty, Adv.

Mr. Sakabda Ray, Adv.

...for the State

The Court: Mr. Mainak Bose, learned Advocate, is appearing for
the plaintiff.

Mr. Suman Dutt, learned Advocate, is appearing for the State.

The defendants have filed affidavit-in-opposition. Let the same be
kept with the record.

Counsel for the plaintiff submits that he has received a written
instruction from plaintiff to withdraw the suit as the suit became
infructuous by virtue of bank transferred the funds by invoking bank
guarantee.

Counsel for the plaintiff prays for withdrawal of the suit with the liberty to file afresh on the self-same cause of action and further cause of action arose after the invocation of bank guarantee.

Learned counsel for the defendants raised objection and submitted that no leave can be granted as the plaintiff while filing the suit has obtained leave under Order II Rule 2 of the CPC and the plaintiff can easily initiate a subsequent suit if any subsequent cause of action arose in favour of the plaintiff.

Learned counsel for the defendant submits that if the leave is granted to the plaintiff, the defendants will be prejudiced.

Heard the learned counsel for the respective parties.

Order II Rule 2 of CPC reads as follows:

“2. Suit to include the whole claim.- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) **Relinquishment of part of claim.-** Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished

(3) **Omission to sue for one of several reliefs.-** A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

Order XXIII Rule 3 reads as follows:

“3. Compromise of suit.- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise ¹ [in writing and signed by the parties], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith ² [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit]:

³ [Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]”

In the present case, plaintiff has challenged the impugned notice dated 12th July, 2024 wherein the defendant no.3 has requested the defendant no.5 for invocation of bank guarantee. This Court has not granted any interim relief, accordingly, the defendants have invoked the bank guarantee.

Now the counsel for the plaintiff submits that after revocation of the bank guarantee, new cause of action arose and the plaintiff intends to file a suit for recovery of the said amount as the invocation is bad.

Considered the submission made by the counsel for the respective parties.

This Court finds that if the leave is granted to the plaintiff the defendant will not be prejudiced.

Accordingly, the suit being CS-COM/727/2024 is dismissed as withdrawn with liberty to file afresh with the self-same cause of action or any cause of action arose during the pendency of this suit.

Consequently, connected application is also dismissed.

(KRISHNA RAO, J.)