

Sl.7
22.07.2025
Court No.6
BP

C.O. 2542 of 2025

Sitaram Salampuria & Ors.
-versus-
Smt. Rubi Dutta & Ors.

Mr. Prabal Kumr Mukherjee, Sr. Advocate
Mr. Debanik Banerjee
Mr. Steven S. Biswas
Mr. H. Sahid
..for the petitioners

Ms. Bratati Roy Chowdhury
..for the opposite
party nos. 3 & 18

Mr. Abhinaba Dan
..for the opposite party
Nos. 2, 4, 6, 8, 12 & 15

Mr. Samiran Mandal
Mr. S.C. Dhara
Mr. N. Samanta
..for the opposite party nos. 5, 7 & 9

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order being no. 156 dated 17th December, 2021 passed by the learned Civil Judge (Junior Division), 1st Court at Bankura in Title Suit No. 67 of 2008.

By the order impugned the application filed by the petitioners herein praying for withdrawal of the suit stood rejected.

Mr. Mukherjee, learned senior advocate appearing for the petitioners submits that the petitioners filed the application praying for withdrawal of the suit without seeking any liberty to sue afresh. He further

submits that such application was accompanied by an affidavit.

The learned advocate representing the opposite party nos. 2, 4, 6, 8, 12 and 15 submits that the learned trial judge after considering the provisions of Order 23 Rule 1 sub-rule (3) of the Code of Civil Procedure rightly rejected the application praying for withdrawal of the suit as in the said application no reasons for withdrawal of the suit has been stated. He further submits that the application was filed by only one of the plaintiffs and, therefore, the suit could not have been allowed to be withdrawn at the instance of one of the plaintiffs.

The learned advocate appearing for the opposite party nos. 3 and 18 also adopted the argument advanced by the learned advocate for the other opposite parties.

The learned advocate appearing for the opposite party nos. 5, 7 and 9 also adopted the argument made by the learned advocate for the opposite party nos. 2, 4, 6, 8, 12 and 15.

After going through the impugned order this Court finds that the learned trial judge applied the provisions of Order 23 Rule 1 sub-rule (3) of the Code of Civil Procedure which deals with withdrawal of suit with liberty to sue afresh.

Order 23 Rule 1(4) of the Code of Civil Procedure states that where the plaintiff abandons any suit

or part of claim under sub-rule (1), or withdraws from a suit or part of a claim without permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

After going through the application for withdrawal this Court finds that the petitioners herein have not sought for leave to institute a fresh suit but has only prayed for withdrawal of the said suit. This Court, therefore, holds that the provisions of Order 23 Rule 1 sub-rule (3) of the Code of Civil Procedure could not have been applied by the learned trial judge and the relevant provisions which ought to have been applied in the case on hand is the provisions laid down under Order 23 Rule 1 sub-rule (4) of the Code of Civil Procedure. It does not appear from the application filed for withdrawal of the suit that the same was filed by the plaintiff No. 1 alone.

To the mind of this Court, the learned trial judge in exercise of its jurisdiction acted illegally and with material irregularity by rejecting the application for withdrawal of the suit. Accordingly, the application for withdrawal of the suit filed by the petitioners herein stands allowed. The suit stands dismissed as withdrawn and the plaintiff shall be precluded from instituting any fresh suit in respect of such subject matter.

With the above observations, C.O. 2542 of 2025 stands allowed.

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

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)