

***HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA***

**CIVIL REVISION PETITION No.5392 of 2016**

**ORDER:**

Heard Sri Syed Lateef, learned counsel appearing for the revision petitioner and as well as Sri L.Prabhakar Reddy, learned counsel appearing for the respondent.

2. Challenge in this Revision Petition is the order that is rendered by the Court of Junior Civil Judge, Kodad in I.A.No.107 of 2016 in O.S.No.109 of 2011, dated 09.8.2016.

3. An interlocutory application *vide* I.A.No.107 of 2016 was filed by the revision petitioner, who is the plaintiff to the suit, seeking permission of the Court to withdraw the suit with liberty to file a fresh suit. The said application was dismissed by the trial Court through the impugned order. Aggrieved by the same, the revision petitioner is before this Court.

4. Making his submission, the learned counsel for the revision petitioner states that the revision petitioner, who is the plaintiff to the suit, had not made proper pleadings and further, he had not impleaded all the necessary parties to the suit and as such, for filing a comprehensive suit, he

intended to withdraw the suit i.e., O.S.No.109 of 2011 and therefore, he moved an application seeking permission of the Court to withdraw the suit with liberty to file a fresh suit, but the trial Court erroneously dismissed the said application and hence, the revision petitioner approached this Court seeking to set aside the said order.

5. Opposing the said submission, the learned counsel for the respondent contends that the reason shown by the revision petitioner for withdrawal of the suit is neither just nor reasonable and further, the revision petitioner has ample opportunity to make all the necessary parties as parties to the suit by filing proper application to that effect, but without doing so, he filed an application for withdrawal of the suit and therefore, the trial Court rightly dismissed the said application and hence, the Revision Petition is not maintainable.

6. The law in this regard is governed by Order XXIII Rule 1 C.P.C. which reads as under:

**“1. Withdrawal of suit or abandonment of part of claim.-** (1) At any time after the institution of a suit, the plaintiff may as against all or any of the

defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,-

- (a) that a suit must fail by reason of some formal defect, or
- (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

- (a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the 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.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.”

7. In the affidavit filed in support of the application, the revision petitioner made the following single line statement at para 3:

“That I came to know, the above suit was not pleaded properly and necessary parties are not added in the plaint, as such I was advised to file fresh suit by withdrawing the present suit with permission of the Hon’ble Court.”

8. Nothing is stated as to why pleadings were not properly made and what prevented the revision petitioner to make all the necessary parties as parties to the suit.

9. In the counter the respondent contended that the petitioner filed chief-affidavit in lieu of his chief-examination and thereafter, he dragged on the matter and subsequently filed additional chief-affidavit and thereafter, filed an interlocutory application seeking the Court to receive some documents and the said interlocutory application was dismissed and later, he filed the present application.

10. The suit, admittedly, is of the year 2011. An interlocutory application *vide* I.A.No.107 of 2016 was filed in the year 2016 seeking permission of the Court to withdraw the suit with liberty to file a fresh suit. Thus, after more than five years of filing of the suit, the said interlocutory application was moved.

11. Law, as discussed earlier, permits the person who institutes the suit to abandon the same or part of the claim. But, when the Court is satisfied that the suit must fail by reason of some formal defect or that, there are sufficient grounds for allowing the plaintiff to institute a fresh suit, then only, it can accord permission for withdrawal of the suit or part of the claim granting liberty

to institute a fresh suit in respect of the same subject matter.

12. In the case on hand, the revision petitioner/plaintiff did not make any mention or state any ground which makes the suit fail. No defect whatsoever is projected. Likewise, the revision petitioner/plaintiff failed to mention any grounds, more so sufficient grounds, for allowing him to institute a fresh suit for the same subject matter. Admittedly, when all the necessary parties are not brought on record, the revision petitioner/plaintiff has got every right to make an application seeking the Court to permit him to add those parties as parties to the suit. That apart, even the details of those necessary parties are not mentioned.

13. Having made the suit progress considerably for a long period of five years, suddenly moving an application for withdrawal of the suit seeking permission to file a fresh suit on the same subject matter and thereby, starting fresh round of litigation is impermissible under law. The case should invariably fall within the parameters mentioned in Order XXIII Rule 1 C.P.C. so as to permit the person who

files the suit to withdraw the same with liberty to file a fresh suit on the same subject matter.

14. In the case on hand, no such grounds are projected or no such cause is shown by the revision petitioner/plaintiff. Therefore, this Court is of the view that the trial Court has not committed any error in disallowing the said application.

15. In the light of the discussion that went on supra, this Court ultimately concludes that the Revision Petition lacks merits.

16. Resultantly, the Civil Revision Petition is dismissed without costs.

17. As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

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*Dr. JUSTICE CHILLAKUR SUMALATHA*

25.4.2022

*Note:*

*LR copy to be marked.*

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