

M.Subba Vs. B.Vasanth and Ot

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Court : Andhra Pradesh

Decided On : Jun-12-2014

Appellant : M.Subba

Respondent : B.Vasanth and Ot

Advocate for Def. : Sri. Vedula Venkata Ramana Counsel

Judgement :

THE HONBLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA AND THE HONBLE SRI JUSTICE SANJAY KUMAR WRIT APPEAL NO.730 OF201412-06-2014 M.Subba Rao Appellant B.Vasanth and others Respondents Counsel for Appellant: Sri Vedula Venkata Ramana Counsel for Respondent No.1: Counsel for Respondents 2 to 5: G.P. for Panchayat Raj & Rural Development HEAD NOTE: ?. CASES REFERRED: THE HONBLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA AND THE HONBLE SRI JUSTICE SANJAY KUMAR WRIT APPEAL NO.730 OF2014

JUDGMENT

: (per Honble the Chief Justice Sri Kalyan Jyoti Sengupta) This appeal is admitted in so far as the order under appeal relates to disposal of W.P. No.1657 of 2014. We do not require any notice to be served upon the writ petitioner/the first respondent as he would not be affected by the judgment and order proposed to be passed by us. The recordings of the Honble trial Judge are good enough to decide the matter at this stage finally. It is the admitted position that after conclusion of

the hearing, the writ petitioner tried to withdraw the writ petition, but permission was declined by the Honble trial Judge. Therefore, the question arises as to whether refusal to allow withdrawal is a proper exercise of jurisdiction under Order 23 Rule 1 of the Code of Civil Procedure (the Code).

2. Sri Vedula Venkataramana, learned senior Advocate, argued that assertion of the right of withdrawal of any suit by a suitor is not dependent upon the mercy of the Court. If the provision of the above Code is read carefully and meaningfully, it would appear that such an exclusive right has been given to the suitor. Asking for leave to withdraw is a matter of courtesy and respect to the Court and it is not intended to give the Court a power to exercise discretion.

3. In the context of the argument, we feel that the provisions of Order 23 Rule 1 of the Code are required to be set out for better understanding.

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. 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.

4. While reading the aforestated provision, we are in agreement with Sri Vedula Venkataramana, learned senior Advocate. It is the absolute right of the suitor as the suitor can bring his lis of his own choice and wishes. Neither the Court nor anyone else can compel any person to come to the Court. With the parity of reasoning after having brought action, the litigant decides not to continue with his lis, such decision is final and no one can sit on that claim. We feel that asking for leave is only matter of courtesy and respect and grant of leave is matter of course not of discretion and it is manifest in Clause (b) sub-Rule (3) of Rule 1 of the Code, wherein words may grant are employed. If the suitor wants to bring fresh action on the self-same cause of action while asking for withdrawal of lis, then the power to allow such prayer is left with discretion of the Court and not with choice of the suitor. In other words, the suitor cannot claim, as a matter of right, the liberty to bring a fresh action on the self-same cause of action. Clause (b) sub-Rule (4) of Rule 1 of the Code wherein like Clause (b) sub-Rule (3) of Rule 1 of the Code words may grant permission are not mentioned.

5. However, in the case of litigation under Rule 8 Order 1 of the Code, prayer for withdrawal is dealt with slightly in a different way, even in certain situation in these cases the Court has power to continue with proceedings even if original party does not want to proceed.

6. If impugned order refusing leave to withdraw the lis stands, it would amount to encouragement of proliferation of the litigation. The approach of the Court, as is well known, would be to discourage filing of unnecessary, vexatious and frivolous litigation. For any reason, if the suitor feels that the litigation is unnecessary, it is

not for the Court to insist that the suitor remains with the lis. With great respect, we are therefore unable to subscribe to the views expressed by the learned trial Judge.

7. Of course, after wasting the Courts time, money and energy, when a suitor withdraws the lis, the Court has ample power to award costs as it would be clear from the language of Clause (b) of sub-Rule (4) of Rule 1 of Order 23 of the Code wherein words shall be liable for such costs as the Court may award are employed. In this case, the Honble trial Judge has decided not to award any costs. We are therefore not doing so. Accordingly, while allowing the appeal, we hold that the judgment and order impugned would not be applicable to the above writ petition. The said writ petition is dismissed as being withdrawn. Pending miscellaneous petitions in the writ appeal shall stand closed. No costs.

_____ K.J.

SENGUPTA, CJ _____ SANJAY KUMAR, J1206-2014

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