
(2008) 11 SHI CK 0023
In the High Court Of Himachal Pradesh

Prem Singh

APPELLANT

Vs

Sulendra Thakur and Another

RESPONDENT

Date of Decision : 06-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 28 Rule 1(3)
Motor Vehicles Act, 1988 — Section 163A, 169, 173

Citation : (2009) 1 ShimLC 214

Hon'ble Judges : Surjit Singh, J;R.B. Misra, J

Bench : Division Bench

Judgement

R.B. Misra, J.—Heard learned Counsel for the parties.

The present appeal has been preferred u/s 173 of the Motor Vehicles Act against the award dated 1.3.2001 passed by Motor Accidents Claims Tribunal, Bilaspur, H.P. (in short called "Claims Tribunal"), whereby claimed petition preferred u/s 163-A of Motor Vehicles Act, 1988 by Sh. Prem Singh, has been dismissed.

2. After adjudicating the claim petition, learned Claims Tribunal did not find any merit in the claim petition and, as such, dismissed the MAC case No. 3/2000 preferred before it. Being aggrieved, appellant has preferred the present appeal.

3. During the course of hearing, learned Counsel for the appellant in the interest of appellant, has prayed to withdraw the main claim petition No. 3/2000 before learned Claims Tribunal with a liberty of this Court to approach the Commissioner Workmen's Compensation for availing appropriate remedy.

According to the appellant, the prayer of withdrawal of claim petition No. 3 of 2000 at this stage is justifiable as withdrawal shall not prejudice or affect the respondents, more so, no vested or substantive rights have been created in favour of the respondents.

4. Before considering the prayer of the appellant, it is necessary to know whether the appellant is legally entitled to withdraw the claim petition No. 3 of 2000 adjudicated by learned Claims Tribunal.

5. In this respect, it is necessary to refer Section 169 of Motor Vehicles Act, 1988 as below:

169. Procedure and powers of Claims Tribunals.--(1) In holding any inquiry u/s 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure, as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

In this respect, it may also be noted that many of the provisions of CPC are applicable. The relevant para 232 of Himachal Pradesh Motor Vehicle Rules, 1999 (in short called H.P. M.V. Rules, 1999) is quoted as below:

The CPC to apply in certain cases:

The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall so far as may be, apply to proceedings before the Claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX; Order XIII; Rule 3 to 10; Order XVI, Rules 2 to 21; Order XVII; Order XXI and Order XXIII, Rules 1 to 3.

In view of the above, it appears that Order XXIII Rules 1 to 3 of CPC is also applicable to the cases to be dealt with in Motor Vehicles Act, 1988. Relevant provisions for withdrawal and adjustment of suits provided in Order XXIII of the CPC are extracted as below:

[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,
(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 preclude 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.]

6. The provisions of withdrawal of suits shall also be applicable in all proceedings in any Court of civil jurisdiction, as provided in Section 141 of the Civil Procedure Code. For reference, the provision of Section 141 of the CPC is extracted as below:

141. Miscellaneous proceedings.--The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

In view of the above provision it appears that the norms and procedures applicable for withdrawal of suit, as indicated in Order XXIII Rules 1 to 3, shall also be applicable for withdrawal of claim petition, i.e. MAC case of Claims Tribunal by virtue of the provision of Section 141 of the Civil Procedure Code.

7. Before scrutinizing further the present case as to whether the prayer of the appellant for withdrawal of claim petition No. 3 of 2000 from Claims Tribunal could be allowed, it is necessary to analyse different aspects in detail in the light of settled position of law and in the light of decisions of different High Courts as well as Supreme Court. Every suit, if it is not withdrawn or abandoned, ultimately results in a decree as defined in Section 2(2) of the Code of Civil Procedure. This definition, so far as it is relevant, is reproduced below:

2(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include -
(a) any adjudication from which an appeal lies as an appeal from an order, or (b)

any order of dismissal for default.

Explanation.--A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

8. A "decree" has to have the following essential elements, namely, (i) There must have been an adjudication in a suit, (ii) The adjudication must have determined the rights of the parties in respect of, or any of the matters in controversy, (iii) Such determination must be a conclusive determination resulting in a formal expression of the adjudication.

9. The provision of the withdrawal of suits as provided in order XXIII Rules 1 to 3 may be generally stated in two parts: (a) a plaintiff can abandon a suit or abandon a part of his claim as a matter of right without the permission of the Court; in that case he will be precluded from suing again on the same cause of action. Neither the plaintiff can abandon a suit or a part of the suit reserving to himself a right to bring a fresh suit, nor can the defendant insist that the plaintiff must be compelled to proceed with the suit; and (b) a plaintiff may, in the circumstances mentioned in Sub-rule (3) be permitted by the Court to withdraw from a suit with liberty to sue afresh on the same cause of action. Such liberty being granted by the Court enables the plaintiff to avoid the bar in Order II Rule 2 and Section 11, C.P.C.

10. The provision in Order XXIII, Rule 1, C.P.C. is an exception to the common law principle of non-suit. Therefore on principle an application by a plaintiff under Sub-rule (3) cannot be treated on par with an application by him in exercise of the absolute liberty given to him under Sub-rule (1). In the former it is actually a prayer for concession from the Court after satisfying the Court regarding existence of the circumstances justifying the grant of such concession. No doubt, the grant of leave envisaged in Sub-rule (3) of Rule 1 is at the discretion of the Court but such discretion is to be exercised by the Court with caution and circumspection. The legislative policy in the matter of exercise of discretion is clear from the provisions of Sub-rule (3) in which two alternatives are provided, (1) where the Court is satisfied that a suit must fail by reason of some formal defect, and the other where the Court is satisfied 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. Clause (b) of Sub-rule (3) contains the mandate to the Court that it must be satisfied about the sufficiency of the grounds for allowing the plaintiff to institute a fresh suit for the same claim or part of the claim on the same cause of action. The Court is to discharge the duty mandated under the provision of the Code on taking into consideration all relevant aspects of the matter including the desirability of permitting the party to start a fresh round of litigation on the same cause of action. This becomes all the more important in a case, where the application under Order XXIII Rule (1) is filed by the plaintiff at the stage of appeal. Grant of leave in such a case would result in the unsuccessful plaintiff to avoid the decree or decrees against him and seek a fresh

adjudication of the controversy on a clean slate. It may also result in the contesting defendant losing the advantage of adjudication of the dispute by the Court or Courts below. Grant of permission for withdrawal of a suit with leave to file a fresh suit may also result in annulment of a right vested in the defendant or even a third party.

11. Order 23 Rule 1, quoted above, provides that a plaintiff can withdraw a suit or abandon a part of his claim unconditionally. It creates a right in favour of the plaintiff to withdraw the suit, at any time, after its institution. Once the suit is withdrawn or any part of the suit is abandoned against all or any of the defendants, unconditionally, the plaintiff cannot bring a fresh suit on the same cause of action unless leave of the Court is obtained as provided by Order 23 Rule 1(3(b)).

12. The Bombay High Court (DB) in (Takaram Mahada Tandel v. Ramachandra Mahada Tandel and Ors. AIR 1925 Bom 425, observed that though as a general proposition, a plaintiff can, at any time, withdraw a suit but where the parties have entered into a compromise and the defendant has acquired a right under the compromise, it would not be open to the plaintiff who had consented to the compromise, afterwards to annul its effect by withdrawing the suit under Order 23 Rule I read with Rule 3.

13. In Dharma Raja v. KM. Pethur Raja and Ors. AIR 1924 Mad 79, the Madras High Court has observed where the plaintiff had obtained a decree against the defendants against which only one of the defendants had filed an appeal while the rest of them did not challenge that decree. At the appellate stage, the plaintiff-respondent wanted to withdraw the suit against the appealing defendant so that the decree which had already been passed against other defendants who had not appealed, may be enjoyed by him. The High Court while rejecting the application of the plaintiff for withdrawal under Order 23 Rule 1 C.P.C. observed as under:

The provision of law relied on by the plaintiffs-respondents in Order 23, Rule 1 of the Code of Civil Procedure, which provides for the withdrawal of a suit by a plaintiff and abandonment of part of his claim. Thus the rules gives as a matter or right and it is not disputed that a similar privilege is inherent in an appellant as regards his appeal: but we have not been referred to any ruling or provision of law which would extend this privilege to a plaintiff-respondent, nor can we see any reason why, when the litigation has reached the stage of an appeal, the respondent should be allowed the right to defeat the appeal and prevent its being heard by the simple process of withdrawing his suit as against the appellant. It may of course be argued that, although this is not a right of the appellant, nevertheless it is in the discretion of the Court to allow him to do so but that will depend on considerations which, we think, have not been appreciated by the lower appellate Court.

14. In Kedar Nath and Others Vs. Chandra Kiran and Others, , permission to

withdraw the suit at the stage of second appeal was refused by Allahabad High Court by observing that the Court observed that where the case is at the stage of second appeal and the trial Court has given a finding of fact which is binding in second appeal, the Court should not deprive the party of the plea of res judicata by allowing the plaintiff to withdraw the suit at that stage.

15. In *Bijayananda Patnaik Vs. Satrugna Sahu and Others*, the Supreme Court has considered the scope of withdrawal of appeal in reference to the provisions of Representation of People Act, 1951 and has held as follows:

The power of the High Court u/s 116A(2) when hearing an appeal from an election petition is the same as its power when hearing an appeal from an original decree, and the procedure is also the same, for there is no express provision to the contrary in the matter of withdrawal of an appeal in the Act. Therefore when an appellant u/s 116A makes an application for an unconditional withdrawal of the appeal, the power of the High Court consistently with its power in an appeal from an original decree, is to allow such withdrawal, and it cannot say that it will not permit the appeal to be withdrawn. We are therefore of opinion that the High Court was in error in importing the principles of Sections 109 and 110 of the Act which deal only with the withdrawal of election petitions and not with the withdrawal of appeals.

16. In *Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co.*, the suit was allowed to be withdrawn by the plaintiff in the case of suit for rendition of accounts even when issues were framed and evidences were to be recorded. It was observed by the Allahabad High Court while explaining the verdict of Madras High Court in *Seethai Achi v. Meyappa Chettiar* AIR 1934 Mad 337. In *Hulas Rai Baij Nath (supra)*, it was observed as under:

In a suit for rendition of accounts by principal against his agent the principal is entitled to withdraw the suit even at the stage when issues have been framed and some evidence has been recorded but no preliminary decree for rendition of accounts has yet been passed. The defendant cannot insist that the plaintiff must be compelled to proceed with the suit.

The language of Order 23, Rule 1, Sub-rule (1), C.P.C., gives an unqualified right to a plaintiff to withdraw from a suit and if no permission to file a fresh suit is sought under Sub-rule (2) of that Rule, the plaintiff becomes liable for such costs as the Court may award and becomes precluded from instituting any fresh suit in respect of that subject-matter under Sub-rule (3) of that Rule. There is no provision in the CPC which requires the Court to refuse permission to withdraw the suit in such circumstances and to compel the plaintiff to proceed with it. It is, of course, possible that different considerations may arise where a set-off may have been claimed under Order 8, C.P.C. or a counter-claim may have been filed, if permissible by the procedural law applicable to the proceedings governing the suit.

Further in the case of a suit between principal and agent, it is the principal alone

who has normally the right to claim rendition of accounts from the agent. The agent cannot ordinarily claim a decree from the principal.

17. The decision of Kedar Nath (supra) was considered and approved subsequently by Allahabad High Court in Vidhydhar Dube and Others Vs. Har Charan and Others, and it was observed that the right of the plaintiff to withdraw the suit at the appellate stage is not an absolute right but is subject to rights acquired by defendant under the decree. It was also observed that withdrawal may be permitted if no vested or substantive right of any party to the litigation is adversely affected. The decision of this Court in Hulas Rai Baij Nath (supra), was also considered and distinguished by observing as under:

In that case the Court had to consider the right of a plaintiff to withdraw the suit before a decree come into being. It was observed: "It is unnecessary for us to express any opinion as to whether a Court is bound to allow withdrawal of the suit of a plaintiff after some vested right may have accrued in the suit in favour of the defendant. On the facts of this case, it is clear that the right of the plaintiff to withdraw the suit was not at all affected by any vested right existing in favour of the appellant and, consequently, the order passed by the trial Court was perfectly justified."

In the present case, however, a right has become vested in the defendant after the decree in the suit had been passed.

18. The decision of Kedar Nath (supra) was followed in Kanhaiya and Others Vs. Mst. Dhaneshwari and Another, in which it was again laid down by Allahabad High Court that the plaintiff does not have an unqualified or unfettered right under Order 23 Rule 1(1) C.P.C. to withdraw the suit at the appellate stage when rights have accrued to the respondents under the decree.

19. The decisions in Kedar Nath's case (supra) and Kanhaiya's case (supra) were followed in Thakar Balaram Singh v. K. Achuta Rao and Ors. 1977 (2) A.P.L.J. 3, where it was observed by Andhra Pradesh High Court that though the plaintiff has an absolute right to withdraw his suit before the passing of a decree under Order 23 Rule 1(1) C.P.C. but permission to withdraw the suit at the appellate stage would be refused if it would have the effect of prejudicing or depriving any right which became vested in the respondent or had accrued to them by reason of the findings recorded by the trial Court.

20. The decisions in Kedar Nath (supra) and Kanhaiya (supra) were followed by the Rajasthan High Court in Ram Dhan Vs. Jagat Prasad Sethi and Others, with observation that if the withdrawal of the suit at the appellate stage would have the effect of destroying the rights which had come to be vested in the defendant-respondents, the suit would not be permitted to be withdrawn. It was also held that though the plaintiff has an unqualified right to withdraw the suit under Order 23 Rule 1(1) C.P.C., he cannot be allowed to do so at the appellate stage. It was observed that though it is right that the plaintiff would be precluded from bringing a fresh suit on the same subject-matter, it could not be denied that the

defendant would not be entitled to use the findings given in such a suit as res judicata in subsequent proceedings.

21. Similar view was also expressed in Sh. Guru Maharaj Anahdyur Ashram Trust Guna v. Chander Prakash and Ors. 1986 PLR 319 , where High Court of Punjab and Haryana has observed as below:

Once the decree is passed by the trial Court, certain rights are vested in the party in whose favour the suit is decided. Thus, the plaintiff is not entitled to withdraw the suit as a matter of course at any time after the decree is passed by the trial Court. In these circumstances, the lower appellate Court has acted illegally by allowing the plaintiffs to withdraw the suit after setting aside the judgment and decree of the trial Court dismissing the suit.

22. Such situation could also be noticed where case of withdrawal was not made out. In Bakhtawar Singh another Vs. Sada Kaur and another, the question of grant of permission under Clause (3) of Order XXIII Rule 1 of the C.P.C. was considered wherein it was held (Para 8 of AIR) as under:

In the present case all the Courts below including the High Court concurrently found that the plaintiffs/appellants failed to produce any evidence to show that the permission to withdraw the suit was given on the ground that the suit was bound to fail by reason of some formal defect or there were sufficient grounds for allowing the plaintiffs to institute a fresh suit in respect of the same subject-matter. The plaintiffs had not even produced the application which is said to have been filed for withdrawal of the earlier suit with permission to file a fresh suit on the same cause of action to show as to what was the formal defect in the earlier suit by reason of which it was sought to be withdrawn. In these facts and circumstances no case for fresh institution of suit on the same cause of action and for the same relief after the withdrawal of the earlier suit was made out by the plaintiffs/appellants in accordance with the provisions of Clause (3) of Order 23, Rule 1 of the Code.

23. The general principle of withdrawal of dismissed original petition as well as revision petition against the same by petitioner-revisionist was elaborated with observation that when petitioner revisionist has obtained an advantage of remand by the Supreme Court, as such withdrawal was held impermissible. In The Executive Officer, Arthanareswarar Temple Vs. R. Sathyamoorthy and Others, , the Supreme Court has observed in paragraph 14 as below:

14. It is true that in a large number of cases decided by the High Courts, it was held while dealing with applications under Order 23, Rule 1, CPC, that if an appeal was preferred by an unsuccessful plaintiff against the Judgment of the trial Court dismissing the suit and if the plaintiff appellant wanted to withdraw not only the appeal but also the suit unconditionally, then such a permission so far as the withdrawal of the suit was concerned, can be granted if there was no question of any adjudication on merits in favour of the defendants by the trial being nullified by such withdrawal. On the other hand, if any such findings by the

trial Court in favour of the defendant would get nullified, such permission for withdrawal of the suit should not be granted. (See *Thakur Bahrain Singh v. K. Achuta Rao* (1977) 2 APLJ (HC) 111 ; *Kedar Nath and Others Vs. Chandra Kiran and Others*, ; *Vidhydhar Dube and Others Vs. Har Charan and Others*, ; *Lala Chatram, represented by hereditary and Managing Trustee, R. Ramanatha Misra, Advocate Vs. Krishnammal and Others*, ; *Jubedan Begum and Others Vs. Sekhawat Ali Khan*, ; *Ram Dhan Vs. Jagat Prasad Sethi and Others*, In the present case, the learned Judge felt that no such finding in favour of the Commissioner was being nullified by the withdrawal of the OP at the stage of revision and therefore the withdrawal of OP was permissible.

24. In *K.S. Bhoopathy and Ors. v. Kokila and Ors.* AIR 2000 SC 2132, the Supreme Court after analyzing the facts of the case in reference to Order XXIII Rule 1(3) has not allowed withdrawal of suit to file a fresh suit at the stage of second appeal by observing that it is the duty of the Court to feel satisfied about the existence of proper grounds/reasons for granting permission and merely stating that grant of permission would not prejudice the defendant is not compliance with the statutory mandate of Order XXIII Rule 1(3).

25. The Supreme Court in the case of *K.S. Bhoopathy* (supra) has acknowledged the facts and situation by considering where the plaintiffs filed a suit and sought relief, inter alia, of injunction against defendants restraining them from establishing and running a flour mill on their property and for further injunction restraining them from disturbing the plaintiffs' exclusive user of the pathway lying between the properties of the plaintiffs on one side and defendants on the other. Defendants in the suit as owners sold portions of their land by separate sale deeds executed in favour of plaintiffs. It was the case of the plaintiffs that establishment of the proposed flour mill by the defendants will Act as a nuisance and will seriously prejudice the plaintiffs' user of their property on which they have constructed a clinic. Regarding the pathway the case of the plaintiffs is that they have exclusive right of user of the same and the plaintiffs should not be permitted to interfere with their right in any manner. The trial Court decreed the suit holding inter alia that the plaintiffs' have an exclusive right of user over the pathway. The trial Court also accepted the case of the plaintiffs in respect of the prayer for injuncting contesting defendants from establishing a flour mill on their property. On appeal first appellate Court modified the decree relating to the pathway holding that the plaintiffs have no exclusive right of user of the pathway and all the parties entitled to use the same as it is a common path way. The plaintiffs filed the second appeal, and before said appeal was admitted the plaintiffs filed an application under Order 23 Rule 1(3), C.P.C. seeking permission of the Court to withdraw the suit with leave to file a fresh suit as no prayer for declaration of plaintiffs title over the pathway was made in the plaint and in view of the cloud raised against their exclusive title and right of user in the judgment of the lower appellate Court, it was necessary to withdraw the suit and file a fresh suit properly constituted and seeking appropriate relief. The application filed by the plaintiffs was allowed by the High Court. The Supreme Court

observed that the High Court could not be said to have considered the relevant aspects of the matter. Its approach have been that since the interest of the defendants can be safeguarded by giving them permission for user of the pathway till adjudication of the controversy in the fresh suit to be filed, permission for withdrawal of the suit as prayed for can be granted. Such an approach was found to be clearly erroneous. It was also observed that in case such permission is granted at appellate or second appellate stage prejudice to defendant is writ large as he loses the benefit of the decision in his favour in the lower Court. Thus the order of the High Court granting permission for withdrawal of the suit with permission to file fresh suit was found liable to be set aside. In view of K.S. Bhoopathy and Ors. (supra) there should be application of mind to the relevant aspects of the matter and it is the duty of the Court to feel satisfied that there exists proper grounds/reasons for granting permission for withdrawal of the suit with leave to file fresh suit by the plaintiff.

26. In *R. Rathinavel Chettiar and Another Vs. V. Sivaraman and Others*, , the Supreme Court in the matter of withdrawal of suit by plaintiff at the appellate stage in reference to Order XXIII Rule 1 CPC on passing of the decree has held that withdrawal of suit cannot be allowed by a Court as a matter of course when by virtue of such withdrawal, vested and substantial rights of a party to the litigation will be adversely affected after passing of a decree in favour of the plaintiff. In the instant case, the suit property was sold by the plaintiff to a third party, but defendant preferred an appeal against the decree. In such a situation, the plaintiff cannot seek to withdraw the suit at the appellate stage on the ground of he having compromised the dispute with the original defendant, as that would result in nullifying the substantive right to the property acquired by the third party-transferee. The Supreme Court in the case supra has observed as below:

11. Once the matter in controversy has received judicial determination, the suit results in a decree either in favour of the plaintiff or in favour of the defendant.

12. What is essential is that the matter must have been finally decided so that it becomes conclusive as between the parties to the suit in respect of the subject-matter of the suit with reference to which relief is sought. It is at this stage that the rights of the parties are crystallised and unless the decree is reversed, recalled, modified or set aside, the parties cannot be divested of their rights under the decree. Now, the decree can be recalled, reversed or set aside either by the Court which had passed it as in review, or by the Appellate or Revisional Court. Since withdrawal of suit at the appellate stage, if allowed, would have the effect of destroying or nullifying the decree affecting thereby rights of the parties which came to be vested under the decree, it cannot be allowed as a matter of course but has to be allowed rarely only when a strong case is made out. It is for this reason that the proceedings either in appeal or in revision have to be allowed to have a full trial on merits.

22. In view of the above discussion, it comes out that where a decree passed by

the trial Court is challenged in appeal, it would not be open to the plaintiff, at that stage, to withdraw the suit so as to destroy that decree. The rights which have come to be vested in parties to the suit under the decree cannot be taken away by withdrawal of suit at that stage unless very strong reasons are shown that the withdrawal would not affect or prejudice anybody's vested rights. The impugned judgment of the High Court in which a contrary view has been expressed cannot be sustained.

27. In view of the aforesaid analysis and above decisions, we are satisfied that their exist proper grounds/reasons for granting permission for withdrawal of the MAC Case No. 3 of 2000 from learned Claims Tribunal, with leave to file a fresh suit by the appellant for appropriate remedy before the Commissioner, Workmen Compensation, as there was no question of adjudication of MAC Case No. 3 of 2000 on merits in favour of the respondents whereby the trial/adjudication could be nullified by such withdrawal. In our respectful consideration, in fact there is no finding in favour of the respondents given by the claims tribunal which would get nullified, as such permission for withdrawal of claim petition may be granted.

28. Accordingly, in exercise of power of appellate Court, we are of the considered view that in view of Order XXIII Rule 1(3), on the oral submission of appellant, we may dispose of the present appeal in terms of prayer made by the appellant as also the prayer is not being opposed by the learned Counsel for the respondents. Accordingly, we allow the appellant to withdraw the MAC No. 3 of 2000, with liberty to the appellant to approach, as prayed for, before the Commissioner, Workmen's Compensation.

29. The appeal being FAO (MVA) No. 158 of 2002 stands disposed of accordingly.