
(1973) 10 OHC CK 0004
In the Orissa High Court
Case No : Civil Revision No. 203 of 1973

Rasiklal Rathor

APPELLANT

Vs

Smt. Maitroi Sukhla

RESPONDENT

Date of Decision : 31-10-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(3)

Citation : AIR 1974 Ori 158 : (1973) 39 CLT 1341

Hon'ble Judges : G.K. Misra, C.J

Bench : Single Bench

Advocate : R.K. Patnaik, for the Appellant;

Final Decision : Dismissed

Judgement

G.K. Misra, C.J.—Plaintiff's suit was for a declaration that she had taken lease of 254.25 acres of land in Gonua Iron Mines and for an injunction against the defendant. There was a registered agreement between the parties on 10-4-1969. The defendant was a raising contractor under the agreement with a condition to pay royalty on certain terms. The agreement contained the usual arbitration clause.

On 16th November, 1970, plaintiff filed the suit. On 8th May, 1971, the trial Court stayed the proceeding u/s 34 of the Arbitration Act, and referred the matter to arbitration. Evidence was closed and the case was fixed for argument at 5 p. m. on 4-12-1972. At that point of time, plaintiff withdrew the authority of Sri Raniit Mohanty to arbitrate the case as her nominee. On 5-7- 1972 she nominated Sri Muralidhar Mohanty as arbitrator. On 11-12-1972 she filed a petition for approval by the Court of the new arbitrator. On 25-1- 1973 she filed an application for withdrawal of the suit under Order 23. Rule 1. Civil P. C. The withdrawal was allowed on 31st, January, 1973, and it is against this order that the civil revision has been filed.

2. Order 23, Rule 1 (1), Civil P. C. with Orissa amendment runs thus :

"At any time after the institution of a suit, but not after the passing of the preliminary decree in the suit, the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim."

It would be apparent from the above that when the plaintiff withdraws the suit simpliciter without any liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim, the Court is bound to grant withdrawal. The reason is, plaintiff does not seek any favour from the Court in asking for a withdrawal simpliciter. The plaintiff must have full liberty to withdraw the suit in such a case. The consequence of a withdrawal simpliciter is disastrous as enjoined upon by Order 23, Rule 1 (3) by which he is precluded from instituting a fresh suit in respect of such subject-matter or such part of the claim. That by itself is a harsh penalty on the plaintiff. This view is no longer *res integra*. and is fully supported by *Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co.,* .

3. The learned Subordinate Judge should not have been oblivious of the fact that the arbitration had almost come to a close and he had powers to grant cost under Order 23, Rule 1 (3). Senior Advocates had been engaged as arbitrators and lawyers also appeared before them. Mr. Patnaik says that a minimum cost of Rs. 250.00 should have been allowed by the learned Subordinate Judge while granting the withdrawal. The claim appears to be quite reasonable.

4. The withdrawal of the suit is accordingly allowed subject to payment of Rs. 250.00 as costs by the plaintiff to the defendant within two months from today, failing which the application for withdrawal must be rejected.

Subject to the aforesaid order regarding costs, the civil revision is dismissed.