
(2008) 11 CAL CK 0058
In the Calcutta High Court
Case No : W.P.C.T. No. 238 of 2008

Union of India and Others	Vs	APPELLANT
Pravash Dutta and Another		RESPONDENT

Date of Decision : 06-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 12, 122, 125, 2(18)

Citation : (2008) 11 CAL CK 0058

Hon'ble Judges : Prasenjit Mandal, J; Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : A.K. Gayen, for the Appellant; Ayan Banerjee and Arindam Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

The Judgment of the Court was as follows:

1. Vakalatnama filed on behalf of respondents be kept with the record.
2. Mr. Banerjee has taken a preliminary objection in this matter drawing our attention to Paragraph-15 of the petition. Since it is a point of law there is no need for any affidavit-in-opposition. We have gone through the statement and averments made in the petition. Accordingly, we quote the exact language used in Paragraph-15 of the petition:-

15. That your petitioners state that thereafter the case filed and the decision for filing of an appeal/writ petition before the Hon''ble Court" were examined and vetted at various official levels of the Railway authority and finally, a writ petition was filed before this Hon''ble Court on 20.07.2007 being W.P.C.T. No. 646 of 2007 (Union of India & Ors. vs. Sri Pravash Duffa) by enclosing the original certified copy of the order dated 15.03.2007. Your petitioners further state that subsequently it has been decided that the W.P.C.T. should be withdrawn and the Hon''ble Tribunal's order implemented and accordingly a miscellaneous application should be filed before the Hon''ble Tribunal for extension of time for

compliance with the order dated 15.03.2007. Accordingly, the aforesaid writ petition was dismissed as withdrawn without merit on 15.10.2007.

3. It is thus clear that earlier writ petition was withdrawn may be on some valid or invalid ground but without leave of the Court. Rule 53 of the Writ Rules framed by this Court has adopted the provisions of CPC to the extent it is applicable. Order 23 sub-rule 3 (b) and (4) sub-rule (b) provides as follows:-

(3) Where the Court is satisfied -

(a)

(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)

(b) Withdraws from a suit or part of a claim without the permission referred to in sub-rule (3).

4. It is thus evident without permission, referred to in sub-rule 3; the litigant was precluded from instituting any fresh suit in respect of same subject-matter or same claim or part of the claim.

5. Admittedly, the petitioner in this case has not obtained leave to file fresh application, as provided in the said rule. According to us the aforesaid provision has been adopted and substantiated in the body of the Code in Section 12 of the CPC which specifically creates a bar which we set out hereunder:-

12. Bar to further suit - Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

6. "Rules", as provided in Section 2(18), means rules and forms contained in the First Schedule or made u/s 122 or Section 125.

7. It is thus clear that the bar created in Order 23 sub-rule (4) has to be treated as substantive bar as mentioned in Section 12 in the Code of Civil Procedure. The said bar, in our view, is not a procedural bar and it creates substantive right in favour of the adversary with an object that a litigant ought not to be vexed twice over again like principle of res judicata of course in different way.

8. Under such circumstances, the preliminary objection succeeds and on that ground this application is dismissed. There will be no order as to costs.