

**ORDER ON IA No.VI**

The application is filed under Section 11(a) of I.D. Act read with order 23 Rule 1(3) (b) of Civil Procedure Code by the applicant praying to permit him to withdraw the application with liberty to institute a fresh application in respect of the subject matter as per law.

2. It is stated in the affidavit filed along with the application that he filed this petition for the recovery of incentives, leave with wages and bonus due by the respondent. Now, he came to know through his counsel that before filing this application, there must be some conciliation proceedings before the labour authorities. Thereafter, there must be reference by the Government of Karnataka to the labour court or industrial tribunal as per the Industrial Dispute Act. So, there is a irregularities in the filing this petition. Hence, he filed this application. If he is not permitted to withdraw the said application as prayed it will lead to multiplicity of proceedings and he may not be able to crop the fruits of his labour. If the application is allowed no hardship will be caused to respondent. Hence, prayed to allow the application.

3. The respondent has filed objection stating that the application is not maintainable either in law or on facts. This application is misconceived. Hence, liable to be dismissed in limine. The first party instituted the present proceedings without due diligence and without proper appreciation of the statutory requirements. The reason given by him that he was unaware of the requirement of conciliation under the Industrial Dispute Act does not constitute a valid or sufficient reason to grant liberty to file a fresh petition as it is settled principle of law that ignorance of law is no excuse. The first party has not demonstrated any formal defect or sufficient ground as required under Order XXIII Rule 1(3)(b) of Civil Procedure Code. The averments in the affidavit in support of the

withdrawal application do not satisfy the legal threshold for granting liberty as sought for. If this court in client to permit withdrawal it should be allowed only liberty to file a fresh case. Hence, prayed to dismiss the application.

4. Heard both sides.

5. The point that arise for my consideration is:  
“Whether application is deserve to be allowed?”

6. My finding on the above point is in the affirmative for the following:

#### **REASONS**

7. This petition is filed by the applicant/first party for recovery of incentive, leave with wages and bonus said to be due from the respondent while he was working with respondent. The present application is filed seeking permission to withdraw the said application with liberty to institute a fresh application on the same subject matter on the ground that he came through his counsel that before filing this petition there must be some conciliation proceedings before the labour authorities and thereafter the reference must be made by Government of Karnataka to the Labour Court or Industrial Tribunal as per ID Act, so there is irregularity in filing this petition.

8. The respondent objected this application on the ground that this applicant has instituted the proceedings without due diligence and proper appreciation of statutory

requirements. The reason given by him to file this application that he is unaware of the requirement of conciliation cannot be a ground to file this petition as it is well settled principle of law that ignorance of law is no excuse. Hence, he cannot be permitted to withdraw the petition with liberty to file fresh petition on the same subject matter.

9. This petition is filed under Section 33(C)(2) of I.D. Act. Here, it is very pertinent to note that this second party has filed IA No.5 under Order VII Rule 11(d) of Civil Procedure Code to reject the plaint on the ground the petitioner ought to have approached the appropriate adjudicating authority to have his disputed facts determined and only after obtaining an order or award from the said authority he could file the petition under Section 33(C)(2) of the Act. As per the pleading he did not obtain any order or award from the adjudicating authority prior to filing this petition.

10. So, it is very clear that the respondent/second party admitted that the first party has before approaching this court has not approached the appropriate authority for conciliation proceedings which is must to approach court under Section 33(C)(2) of ID Act. Section 11(a) of ID Act relates to power of the Labour Court, Tribunal or National Tribunal to give appropriate relief in case of discharge or dismissal of the workmen.

11. Section 11(1) of ID Act relates to procedure and power of conciliation Officer, Board, Courts, Tribunal and National Tribunal in relation to the Industrial Dispute. Section 10 of ID Act relates to reference of dispute by the Government to Board, Court or Tribunal. When as discussed above, the second party have filed an application to reject the plaint on the ground of non-approaching the appropriate adjudicating authority before approaching this court. It is very clear that the petition is suffered from procedural irregularity. The Order 23 Rule 1(3) of Civil Procedure Code relates to giving permission to withdraw the suit or abandon part of a claim with liberty to file a fresh suit in respect to the same subject matter. It says that if the court satisfied that the suit must fail by reason of some formal defect and there are sufficient ground for allowing the plaintiff to institute a fresh suit on the same subject matter the court may grant permission.

12. It is contended by the respondent that the applicant has failed to show what is the formal defect. When the respondent himself stated that the applicant ought to have approached the concerned adjudicating authority before approaching this court it is a formal defect which cannot be cured in any manner. It is well settled that if any defect cannot be cured in any manner that too by way of amendment the permission to withdraw the suit can be granted. So, I opine that when there is bar to approach this court by the applicant without approaching adjudicating authority for conciliation proceedings he is not entitled for any relief. So, there is a ground to permit him to withdraw the petition. But, now the

question is whether he can be permitted to withdraw the suit with liberty to file a fresh application on the same subject matter. When the application is suffered by formal defect, if after curing the said formal defect he is entitled to file a fresh petition as per law subject to the limitation. He can be permitted. So, I opine that on these condition if he is permitted to withdraw the petition with liberty to file a fresh petition on the same subject matter subject to limitation no hardship will be caused to the second party. However, this application is filed at the final stage of the case that too after the second party filed an application to reject the petition, as provided under Section Order VII Rule 11(d) of Civil Procedure Code and since by the act of the first party he made the second party to knock the door of the court to defend his case so the second party is entitled to the cost. Hence, I deem fit to allow the application with costs. Accordingly, I answer above point in the affirmative.

13. In view of the above discussions, I proceed to pass the following:

#### **ORDER**

The IA No.VI filed under Section 11(a) of I.D. Act read with order 23 Rule 1(3) (b) of Civil Procedure Code by the applicant is hereby allowed with cost of Rs.5,000/- to be paid to the second party.

The applicant is permitted to withdraw this application filed under Section 33(C)(2) of ID Act with liberty to file the fresh application in

respect of the same subject matter subject to the limitation as per law.

The applicant shall pay the cost within one month from the date of this order.

**(Hemavathi)**  
Principal District & Sessions Judge,  
Hassan.