

**Title Suit No. 39 of 2019**  
*CIS No. 40 of 2019*  
*CNR No. WBBK07-000124-2019*  
*Present : Sri Tanumoy Karmakar (J.O. Code: WB01209)*

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**Order no. 44**  
*Dated 06-05-2025*

The record is put up today by way of a put up petition.

The put up petition is considered and allowed.

At the very outset of this order it is pertinent to mention here that plaintiffs were directed to file substituted copy of plaint pertaining to the death of defendant no.1 & 2 and the same has been filed today.

The substituted copy of plaint is kept with the record.

The copy of substituted plaint was served to the Ld. Counsel for the contesting defendant and he received the same by putting his endorsement.

Plaintiffs filed ne application under Order 23 Rule 1 read with Section 151 of the CPC with a prayer to withdraw his claim pertaining to defendant no.24.

Ld. Counsel on behalf of the contesting defendants is present and he vehemently raised objection against such prayer of of the plaintiffs.

Now, let us take a view the provision as laid down under Order 23 Rule 1 of the CPC. It deals as “*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 32 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*”.

So, it is very clear that after institution of the suit, plaintiffs can abandon a part of their claim pertaining to the said suit. Accordingly, plaintiff no.1(a) was examined on behalf of all the plaintiffs as PW-1 on a separate form and the same is kept with the record.

In this context, it is pertinent to mention here that the Ld. Counsel for the contesting defendants did not cross-examine PW-1 in this regard.

Considering the above noted aspect, I have no legal impediment to allow the application filed by the plaintiffs especially when plaintiffs are withdrawing their claim against defendant no.24.

Hence, it is,

**ORDERED**

that the application under Order 23 Rule 1 of CPC preferred by the plaintiffs be and the same is granted without any order as to costs.

Thus, plaintiffs are directed to file revised copy of plaint on the next date deleting their claim against defendant no.24.

Fix to date (04-06-2025) for SR & AD in respect of defendant no.1, 6, 9, 12, 14 , 16 to 18, 21, 23 & 26.

Requisites in the meantime.

Update CIS forthwith.

*Dictated & Corrected by me.*

*Civil Judge (Sr. Divn.), Bishnupur*

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