

T.S. 674 of 2022

(CNR no. WBSP0E000 9332022)

Order no. 08 dated 20.05.2023

Today is fixed for hearing of the petition U/O XXIII rule 1 (3) read with sec. 151 of CPC, if copy served.

Both plaintiff and defendant file hazira separately.

Defendant files written objection against the instant petition.

Copy served.

Accordingly the record is taken up for hearing of the petition dated 10.02.2023 in presence of both sides.

Plaintiff Sudeshna Banerjee @ Mukherjee filed the instant petition, supported by affidavit praying for withdrawal of the suit with liberty to file separate suit on the same cause of action, inter alia, submitting that during the pendency of the suit, the defendant and his associate broke the original lock of the flat and forcefully took the possession. For that she is temporary staying at Rabindra Kanan, Purba Burdwan. That the cause of action of the present suit has changed and as such in this situation there is no scope to amend the suit.

Defendant resisted the instant petition by filing written objection inter alia, submitting that the instant petition is not maintainable and denied the averments stated by the plaintiff. That the allegations staged by the plaintiff is false. Neither there is any cause of action nor any cause of action presently. That the plaintiff has filed this suit on a concocted story. Stating the above, he pleads before this court to dismiss the suit without any liberty to file fresh suit on the same cause of action.

Plaintiff Sudeshna Banerjee @ Mukherjee is examined on dock and during examination she stated that she has filed the withdrawal petition voluntarily and is praying for the reliefs as stated therein

Hd. Perused the withdrawal petition along with the deposition and other materials on record.

Now the record is taken up for passing necessary order.

As per Order XXIII Rule 1 of CPC, a withdrawal petition can be filed at any time after the institution of the suit by the plaintiff and if the suit may fail by reason of some defect or there are other sufficient ground, then the court may grant the plaintiff permission to withdraw such suit or claim with a liberty to institute a fresh suit in respect of the subject matter of such suit

After considering the withdrawal petition, it is apparent that the plaintiff herself stating that the cause of action has changed (paragraph 4 of the petition dated 10.02.2023) and so she cannot be provided any liberty to file fresh suit on the same cause of action. However, as the suit has been instituted at her instance and she wants to withdraw the same on some grounds specifically stated, then this court do not find it proper to curtail the same. In the light of the above discussion, the prayer for withdrawal of the suit filed by the plaintiff is liable to be allowed and the court is not debarring the plaintiff to file fresh suit in respect of the subject matter. But she cannot take the plea to file the same on the same cause of action or claim which has been estopped by her own conduct.

C.F paid is correct

Hence it is

ORDERED

That the suit be and the same is disposed off on the basis of the withdrawal prayer made by the plaintiff on 10.02.2023, supported by affidavit.

The plaintiff is permitted to withdraw the instant suit without any liberty to file fresh suit on the same cause of action or claim.

The withdrawal petition dated 10.02.2023 is disposed off along with the suit.

D/A is directed to note down the same in the concerned register and CIS.

D/C by

sd/-

Civil Judge (Jr. Divn.), 2nd Court
Baruipur, South 24-Parganas

sd/-

Civil Judge (Jr. Divn.), 2nd Court
Baruipur, South 24-Parganas

