

Assam Schedule VII. Form No. 143

HIGH COURT FORM NO. (J) 13

Form of Order Sheet

DISTRICT- SONITPUR

IN THE COURT OF MUNSIF NO. 1, SONITPUR, TEZPUR

PRESENT : Shri V. Bhuyan

T.S Case No. 87 of 2019

Sualkuchi Resham Samabay Limited - Versus - Shri Ranjan kakati

Sl No. of Orders	Date	Order	Signature
	01-12-2022	<p>Both sides are represented.</p> <p>Today is fixed for order on petition no. 31/2020.</p> <p>Perused petition no. 31/2020 filed by the plaintiff.</p> <p>In the instant petition the plaintiff states that they intend to withdraw the present Title Suit with the leave to file a fresh suit against the defendant. The plaintiff intends to withdraw the suit to construct the new building in the suit premises. The defendant is now staying in the suit premises and the plaintiff has no objection to the staying till new construction building.</p> <p>Hence, the plaintiff has prayed to consider the petition and allow withdrawal of the suit with liberty to file afresh in the interest of justice.</p>	Contd...

<p>01-12-2022 Contd...</p>	<p>The defendants filed their written objection against the Plaintiff and stated that the petition of the Plaintiff is bound to be rejected as the same will prejudice the defendant's case. The defendants further states that in order for a suit to be withdrawn with liberty to file afresh, the Court has to be satisfied that the suit must fail by reason of some formal defect or there are other sufficient grounds for allowing the prayer of the Plaintiff. In the withdrawal petition dated 03/12/2019 the Plaintiff has neither pleaded that (a) the suit must fail by reason of some formal defect or (b) there are sufficient grounds for allowing it to institute a fresh suit for the subject matter of the suit. The defendants pleads that the petition is ploy of the plaintiff to prejudice the defendant's valuable rights and hence prays for rejecting the Plaintiff's application to withdraw the suit with liberty to institute afresh.</p> <p>I have perused the case record and heard both the parties.</p> <p>On perusal it appears that the plaintiff filed the instant petition soon after institution of the suit. So the defendant has not submitted the written statement in the instant suit.</p> <p>Now, Order XXIII Rule 1(3) of CPC provides that "where the Court is</p>	<p>Contd...</p>
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<p>01-12-2022 Contd...</p>	<p>satisfied -</p> <p>a) That a suit must fail by reason of some formal defect, or</p> <p>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.</p> <p>In the instant petition the plaintiff has stated that the subject matter of the suit has not been described properly for which also the suit may allowed to withdrawn with a liberty to file afresh. Apart from some facts were left to mention in the plaint.</p> <p>That the subject matter of the suit has been not described properly in the suit is also a formal defect. So, there is a sufficient ground for allowing the plaintiff to withdraw the suit with a liberty to file a fresh suit.</p> <p>Therefore, in the light of all the aforesaid discussion, this court is of considered opinion that if the case is allowed to withdraw with a liberty to file a fresh suit, the other side should not be prejudiced, rather it will help the court to arrive</p>	<p>Contd..</p>
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	<p>01-12-22 Contd..</p>	<p>at a proper conclusion of dispute.</p> <p>So, the prayer of the plaintiff vide petition no. 31/2020 filed by the plaintiff praying to withdraw the suit with a liberty to file a fresh suit is allowed. No cost is imposed upon the plaintiff.</p> <p>The suit is disposed of on withdrawal.</p>	
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