

Order-23 Withdrawal and Adjustment of Suits

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1. 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 rule 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 abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied-

(a) that a suit must (ail by reason of some formal defect, or

(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) abandons any suit or part of claim under sub-rule (1), or

(b) without from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1) or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.]

1A. When transposition of defendants as plaintiffs may be permitted :-

Where a suit is withdrawn or abandoned by a plaintiff under rule I, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.].

2. Limitation law not affected by first suit :-

In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by law of limitation in the same manner as if the first suit had not been instituted.

3. Compromise of suit :-

Where it is proved to the satisfaction of the Court a suit has been adjusted wholly or in part any lawful agreement or compromise,¹[in writing and signed by the parties] or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith²[so far it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject- matter of the suit].³ [Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question, but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

1. Ins. by Act 104 of 1976, Sec. 74 (w.e.f. 1st February, 1977).

2. Subs. by Act 104 of 1976, for the words "so far as it relates to the suit" (w.e.f. 1st February, 1977).

3. Added by Act 104 of 1976. (w.e.f. 1st February, 1977).

3A. Bar to suit :-

No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.]

3B. No agreement or compromise to be entered in a representative suit without leave of Court :-

(1) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

4. Proceedings in execution of decrees not affected :-

Nothing in this Order shall apply to any proceeding in execution of a decree or order.