* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 12.10.2026
Date of Decision: 28.10.2026
Date of Uploading:28.10.2026

\# **CNR No. DLHC010644262024**

\+ CM(M) 3465/2024 & CM APPL. 56131/2024

KASTURI RAJAN & ORS. .....Petitioners

Through: Mr. Virender Goswami and Ms. Swati Goswami, Advs.

versus

VATSALA VESCIO & ORS. .....Respondents

Through: Mr. Avneesh Garg, Mr. Utkarsh Sharma and Mr. Harsh Pal, Advs.
Mr. Praveen Chauhan, Advs. for R-2
Mr. Anil Nauriya and Ms. Sumita Hazarika, Advs. for R-3

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. The present petition under Article 227 of the Constitution of India read with Section 151 of the code of Civil Procedure, 1908[1] assails the order dated 17.09.2024 passed by the learned Additional District Judge-04, Patiala House Courts, New Delhi[2], in CS No.

[1]Hereinafter "CPC"
[2]Hereinafter "Trial Court"

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59209/2016[3], titled *"Vatsala Vescio Vs. Kasturi Ranjan & Ors."*, whereby the application filed by respondent no. 1/plaintiff for early hearing was allowed and, on the same date, respondent no. 1 was permitted to withdraw the application under Order I Rule 10 CPC seeking deletion of respondent nos. 2 and 3 from the array of parties.

2. The underlying suit was instituted in the year 2008 by respondent no. 1 seeking declaration, possession and damages against the petitioners and respondent nos. 2 and 3 in respect of property bearing no. C-21, Anand Niketan, New Delhi-110021[4].

3. Respondent nos. 2 and 3 were initially proceeded against *ex-parte*. Their application under Order IX Rule 7 CPC was dismissed, and the subsequent review application was also rejected. In appeal, however, they were permitted to participate in the proceedings and file their written statement. The suit thereafter proceeded to the stage of final arguments, and the defendants' evidence was closed on 02.03.2023.

4. It was on 16.01.2024 that respondent no. 1 moved an application under Order I Rule 10 CPC for deletion of respondent nos. 2 and 3.

5. Subsequently, respondent nos. 2 and 3 sought recall of the order closing their evidence and permission to lead further evidence. By order dated 14.02.2024, the learned Trial Court allowed their application and permitted the reopening of evidence, while keeping pending the application filed by respondent no. 1 under Order I Rule 10 CPC for deletion of respondent nos. 2 and 3. The petitioners challenged the said order before this Court in CM(M) 1924/2024,

[3]Hereinafter "underlying suit"
[4]Hereinafter "suit property"

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wherein interim protection was granted on 20.02.2024 and the order was subsequently modified on 15.05.2024 to permit certain procedural steps for recording evidence.

6. By order dated 14.08.2024, this Court disposed of the aforesaid petition, directing that the application for deletion of respondent nos. 2 and 3 shall be decided by the learned Trial Court in accordance with law. The question whether respondent no. 1 could withdraw the said application was left open for consideration by the learned Trial Court, and the recording of evidence of respondent nos. 2 and 3 before the Local Commissioner was deferred.

7. Thereafter, respondent no. 1 filed an application seeking early hearing before the learned Trial Court. The learned Trial Court *vide* the impugned order dated 17.09.2024, allowed the application for early hearing, and permitted respondent no. 1 to withdraw the application under Order I Rule 10 CPC. The relevant paragraphs of the impugned order are reproduced herein below:

> **"36.** Now, the Ld. counsel for the plaintiff has sought to withdraw the application under Order I Rule 10 CPC to which there is no objection by the defendants no. 5 and 6, however, the defendants no. 1 to 4 are objecting to the withdrawal of the application.
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> **37.** Unfortunately for the defendants nos. 1 to 4, I am not in agreement with the submissions made on their behalf. The entire argument of the defendants no. 1 to 4 is based on the premise that the application under Order I Rule 10 CPC by the plaintiff was essentially a withdrawal and abandonment of the suit by the plaintiff in respect of the defendant nos. 5 and 6 under Order XXIII rule 1 CPC. However, a holistic reading of the application under Order I Rule 10 CPC shows that this was not the case. The prayer clause in the application seeks the deletion of the defendants nos. 5 and 6. The plaintiff has stated in the application under Order I Rule 10 CPC that due to the application of the defendant no. 5 for reopening evidence and the list of witnesses of defendant no. 5 containing 15 witnesses, the plaintiff apprehended that the suit

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would be delayed, and it was in these circumstances, that the plaintiff was seeking deletion of the defendants nos. 5 and 6. Furthermore, a perusal of paragraph 9 of the application would show that the statement regarding giving up of the prayer (ii) against the defendants no.5 and 6 was itself conditional on the deletion of the defendants nos. 5 and 6.

38. The question arises as to whether by mere filing of the application under Order I Rule 10 CPC, the Court was bound to delete the defendants nos. 5 and 6 akin to a case of abandonment of a suit under Order XXIII Rule 1 CPC. The answer is clearly in the negative. The mere filing ofthe application under Order I Rule 10 CPC did not mean that this court was bound to delete the defendants nos. 5 and 6. The application was to be adjudicated and it was only if the Court found that the defendants nos. 5 and 6 were neither necessary nor proper parties to the suit, then only the Court could have proceeded to delete the defendants nos. 5 and 6 from the array of parties. Hence, the application under I Rule 10 CPC filed by the plaintiff is not akin to an application under Order XXIII Rule 1 CPC in which case the withdrawal is effective the moment of filing of the application.

39. Since the application under Order I Rule 10 CPC cannot be taken as withdrawal or abandonment of the suit against the defendant no. 5 and 6 under Order XXIII Rule 1 CPC, the decisions relied upon by the Id. counsel for the defendants nos. 1 to 4 are clearly distinguishable and not applicable to the present case.

40. Since the plaintiff is seeking to withdraw the application under Order I Rule 10 CPC for deletion of the defendants nos. 5 and 6, and the defendants no. 5 and 6 have no objection to the same, and the objection of the defendants no. 1 to 4 to the withdrawal of the application is without any merit, the plaintiff is permitted to withdraw the application under Order I Rule 10 CPC.

41. Accordingly, the application under Order I Rule 10 CPC filed by the plaintiff seeking deletion of the defendants nos. 5 and 6 is dismissed as withdrawn."

8. Aggrieved thereby, the petitioners have approached this Court.

9. At the outset, learned counsel for the petitioner submits that although the application for deletion of respondent nos. 2 and 3 moved by respondent no. 1 was captioned under Order I Rule 10 CPC, but a complete reading of paragraph 9 of the said application and the

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averments therein, reveal that the said application was under Order XXIII Rule 1 CPC and respondent no. 1 unconditionally abandoned her claim and the sole relief sought against respondent nos. 2 and 3 *qua* the agreement to sell dated 20.02.1973. In support of this, reliance is placed on ***M.C. Mehta v. Union of India and Ors***.[5].

10. It is contended that under Order XXIII Rule 1(1) CPC, an act of abandonment of the claim or part thereof, gets completed the moment knowledge of abandonment is brought to the notice of the Court. Reliance is placed on ***Anurag Mittal v. Shaily Mishra Mittal***[6] to emphasise that abandonment under Order XXIII Rule 1(1) CPC is "absolute" and a suit is deemed to be withdrawn on the very day an application is moved in that regard.

11. Further reliance is placed on ***Raisa Sultana Begam and Ors. v. Abdul Qadir and Ors***.,[7] to submit that since the operation of the application under Order I Rule 10 CPC was automatic upon its filing, respondent no. 1 could not have withdrawn the withdrawal/abandonment of the suit *qua* respondent nos. 2 and 3.

12. In the same context, reliance is placed on ***Vimal Jain and Ors. v. Govt. of NCT(Delhi) and Ors***[8]., whereby this Court while referring to the decisions of the Hon'ble Supreme Court in ***Shiv Prasad v. Durga Prasad and Anr.***.[9], and the Hon'ble Bombay High Court in ***Anil Dinmani Shankar Joshi and Ors. v. Chief Officer, Panvel Municipal Council and Ors***.[10], observed that the act of withdrawal is complete as soon as the applicant files his application as Order XXIII

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[5] **2018 INSC 804**
[6] **(2018) 9 SCC 691**
[7] **1965 SCC OnLine All 380**
[8] **2018 SCC OnLine Del 13650**
[9] **(1975) 1 SCC 405**
[10] **2003 SCC OnLine Bom 24**

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Rule 1 CPC permits the plaintiff to abandon the suit/part of the claim in the suit against all or any of the defendants, at any time after the institution of the suit.

13. Lastly, it is contended that the learned Trial Court erred by preponing the matter, as the early hearing application of respondent no. 1 was signed by an advocate who did not hold the *Vakalatnama*, and in any event, the application failed to disclose any reasonable cause for urgency.

14. *Per contra*, learned counsel for respondent no. 1 submits that respondent no. 1, being the plaintiff, is the *dominus litis.* She cannot be coerced into litigating/abandoning claims against any party against her will. It is submitted that the statement made in paragraph 9 of the application was conditional upon the deletion of respondent nos. 2 and 3. As respondent nos. 2 and 3 were not ultimately deleted from the array of parties, she was well within her rights to withdraw the statement.

15. He further submits that a plaintiff has an inherent right to not press/withdraw an interlocutory application before an order is passed on it. In this regard, reliance is placed on ***Rajendra Prasad Gupta v. Prakash Chandra Mishra***[11]**,** to contend that there is no bar under the CPC which prevented respondent no. 1 from withdrawing her application. The relevant portion of the aforesaid judgment is reproduced hereunder:

> "**4.** We do not agree. Rules of procedure are handmaids of justice. Section 151 of the Code of Civil Procedure gives inherent powers to the court to do justice. That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is

[11] **(2011) 2 SCC 705**

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> prohibited unless expressly permitted. There is no express bar in filing an application for withdrawal of the withdrawal application."

16. Attention is drawn by the learned counsel for respondent no. 1 to the reference before the Hon'ble Allahabad High Court in ***Jeera Devi and another v. Additional District Judge Court No. 12, Varanasi and 2 others***[12], to contend that the petitioner's reliance on ***Raisa Sultana Begam & Ors. (supra)*** and ***Anurag Mittal (supra)*** is untenable as it is not good in law. The relevant portion of the aforesaid judgment reads thus:

> "49. If allowed 'automatically', besides leading to multiplicity of proceedings, it would result in obstructing the fair path of justice itself. The court would become a mere postman or spectator, entirely dependent on the conduct of a plaintiff (except in cases of fraud), with no eye on or intent to address the needs of justice. That dictation of the procedural law to override the substantive law may never be consistent to the ends of justice. Therefore, it may never be desirable
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> 50. Accordingly:
> Question number (i) is answered in the negative. We hold that the **ratio laid down in Smt. Raisa Sultana Begam (supra) is no longer a good law in view** of the later pronouncement of the Supreme Court in Rajendra Prasad Gupta (supra).
> Question number (ii) framed in the negative, is answered in the negative. We opine that Meera Ral (supra) is a good law being consistent to the ratio of the Supreme Court in Rajendra Prasad Gupta (supra);
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> 51. By way of clarification, **we reiterate that Anurag Mittal (supra) though a decision of the Supreme Court has no applicability** while interpreting Order XXIII Rule 1 of the Code. That decision is relevant for an interpretation of Section 15 HMA."

17. In response to the petitioners' grievance *qua* allowance of the early hearing application, counsel for respondent no. 1 contends that the matter is more than 17 years old and pendency of the present

[12] **A227 No. - 4747 of 2019, Allahabad High Court**

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petition is causing grave hardship to respondent no. 1, who is a super-senior citizen of 83 years.

18. Similarly, learned counsel for respondent no. 2 submits that respondent no. 1 moved the subject application considering that respondent no. 2 had put forth a list of 15 witnesses but later when only one witness was sought to be examined on respondent no. 2's behalf, respondent no. 1 withdrew the said application.

19. It is submitted that filing the application under Order I Rule 10 CPC, in no way amounts to abandonment of claim under Order XXIII Rule 1 CPC against respondent nos. 2 and 3, as the interests of the defendants therein are not the same and in fact there are *inter-se* disputes.

20. It is further submitted that an application under Order I Rule 10 CPC is merely a request/prayer and final deletion only happens where the Court determines if a party is a "necessary" or "proper". In this respect, reliance is placed on ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd. & Ors.***[13]**,** to contend that a plaintiff in any suit, being *dominus litis*, may choose the persons against whom he wishes to litigate. Further reliance has been placed on ***Mohinder Jeet Singh v. BMW (India) (P) Ltd***.[14], whereby this Court held as follows:

> **"13.** The deletion of a party as a defendant in a suit is therefore possible only upon arriving at a determination that the party is neither a necessary nor a proper party to the suit."

21. In rebuttal, learned counsel for the petitioner contends that the decision in ***Rajendra Prasad Gupta (supra),*** relied upon by

[13] **(2010) SCC 417**
[14] **2019 SCC OnLine Del 9892**

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respondent no. 1, is *per incuriam,* as it does not take note of the decision in ***Shiv Prasad (supra)***.

22. Heard rival contentions and perused the record.

23. The controversy arising for consideration is whether the statement made by respondent no. 1 in paragraph 9 of her application under Order I Rule 10 CPC amounted to an unconditional abandonment of her claim against respondent nos. 2 and 3, and whether the learned Trial Court erred in permitting her to withdraw the said application. The petitioners have also questioned the order allowing early hearing on the ground that the application was not properly instituted and did not disclose sufficient urgency.

24. At the outset, it must be observed that the jurisdiction of this Court under Article 227 of the Constitution of India is supervisory in nature. It is not an appellate jurisdiction to be exercised merely because a party is dissatisfied with an order passed by the subordinate Court. In ***Shalini Shyam Shetty v. Rajendra Shankar Patil***[15], the Hon'ble Supreme Court cautioned that the power of superintendence is to be exercised sparingly and only in appropriate cases where intervention is warranted to keep subordinate Courts within the bounds of their authority.

25. The petitioners' principal submission rests upon the premise that paragraph 9 of the application filed by respondent no. 1 under Order I Rule 10 CPC constituted an unconditional abandonment of her claim against respondent nos. 2 and 3 in respect of the agreement to sell dated 20.02.1973. Respondent no. 1 disputed this interpretation and submitted that the statement was conditional upon the deletion of the said respondents from the array of parties.

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26. Before proceeding further, the distinction between an application under Order 1 rule 10 CPC and abandonment of a claim under Order XXIII Rule 1 CPC is material. Both are reproduced below for ready reference.

> "**Order I**
> **10. Suit in name of wrong plaintiff**.—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.
>
> (2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.
>
> (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.
>
> (4) Where defendant added, plaint to be amended.—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.
>
> (5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."
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> XXXXXX
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> **Order XXIII**
> **1. Withdrawal of suit or abandonment of part of claim**—
> (1) At any time after the institution of a suit, the plaintiff may as

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[15] **(2010) 8 SCC 329**

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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 XXXII 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.

(3) Where the Court is satisfied,—
(a) that a suit must fail 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) withdraws 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 authorise 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 plaintiffs."

27. The former concerns the constitution of parties to a suit, whereas the latter concerns relinquishment of the suit or a part of the claim. The legal effect of an application must be determined by reading it as a whole, having regard to its contents, the relief sought and the context in which the relevant statement was made. Neither its caption nor an isolated averment can be conclusive. The question is whether the plaintiff has clearly and unequivocally relinquished the claim, independently of the relief sought in the application.

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28. The Hon'ble Supreme Court in ***Nak Engineering Company Pvt. Ltd. v. Tarun Keshrichand Shah & Ors***.[16], while relying on ***Mumbai International Airport (P) Ltd. (supra),*** explained the principle of *dominus litis*, under which a plaintiff ordinarily chooses the persons against whom the suit is to be pursued. However, this principle operates subject to the Court's power under Order I Rule 10 CPC to determine whether a person is a necessary or proper party to the proceedings. A plaintiff's choice of parties does not dispense with that judicial determination where the question of deletion arises.

29. In ***Mohinder Jeet Singh (supra),*** this Court reiterated the same principle and held:

> "**13.** The deletion of a party as a defendant in a suit is therefore possible only upon arriving at a determination that the party is neither a necessary nor a proper party to the suit."

The aforesaid principle makes it clear that an application seeking deletion of a defendant is a request for a judicial determination. The mere filing of such an application does not, by itself, result in the deletion of that defendant. Equally, the filing of the application does not necessarily establish that the plaintiff has abandoned the substantive claim against that party. The effect of any accompanying statement must be assessed separately, in the context of the application as a whole.

30. In the present case, the application filed by respondent no. 1 expressly sought deletion of respondent nos. 2 and 3 from the array of parties under Order I Rule 10 CPC. The petitioners rely upon paragraph 9, in which respondent no. 1 stated that she would not press

[16] **(2026) 3 SCC 631**

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relief (ii), being the only relief claimed against respondent nos. 2 and 3. However, that statement cannot be read in isolation. It must be considered alongside the preceding averments, which explain why the application for deletion was filed. The relevant portions of the application read as follows:

> "8. Recently, the said Defendant Nos. 5 and 6 filed successive applications for re-opening their right of leading evidence in the present matter. At one occasion, their application for permission to cross-examine witnesses of Defendant Nos.1 to 4 was allowed subject to cost of Rs.20,000/- (Order dated 06.06.2023). Even thereafter, the said Defendants came up with another application to lead further evidence in the present suit. It is pertinent to mention here that list of witnesses filed by the said Defendants contains as many as 15 witnesses, all of whom have no relevance with the issue framed qua Defendant Nos. 5 & 6. Even the Hon'ble High Court, while disposing of CM(M) No. 1206/2023 filed by Defendant Nos. 5 and 6 against order dated 07.10.2023 of this Hon'ble Court (whereby this Hon'ble Court had placed the matter for final arguments) has observed that the Defendant Nos. 5 and 6 have been trying to delay the
> proceedings of the present suit.
>
> 9. Under the aforesaid circumstances, the Plaintiff seeks to delete the Defendant Nos. 5 and 6 from the array of parties of the present suit. The Plaintiff, for such purpose, shall not press relief (ii) of the present suit, which is the only relief sought against Defendant Nos. 5 and 6 in the present suit."

31. A reading of the above averments shows that respondent no. 1 sought deletion of respondent nos. 2 and 3 in the backdrop of the delay allegedly caused by their applications for leading further evidence. The statement regarding not pressing relief (ii) was made in paragraph 9 of the said application in which deletion was sought and was expressly linked to that request by the words "for such purpose". The application, therefore, sought a particular procedural outcome,

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namely, deletion of respondent nos. 2 and 3, with the non-pressing of relief (ii) stated in that context.

32. The statement must be understood in that setting. Respondent no. 1 was seeking deletion of respondent nos. 2 and 3 so that the suit could proceed without further delay attributable to their participation. The application was not framed seeking unconditional abandonment of the substantive claim, irrespective of whether the defendants were deleted. The learned Trial Court was, therefore, justified in examining the application according to its substance and the relief actually sought.

33. The subsequent proceedings also lend support to this understanding. The order dated 14.02.2024 records that respondent no. 2 had restricted its evidence to one witness, namely, Mr. M. Sena Prasad, and that respondent no. 1 had no objection to that course. The relevant portion reads:

> "7. The defendant no. 5 has filed an application under Order XVIII Rule 17 CPC seeking recall of the order dated 02.03.2023 whereby the right of the defendant no. 5 to lead evidence was closed.
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> 8. Ld. Counsel for the defendant no. 5 has already submitted today that the defendant would only be examining one witness i.e. Mr. M. Sena Prasad and no other witnesses. Ld. Counsel for the defendant no. 5 has submitted that the order dated 02.03.2023 may be recalled in the interest of justice so that the defendant no. 5 may examine the only one witness.
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> 9. Ld. Counsel for the plaintiff submits that in order to avoid any technical objections at subsequent stages, he has no objection if the defendant no. 5 is permitted to examine the only one witness as has been stated by the ld. Counsel for the defendant no. 5.
>
> xxx xxx xxx

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> 15. Ld. Counsel for the defendant no. 5 has submitted that to expedite the recording of evidence of the sole witness of the defendant, a Local Commissioner may be appointed at the expense of the defendant no. 5.
>
> 16. Ld. Counsel for the plaintiff submits that he has no objection to this."

34. The petitioners have also relied upon ***Raisa Sultana Begum (supra)*** and ***Anurag Mittal (supra)*** to contend that abandonment or withdrawal takes effect upon the filing of the application and cannot thereafter be recalled. These decisions, however, must be considered in the context of the provisions and circumstances with which they dealt. In ***Anurag Mittal (supra),*** the Hon'ble Supreme Court was concerned with an unconditional application for withdrawal of an appeal and held that the withdrawal took effect from the date of filing. The question here is not merely whether a plaintiff may abandon a claim under Order XXIII Rule 1 CPC, but whether the prayer made in an application under Order I Rule 10 CPC constituted such abandonment in the first place.

35. The averment in paragraph 9 of the application cannot be treated as an independent and unconditional abandonment of the claim under Order XXIII Rule 1 CPC, as discussed in the preceding para. The present case is distinguishable from ***Anurag Mittal (supra),*** not because the principle stated therein is inapplicable to abandonment of a claim, but because the averment in question, read in its context, does not establish an unequivocal abandonment. The petitioners' reliance on the said decision does not, therefore, advance their case.

36. In ***Rajendra Prasad Gupta (supra),*** the Hon'ble Supreme Court considered whether an application seeking withdrawal of an earlier

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application for withdrawal of a suit could be entertained. The Court recognized that the Code of Civil Procedure does not prohibit the filing of such an application and observed that Section 151 CPC preserves the inherent powers of the Court to secure the ends of justice. The Court held:

> "4. We do not agree. Rules of procedure are handmaids of justice. Section 151 of the Code of Civil Procedure gives inherent powers to the court to do justice. That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is prohibited unless expressly permitted. There is no express bar in filing an application for withdrawal of the withdrawal application."

The decision recognizes that mere filing of an application does not, in every situation, preclude the Court from considering a subsequent request for its withdrawal. The legal effect of the original application and the nature of the relief sought must be examined.

37. Further, the Full Bench of the Allahabad High Court in ***Jeera Devi (supra)*** considered the effect of the decision in ***Rajendra Prasad Gupta (supra)*** on the earlier view expressed in ***Raisa Sultana Begum (supra)***. The Full Bench held that the view in ***Raisa Sultana Begum (supra)*** regarding the automatic effect of withdrawal upon the mere filing of an application could no longer be regarded as good law in view of the later pronouncement of the Hon'ble Supreme Court in ***Rajendra Prasad Gupta (supra),*** the judgment also clarifies that ***Anurag Mittal (supra),*** though a decision of the Hon'ble Supreme Court, was concerned with a different statutory context and did not govern the interpretation of Order XXIII Rule 1 CPC.

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38. The petitioners, while relying on ***State of Assam v. Ripa Sarma***[17]**,** have contended that ***Rajendra Prasad Gupta (supra)*** is *per incuriam* for not considering the decision of the Hon'ble Supreme Court in ***Shiv Prasad (supra)***. In that case, the Hon'ble Supreme Court held that a decision rendered in ignorance of earlier judgments of Benches of co-equal strength could not be elevated to the status of a binding precedent. The decision, however, does not assist the petitioners in the facts of the present case. Before the principle can be invoked, it must be established that the decision in question was rendered in ignorance of a binding precedent. To sustain their contention, it must be shown that ***Rajendra Prasad Gupta (supra)*** was rendered in ignorance of a binding precedent governing the issue before the Court.

39. In any event, the petitioners have not demonstrated an irreconcilable conflict between the decisions in ***Shiv Prasad (supra)*** and ***Rajendra Prasad Gupta (supra).*** In ***Shiv Prasad (supra),*** the Hon'ble Supreme Court considered the interaction between Order XXI Rules 89 and 90 CPC in execution proceedings. The Court held that an application under Order XXI Rule 89 could not be made or prosecuted while an application under Order XXI Rule 90 remained pending, and considered the effect of the unconditional withdrawal of the latter application upon intimation to the Court**.**

40. ***Rajendra Prasad Gupta (supra)***, on the other hand, dealt with the maintainability of an application seeking withdrawal of an earlier application for withdrawal of a suit and the scope of the inherent powers preserved by Section 151 CPC. The two decisions arose in different procedural contexts and addressed different questions. The

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[17] ***(2013) 3 SCC 63***

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absence of a reference to ***Shiv Prasad (supra)*** in ***Rajendra Prasad Gupta (supra)*** does not, by itself, establish that the latter decision was rendered in disregard of a binding precedent directly governing the issue before it. The petitioners' challenge to the impugned order, on this ground, therefore, cannot be sustained.

41. The remaining challenge concerns the order allowing early hearing of the application. The suit has been pending since 2008, and the application for deletion of respondent nos. 2 and 3 remained unresolved. The advanced age of respondent no. 1 was also relevant circumstance in considering the request for an earlier hearing. In these circumstances, the learned Trial Court was justified in advancing the hearing to facilitate the progress of the proceedings. No material has been shown to establish that the order was passed arbitrarily or caused prejudice to the petitioners.

42. The objection that the application was signed by an advocate who did not hold the *Vakalatnama* does not, in the absence of a demonstrated procedural violation affecting the validity of the order or causing prejudice to the petitioners, warrant interference. Nor have the petitioners shown that the advancement of the hearing deprived them of an opportunity to present their case.

43. The impugned order, read as a whole, discloses no jurisdictional error warranting interference under Article 227 of the Constitution of India. The petitioners have not established that the learned Trial Court acted beyond its jurisdiction or committed any patent error calling for the exercise of supervisory jurisdiction.

44. Accordingly, the petition is dismissed as being devoid of merit. The impugned order dated 17.09.2024 is upheld. The observations made herein are confined to the challenge raised in the present petition

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and shall not be construed as an expression of opinion on the merits of the underlying suit.

45. Pending application(s), if any, stands disposed of.

46. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

OCTOBER 28, 2026/ar/dd/as

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:28.10.2026
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