

Shaik Hussain and Sons

Vs

M. G. Kannaiah and Another

Civil Appeal No. 481 of 1970

(Syed M. Fazal Ali, A. Varadarajan JJ)

12.03.1981

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against an order of the High Court dated September 10, 1969 by which the High Court in the L.P.A. against the order of single Judge upheld the order and dismissed the appeal. It may be mentioned here that when the writ appeal was pending before the High Court, the writ petitioner who is now respondent 1, had filed an application to the court praying that he would like to withdraw the writ petition itself in order to avoid public inconvenience. This application was filed on affidavit on August 5, 1969 and the relevant portion of the application may be extracted thus :

In order to avoid public inconvenience and with a view not to disturb the existing plying of the vehicle on the route Lingagasamudram to Ongole, I intend to withdraw the writ petition since I ceased to have any interest in the subject-matter in issue.

I, therefore, crave leave to withdraw the Writ Petition 390 of 1966 and the same may be granted.

Despite this clear prayer made by the respondent, the High Court did not allow the respondent to withdraw the writ petition but proceeded to hear the appeal on merits and dismissed the appeal maintaining the order of the single Judge.

2. The appellant, who had been granted permit by the R.T.A. has come up in appeal to this Court complaining against the appellate order of the High Court on several grounds, the main ground being that if the writ petitioner before the High Court himself wanted to withdraw the petition and had given good reasons for the same, the High Court was not at all justified in not considering that application or passing orders thereon. It may be noted that apart from respondent 1 and the appellant there were no other parties in the writ appeal excepting the formal parties like the R.T.A. In our opinion the contention raised by the appellant is well founded and must prevail. It is not necessary for us to go into the merits of the case when the respondent himself did not want to invoke the writ jurisdiction of the High Court or having invoked the same did not want to press his writ petition. For these reasons, therefore, we allow this appeal, set aside the judgment of the High Court in appeal as also that of the single Judge allowing the writ petition. The result of our order would be that the writ petition before the High Court would be treated as having been withdrawn and not pressed. The appeal is accordingly allowed but as the respondent has not appeared, there will be no order as to costs.

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