REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 984 OF 2006

RAJENDRA PRASAD GUPTA **Appellant (s)**

VERSUS

PRAKASH CHANDRA MISHRA & ORS. **Respondent(s)**

O R D E R

Heard learned counsel for the appellant and respondent Nos. 1 to 3. No one appeared for respondent No. 4.

This Appeal, by special leave, has been filed against the impugned judgment of the High Court of Allahabad dated 06.02.2004 passed in FAFO No.2103/2003.

It appears that the appellant was the plaintiff in Suit No. 1301 of 1997 before the Court of Civil Judge (Junior Division) Varanasi. He filed an application to withdraw the said suit. Subsequently, it appears that he changed his mind and before an order could be passed in the withdrawal application he filed an application praying for withdrawal of the earlier withdrawal application. The second application had been dismissed and that order was upheld by the High Court. Hence, this appeal by special leave.

The High Court was of the view that once the application for withdrawal of the suit is filed the suit stands dismissed as withdrawn even without any order on the withdrawal application. Hence, the second application was not maintainable. 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.

In Narsingh Das v. Mangal Dubey, ILR 5 All 163 (FB) (1882), Mr. Justice Mahmood, the celebrated Judge of the Allahabad High Court, observed :-

> **"Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed."**

The above view was followed by a Full Bench of the Allahabad High Court in Raj Narain Saxena Vs. Bhim Sen & others, AIR 1966 Allahabad 84 FB, and we agree with this view.

Accordingly, we are of the opinion that the application praying for withdrawal of the withdrawal application was maintainable. We order accordingly.

In the result, the impugned judgment of the High Court is set aside and the Appeal is allowed. No costs.

The suit shall proceed and to be decided on merits, expeditiously .

.....J.
(MARKANDEY KATJU)

.....J.
(GYAN SUDHA MISRA)

NEW DELHI;
JANUARY 12, 2011