

In the City Civil Court At Calcutta

Before the Learned Jith Bench

Title Suit No.775 of 2017

Mr Vijay Agarwal

..... Plaintiff

-Versus-

Life Insurance Corporation of  
India and Others

..... Defendants

APPLICATION UNDER ORDER 23 READ WITH SECTION 151 OF  
THE CODE OF CIVIL PROCEDURE READ

The humble petition on  
behalf of the Plaintiff in the  
aforesaid suit

Most Respectfully Sheweth :

1. The plaintiff has filed this instant suit praying for declaration and injunction in respect of his illegal termination of agency by the Defendant No. 1 by a purported letter dated 20.12.2006 and further seeking reliefs in respect of the purported decision of the disciplinary committee dated 08.11.2016. The statements contained in the plaint are all true and correct.
2. It is a matter of record that the plaintiff has been embroiled in a long drawn litigation with the defendants on account of the

unjust and illegal manner in which his agency was unilaterally terminated and only after four rounds of litigation before the Honble Calcutta High Court in proceedings under Article 226 of the Constitution of India, finally the purported decision of the disciplinary committee dated 08.11.2016 was passed being aggrieved by which the instant suit has been filed.

3. This Learned Court was pleased to grant ad-interim reliefs to the plaintiff, the same is still continuing, however the defendants have acted in violation of the said order owing to which proceeding have been initiated against them under Order 39 Rule 2A of the Code of Civil Procedure.
4. The instant suit has been pending since 2017 and a purported application under order 7 rule 11 of the Code of Civil Procedure has been filed by the defendants. The said application is nothing but an abuse of process of law and the same has been filed with the sole intent of stalling the hearing of the suit.
5. It is a matter of record that the plaintiff owing to the time taken towards disposal of the instant suit has been constrained to file an application under Clause 13 of the Letters Patent Act before the Honble Calcutta High Court, the same is also pending hearing.
6. Recently the plaintiff has obtained legal advice from Learned Advocates and the plaintiff has been advised that the plaintiff ought to have challenged the termination of agency by the Defendant No. 1 by a purported letter dated 20.12.2006 and

the purported decision of the disciplinary committee dated 08.11.2016 by way of an application under Article 226 of the Constitution of India as the defendants are amenable to the writ jurisdiction and such remedy will also be an efficacious remedy leading of speedy resolution of the dispute between the parties.

7. It has been further advised that the plaintiff in the instant suit ought to have claimed the unpaid premiums which have been illegally withheld by the defendants along with damages on account of loss of income.
8. After receiving such legal advice the Plaintiff has decided to act on such advice and consequently has decided to withdraw the instant suit and pursue his remedy before the Honble High Court At Calcutta by way of filing an application under Article 226 of the Constitution of India challenging the termination of agency by the Defendant No. 1 by a purported letter dated 20.12.2006 and the purported decision of the disciplinary committee dated 08.11.2016 and seek further ancillary reliefs and accordingly seeks liberty of this Learned Court.
9. The further reliefs as advised if now incorporated in the plaint shall exceed the pecuniary jurisdiction of this Learned Court as the plaintiff has a claim of Rs.1, 50,00,000/- on account of unpaid premiums and by way of conservative estimate has a claim of Rs.5,00,00000/- on account of damages thus this instant suit would fail on that count.

10. Furthermore, the suit is still at an interlocutory stage and there has not been much progress in the suit and considering the plaintiff intends to avail an efficacious and speedy remedy before the Honble High Court there are sufficient grounds for granting the liberty to the plaintiff to institute fresh proceedings.
11. In such event and considering it is imperative the plaintiff be given liberty to withdraw the instant suit with the liberty as prayed for.
12. Unless Plaintiff is permitted to withdraw the instant suit with a liberty to file further proceedings before the Honble High Court it shall suffer irreparable loss, injury and prejudice.
13. This application is made bonafide and for the ends of justice.

It is therefore prayed that Your Honour may graciously be pleased to permit the plaintiff to withdraw the instant suit and grant liberty to the plaintiff to file further proceedings before the Honble High Court and pass such other order or orders as Your Honour may deem fit and proper

And Your Petitioner as in duty bound shall ever pray.

## AFFIDAVIT

I, Mr. Vijay Agarwal, son of Late Hariram Agarwal, aged about ..... by faith Hindu, by occupation Business, residing at 2/3, Judges Court Road, Alipore, Kolkata-700 027, do hereby solemnly affirm and say as follows:

1. That I am the plaintiff abovenamed and as such am fully conversant with the facts and circumstances of the case and otherwise competent to affirm this Affidavit.

2. That the statements made in the paragraphs No. 1 to of the plaint are true to my knowledge and the rest are my humble submissions before the Learned Court,

DEPONENT

Identified by me

Advocate