

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI.**  
**Suit No. 378 of 2016**

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DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

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1. For order on CMA No.10974/2016.
2. For orders on CMA No.10874/2016.

**04.08.2016**

Ms. Masooma Isphani, CEO of the Plaintiff Company  
a/w Mr. Muzafar, Manager of the Company.  
Mr. Abdul Qayum Abbasi, Advocate for Defendant No.1.  
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1. Urgency granted.
2. Through the instant application, the Plaintiff seeks permission to withdraw the instant suit against all Defendants with directions to file afresh. When this case was called in the first half, it was observed that Ms. Masooma Isphani, who filed the instant application, was not present and the motion was put forwarded by Mr. Muzafar, who did not have any documentary proof to show his authority, therefore, the matter was kept aside for 12:00 noon for the production of authority or the Plaintiff.

Ms. Masooma Isphani, present in Court and confirms that the instant application has been moved by her and she has signed the affidavit accompanied with the said application. The Plaintiff confirms that they intend to withdraw the instant suit against all the Defendants with right to file the same afresh as some new facts have come to their knowledge. Learned counsel for the Defendant No.1 objects to the instant application and brought Court's attention to Order XXIII Rule 1 C.P.C, where the Courts need to satisfy itself that by filing the suit afresh on the same subject matter, would there be any loss to any rights created after the said

initiation of the suit in favour of the Defendant or any third person. He further contended that in the instant case, we have to see if any right has been accrued in favour of the Defendant that limits Court's powers to pass any order against the instant withdrawal of the suit while granting a filing afresh permission. The counsel has brought forward a case reported as 2004 CLC 1511, wherein certain restrictions have been imposed upon the Court's powers to let parties withdraw their suits.

In the circumstances at hand the suit being at initial stages and not being hit by any allegation of Plaintiffs having failed to conduct the instant suit with the required care and diligence, I do not feel any cavil as to why the instant application to withdraw the suit not to be allowed. Notwithstanding therewith, the counsel for the Defendant contends that if in the order it is suggested that whenever any fresh suit is filed the Defendant will have full rights and liberty to defend the same without any restriction or without any impediment to their such rights or stand taken in the instant suit. Such request of the counsel finds favour of this Court and granted.

I, therefore, allow the instant application and the suit is disposed of as being withdrawn with permission to file afresh, notwithstanding therewith, the right to file afresh as being regulated by the law of limitation to apply in respect of any fresh institution of suit in the same manner as if the instant suit had not been instituted.

Judge