

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
**Suit No.653 of 2015**

Date	Order with signature of Judge
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For Evidence \_\_\_\_\_

**10.04.2018**

Mirza Sarfaraz Ahmed, advocate for the defendants 1 & 2  
a/w Defendant No.2 namely Kamran

.-.-.-.

I have examined the record. Record shows that plaintiff was persuaded to withdraw the suit by the defendant as he was persuaded to file an application U/o. XXIII Rule 1 CPC (CMA No.11636/2016) in which he has made the following prayers;

*“that this Hon’ble Court may be pleased to allow simply withdrawal of suit because defendants are ready to resolve the issue of the plaintiff as out of Court settlement”.*

On his application following orders were passed on **23.8.2016**:-

“Plaintiff Abdul Azeem Khan in person.

.-.-.-.

Plaintiff is present in person and submits that the account dispute with other partners/defendants is now settled and hence he intends to withdraw the suit. The request of the plaintiff is allowed and the suit is dismissed as withdrawn with no orders as to costs alongwith pending applications, if any”.

In view of the above order the suit was not supposed to be fixed in Court. However, disposed of suit was again listed in Court for counterclaim without even a formal application from the defendant side that suit has been wrongly disposed of, therefore, the office has wrongly fixed disposed of suit on **20.9.2011** in Court without any permission of the Additional Registrar (O.S) or any relevant Incharge of the Branch for order on counterclaim. Since the suit has been disposed of, counterclaim was also disposed of. If there was any grievance of the defendant to be redressed by the Court against the plaintiff with whom some settlement was made by him outside the Court. The defendant should have opposed

the application for withdrawal of suit or he should have filed an application for recalling of the order of dismissal of the suit.

The other aspect of the case is that irrespective of the fact the Court was not properly assisted and office has wrongly fixed this case after dismissal on **23.8.2016**. Be that as it may, today the defendant is present in Court when he was confronted with application for withdrawal of suit in which plaintiff has stated that some settlement was made outside Court, he confirmed that the contents of application for withdrawal of suit are correct.

The perusal of written statement reveals that the defendant has not claimed set-off as defense rather has filed counterclaim of damages against the plaintiff. Damages are not set off and same cannot be claimed in written statement since cause of action cannot be same.

In view of the above, background and also on admission of the defendant that plaintiff has withdrawn suit against the defendant, the defendant does not want to step into the witness box and request that his counterclaim may also be dismissed as withdrawn.

Therefore, the suit is dismissed including counterclaim as withdrawn.

**JUDGE**