

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**C. P. No. D-7421 of 2021**

**Present:**

Ahmed Ali M. Shaikh, CJ  
and Yousuf Ali Sayeed, J

Petitioner : Fazal Arif through Muhammad Haroon Shaikh, Advocate.

Respondents  
No.2 & 3 : Fazal Rabani & Fazal Khalid, through Mehmood Ahmed, Advocate.

Date of hearing : 18.04.2022.

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order made on 30.11.2021 by the learned Additional District & Sessions Judge-XII/Model Civil Appellate Court, District South, Karachi, dismissing Civil Revision Application No. 65/2021 filed by the Petitioner against the Order of the learned 1<sup>st</sup> Senior Civil Judge, Karachi, South, dated 27.09.2021, whereby his Application under Order XXIII Rule 1 CPC in Civil Suit No.1134/2019 was dismissed.

2. Briefly stated the underlying facts are that the Petitioner had filed the said Application in the aforementioned Suit seeking to withdraw the same with permission to file afresh. That Application and the subsequent Revision Application were both dismissed, and the reasoning of the fora below is reflected in the relevant excerpt from the order of the Revisional Court, which reads as follows:

“7. Perusal of record shows that applicant filed suit for declaration, possession and the respondents filed written statement, however, another suit No.1354/2019 filed by the respondents for declaration, cancellation and permanent injunction in respect of suit property and trial court vide order dated 16.01.2020 consolidated both suits and consolidated issues were framed.

8. Perusal of application under Order 23 Rule 1 CPC with permission to file fresh suit shows that the applicant has taken ground that in the present suit, several mistakes highlighted by the new engaged counsel of applicant therefor applicant need to file fresh suit. The applicant in his application has nowhere mentioned the mistakes/defects which are to be cured by filing fresh suit. Admittedly, the suit No.1134/2019 and suit No.1354/2019 were consolidated and the matter is now fixed for evidence. For the sake of convenience Order 23 Rule 1& 2 CPC reproduced as under;

*Withdrawal of suit or abandonment of part of claim.— (1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.*

*(2) Where the Court is satisfied —*

*(a) that a suit must fail by reason of some formal defect, or*

*(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of a claim.*

9. Perusal of above provision shows, suit can be withdrawn but it must fail by reason of some formal defects however the applicant did not mention any defect in the suit for which he seeks permission to file fresh suit, thus trial court after going through the record has rightly passed impugned order which requires no interference of this court.”

3. When the Application under Order XXIII Rule 1 CPC is examined, it transpires that the same merely reads as follows:-

“APPLICATION UNDER ORDER 23 RULE 1 CPC  
WITH PERMISSION TO FILING FRESH SUIT.

*Most respectfully, it is submitted before this Honourable Court that this Honourable Court may be pleased to allow this application for withdrawal of the suit under order 23 Rule 1 of CPC due to the reason that in the present suit several mistaken highlight by the new engaged counsel of plaintiff and therefore the Plaintiff need to be file fresh suit for clearance the mistake which if through amended clause then also remain the part of present suit therefore, to clear the whole mistake then the Plaintiff withdrawal the present suit for filing fresh suit.*

*Under the following reason and facts this Honourable Court may be pleased to allow this application of the Plaintiff under order 23 Rule 1 for filing the fresh suit with the permission of this Honourable Court.”*

4. As is manifest from a plain reading of the Application, the same is couched in vague terms and does not even identify the particular defects underpinning the request for withdrawal. Indeed, on query posed, counsel for the Petitioner was even now at a loss to identify the same. Furthermore, when queried further as to what perversity or illegality afflicted the approach of the Courts below, learned counsel for the Petitioner was equally at a loss to offer any cogent argument, but merely submitted that permission to withdraw the said suit and file afresh could nonetheless have been granted, and placed reliance on a judgment of the Honourable Supreme Court in the case reported as Pehlwan & others vs. Haji Muhammad Muraf 2005 SCMR 1405.

5. Have considered the matter, we are of the view that the precedent cited on behalf of the Petitioner is of no avail as it was laid down therein by the Apex Court that permission to withdraw and file afresh can be granted where sufficient grounds are disclosed, whereas it is apparent that the Application underpinning the matter at hand was vague and evasive, merely mentioning certain formal defects without specifying the same. Indeed, in light of the shortcomings of that Application, the Orders made by the Courts below on that basis cannot be faulted and no case for interference stands out.
  
6. As such, it is manifest that the Petition is misconceived and devoid of force, hence stands dismissed accordingly.

JUDGE

CHIEF JUSTICE

Karachi.  
Dated: