

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
H.C.A. No.184 of 2018

Date	Order With Signature Of Judge
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| 1.For hg of CMA No.1589/18 | |
| 2.For hg of main case | |
| 3.For hg of CMA No.1591/18 | |
| 4.For hg of CMA No.1592/18 | |

11.02.2025.

Mr. Muhammad Ahmed, advocate for appellant.
M/s. Qazi Ali Akmal and Waqar Ali, advocates
for respondents No. 1.
M/s. Syed Asad Ali Zaidi, Khurram Rashid and Huma Sadiq,
advocates for respondents No. 2.

MUHAMMAD IQBAL KALHORO, J:- Respondent No. 1 filed a suit for declaration and permanent injunction against appellant seeking multiple reliefs against termination of agreement between him and appellant in respect of a project called a “Construction of General Building Structure (Package-1) DH OASIS, Sector 01, at DHA City, Karachi. The suit was still at initial stage and appellant, after recording its appearance, had filed a counter affidavit to stay application, when respondent No. 1 filed an application under Order 23 Rule 1 CPC seeking withdrawal of the suit with permission to file a fresh one after rectifying the defects. This application has been allowed vide impugned order dated 16.04.2018 challenged here in this appeal.

2. Learned counsel for appellant has relied upon a number of case law including **2004 CLC 1511**, **2013 SCMR 464** and **PLD 2022 SC 716** to urge that the Court cannot allow withdrawal of the suit and permit the plaintiff to file a fresh one on the same cause of action unless there are some cogent grounds. According to him, when the plaintiff was not granted ad-interim relief in the suit, he preferred to withdraw the suit and file a fresh one. While allowing withdrawal of the suit, the Court did

not even hear the defendant/appellant and record his objection. According to learned counsel, withdrawal of the suit with permission to file fresh suit therefore is not sustainable in law.

3. On the other hand, learned counsel for respondent No. 1 submits that there was an arbitration clause in the agreement, therefore, earlier suit would have failed on filing of application under section 34 of the Arbitration Act as the matter would have been referred to the arbitration.

4. After hearing the parties, we are of a view that there is no illegality in the impugned order. In the impugned order, it is clearly mentioned that plaintiff wanted to rectify some defects and file a fresh suit. Rectification of a defect recognized by the Court would be a sufficient ground in terms of Order 23 Rule 1 CPC to allow the plaintiff to withdraw the suit with a permission to file a fresh one. It has further transpired from arguments of learned counsel for respondent No. 1 that there was an arbitration clause in the agreement, the subject matter of the case, and in case application under section 34 of Arbitration Act had been filed, the suit would have failed. This defect therefore was irreconcilable.

5. Apart from that we have found the suit was still at initial stage, even the appellant had not filed any written statement, when the suit was sought to be withdrawn. Apparently, no right, if any, in favour of appellant had accrued in the suit to entail affording him an opportunity of hearing or establishing a right in its favour to resist its withdrawal with a permission to file fresh one after removing irreconcilability. On the other hand, after the impugned order, respondent No. 1 has filed a fresh suit under section 20 of Arbitration Act and the appellant after notice has appeared in it. As far as the reliefs sought by respondent No.1 in the fresh suit are concerned, essentially they are the same, therefore, no prejudice, if any, is going to be caused to the respective rights of the

parties, if the fresh suit is allowed to proceed. We, therefore, find no error or illegality in the impugned order and with due respect to the case-law relied upon by learned counsel for appellant, we are of a view that withdrawal of the suit by the learned single Judge of this Court with permission to file fresh one was justified on the given ground i.e. to rectify the defects, and therefore no exception can be taken to it. Consequently, we find no merits in this appeal, which is accordingly dismissed along with pending applications.

JUDGE

JUDGE

HANIF