

GJDH030004872021



सत्यमेव जयते

IN THE COURT OF ADDITIONAL CIVIL JUDGE, AT. DEVGADH
BARIA, DIST. - DAHOD.

PRESIDED OVER BY :- MR S O GARG

RCS- 12 OF 2021

ORDER BELOW EXHIBIT.1.

1. BRIEF FACTS OF THE MATTER :

- 1.1. The original plaintiff had instituted the suit against Defendant No. 1 and Defendant No. 2 for recovery of license fees, rent, and for obtaining possession.
- 1.2. During the pendency of the suit, Defendant No. 2 filed a counterclaim against the plaintiff and also against Defendant No. 1. Thereafter, the original plaintiff filed an application for withdrawal of the main suit, which came to be allowed by My Ld. predecessor, and the suit was disposed of accordingly. However, since the counterclaim was filed, the proceedings continued in respect of the counterclaim.
- 1.3. Subsequently, Defendant No. 1 (main suit) filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the counterclaim.
- 1.4. Meanwhile, the counterclaimant (original Defendant No. 2) preferred the present withdrawal pursis at Exh. 41 seeking withdrawal of the counterclaim and further stated that if any cause arises in future, he may file a fresh suit.
- 1.5. Defendant No. 1 (main suit) filed an application at Exh. 42 seeking permission to file a reply to the withdrawal pursis, which was allowed in the interest of justice. Accordingly, reply at Exh.

43 along with a documentary list at Exh. 44 has been taken on record and considered.

2. SUBMISSIONS :

2.1. The learned advocate for Defendant No. 1 (main suit) opposed the withdrawal pursis, particularly the prayer seeking liberty to file a fresh suit, contending that such liberty cannot be granted as a matter of course and must satisfy the requirements of law.

3. LEGAL POSITION :

3.1. At this stage, it is necessary to refer to Order XXIII Rule 1 of the Code of Civil Procedure, 1908, which reads as under:

Order XXIII Rule 1 CPC: 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 abandon his suit or abandon a part of his claim:

(3) Where the Court is satisfied,—

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

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of 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 such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

4. FINDINGS :

4.1. It is well settled that a counterclaim is in the nature of a cross-suit, and the counterclaimant is entitled to withdraw the same.

(S.O.Garg)

ACJ, Devgadh Baria.

- 4.2.** However, insofar as the prayer in the withdrawal pursis at Exh. 41 seeking liberty to file a fresh suit is concerned, the same cannot be granted automatically. The counterclaimant must satisfy the Court that the case falls within the ambit of Order XXIII Rule 1 (3) CPC, namely existence of a formal defect or existence of sufficient grounds to permit filing of a fresh suit. In the present case, no such formal defect or sufficient ground has been demonstrated by the counterclaimant in the withdrawal pursis. Therefore, the prayer seeking liberty to file a fresh suit is not sustainable in law and cannot be granted.
- 4.3.** As regards the objection raised by Defendant No. 1 (main suit), it is observed that withdrawal of a counterclaim, being in the nature of a cross-suit, is permissible. However, such withdrawal shall be without liberty to file a fresh suit.
- 5.** In view of the aforesaid reasons and discussion. Therefore, I hereby pass the following order in the interest of justice.

ORDER

- 1.** The counterclaim filed by the original Defendant No. 2 (main suit) stands disposed of as withdrawn.
- 2.** Any pending application stands disposed of accordingly.

The order Signed and pronounced in the open Court today.

Date :- 22/06/2026.
Place :- Devgadhbaria.

[Sanjaykumar.O.Garg]
Additional Civil Judge,
Devgadh Baria.
J.O. Code :- GJ01738.