

**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JUDICIAL  
MAGISTRATE FIRST CLASS AT HOSADURGA.**

**Present: SMT. THRINETHRA M.N. M.A., L.L.B.,  
Addl. Civil Judge and JMFC.,  
Hosadurga.**

**O.S.NO.198/2026**

**DATED THIS THE 08<sup>th</sup> DAY OF APRIL-2026**

**PLAINTIFF** : **CANARA BANK,**  
Hosadurga branch,  
Hosadurga taluk,  
Rep. By its Chief Manager  
Kum. Lakshmi M.S  
D/o. Mahadeva,  
Aged about 38 years,  
R/o. S.J.M Layout,  
Hosadurga town,

**(Rep. By. Sri. D.V. Anjankumar, Advocate)**

**Versus**

**DEFENDANTS** : Smt. Ranjitha L.  
D/o. Sri. Lakshmanappa,  
Aged about 23 years,  
Tailoring business,  
R/o. Maruthi Nagar,  
Hosadurga town & taluk,  
Chitradurga district.

**Parties to IA No.II**

**PLAINTIFF/  
APPLICANT :** **Canara bank, Hosadurga,**

**Versus**

**DEFENDANTS/  
OPPONENT :**

**Smt. Ranjitha**

**ORDERS ON I.A.No.II**

Applicant/plaintiff has filed this application under Order 23 Rule 1 of CPC, seeking permission of the court to withdraw the suit with liberty to file fresh suit on the same cause of action.

2. Plaintiff Bank is represented by its Chief Manager, Canara Bank, Hosadurga Branch, who is duly authorized and competent to swear the affidavit. She states that she is conversant with the facts of the case and has verified the relevant records. After filing of the suit, it is noticed that there are certain technical errors and formal defects in the plaint which cannot be cured by way of amendment. It is further noticed that, while making the claim, the outstanding amount of one customer (Tanuja), who is not related to the present suit, has been wrongly included. On verification of the account ledger extract of the defendant Ranjitha L, it is found that the actual claim falls within the jurisdiction of Small Causes Court.

Hence, the plaintiff intends to withdraw the present suit with liberty to file a fresh suit for recovery of money against the defendant on the same cause of action. The said mistake is stated to be bonafide and not intentional. It is also contended

that no prejudice will be caused to the defendant if such liberty is granted. Hence, it is prayed to allow the application.

3. The defendant has not appeared before this court, and the suit summons has not been served on the defendant.

4. Heard both side and perused the entire material placed on record.

5. The plaintiff has filed the suit against the defendant for the recovery of money.

6. Herein the application the plaintiff has sought permission of the court to withdraw the suit with liberty to file fresh suit on the same cause of action. The ground urged in the application is that, there is technical defect in the pleadings and prayer column.

7. In this regard, it is worthy to refer the provisions of order 23 of CPC, which reads as follows:

### **ORDER XXIII**

#### **WITHDRAWAL AND ADJUSTMENT OF SUIT**

**1. 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:*

*Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to*

*14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.*

*(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.*

*(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 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 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) Where the plaintiff-*

*(a) abandons any suit or part of claim under sub-rule (1), or*

*(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),*

*he shall be liable for such costs as the Court may award and shall be preclude from instituting any fresh suit in respect of such subject-matter or such part of the claim.*

*(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.*

8. As per the above refereed provision the plaintiffs may permit to withdraw the suit, as they are masters of their case. So, plaintiffs cannot force or compel to continue their case.

9. On perusal of the application filed by the plaintiff under Order XXIII Rule 1 of CPC, along with the affidavit of the Chief Manager of the plaintiff Bank, it is evident that the plaintiff has sought permission to withdraw the present suit with liberty to file a fresh suit on the same cause of action.

10. The reasons assigned by the plaintiff disclose that, after filing of the suit, certain technical errors and formal defects have been noticed in the plaint, which cannot be cured by way of amendment. It is specifically stated that the outstanding amount of one customer, who is not related to the present suit, has been wrongly included in the claim. The said defects, in the considered opinion of this Court, constitute formal defects within the meaning of Order XXIII Rule 1(3) of CPC.

11. Further, the plaintiff has stated that the mistake is bonafide and not intentional. There is nothing on record to disbelieve the said contention. Moreover, granting permission to withdraw the suit with liberty to file a fresh suit would not cause any

prejudice to the defendant. Therefore, in view of the above circumstances, this Court is of the opinion that the plaintiff has made out sufficient grounds to permit withdrawal of the suit with liberty to file a fresh suit on the same cause of action, subject to limitation as prescribed under order 23 rule 2 of CPC. Hence, this is a fit case to allow the application. Therefore, the grounds assigned in the application are sufficient to allow the application. According, this court proceed to pass following:

**ORDER**

I.A.No.II filed by the applicant/plaintiff under Order 23 Rule 1 of CPC is hereby allowed on cost of Rs.100/-, which shall be payable by the plaintiff.

Accordingly suit of the plaintiff is hereby dismissed as withdrawn with the liberty to file fresh suit on the same subject matter of the suit or such part of the claim subject to limitation as provided under order 23 rule 2 of CPC and payment of aforesaid costs.

*(Dictated to the Stenographer directly on the computer, typed by her, corrected and pronounced by me in the open court on this the 8<sup>th</sup> day of April -2026)*

**Addl. Civil Judge & JMFC.,  
Hosadurga.**