

ORDER ON I.A.NO.2

The plaintiff has filed IA.No.2 Under Order 23 Rule 1(3) R/w sec. 151 of CPC for withdrawal of suit with liberty to file fresh suit on the same cause of action.

2. The defendant has filed objection by denying the contents of application and prays to reject the same.

3. Heard arguments on both side.

4. The point for consideration are as follows:

1. Whether the plaintiff has made out grounds to allow the IA.No.2?

2. What order?

5. My findings on the above points are as under:

Point No.1. In the Affirmative.

Point No.3. As per final order, for the following:

:REASONS:

6. Point No.1 :- The plaintiff has filed the suit for declaration and mandatory injunction. When the case was posted for issues at that time the plaintiff has filed the present application for withdrawal of the suit on the ground that there are some

amendments required and some more parties he wants add in the suit. Therefore he prays to permit him for withdrawal the suit with liberty to file fresh on the same cause of action.

7. On the other hand the defendant has filed objections stating that plaintiff has not disclosed the nature of proposed amendment and the identity of persons whom he wants to implead . In the absence of the said particulars the application is vague and not maintainable. The plaintiff can very well file application for amendment and implading of the parties in the present suit itself. If the application is allowed it will cause much hardship to the defendant. Therefore prays to reject the same with cost.

8. On perusal of the application,objection hearing arguments on both side, the order 23 rule 1(3) of CPC says that if any formal defect in the suit the suit can be withdrawn with liberty to file fresh suit on the same cause of action. In this case the plaintiff has stated that he wants to amend the plaint to include some more information and he wants to implead some other parties in the suit, so it is nothing but formal defect. It is not necessary to disclose

nature of the amendment and identity of the persons whom he wants to implead. When the provision itself allows a party for withdrawal of the suit there is no hurdle to allow the application.

9. The present suit is filed on 10.06.2025 and the defendant appeared through advocate in this case on 30.08.2025, so there is no much time lapsed in prosecuting the case. At the most suitable cost may be imposed to the plaintiff. By allowing the application no irreparable loss will be caused to the defendant. If the application is not allowed the plaintiff will be put to hardship and loss which cannot be compensated in terms of money. Therefore the objection of the defendant to the application are not sustainable. Hence the point No.1 are held in the affirmative.

10. Point No.2 as per discussion and finding on the above point No.1. I proceed to pass the following:

: ORDER :

IA.No.2 filed by plaintiff Under Order
23 rule 1(3) R/w. Section 151 of CPC is hereby

by allowed on cost of Rs.2,000/- in the ends of justice and equity.

The plaintiff shall pay the cost to the defendant.

It is hereby permitted to the plaintiff to withdrawal of the suit with liberty to file fresh suit on the same cause of action.

(Dictated to the Stenographer, directly on computer corrected and then pronounced by me in the open court, this the 07th day August-2026)

Sd/-
(Shankarappa Malashetti)
Addl. Senior Civil Judge
& JMFC-I, Raichur.