

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
H.C.A. No. 471 of 2024

Date	Order with Signature(s) of Judge(s)
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Hearing (priority) case.

1. For orders on C.M.A. No. 1210/25 (U/S 151 C.P.C.)
2. For order on Nazir's report dated 07.07.2025.
3. For orders on office objection at "A".
4. For hearing of C.M.A. No. 1196/25.
5. For hearing of main case.
6. For hearing of C.M.A. No. 2863/24 (Stay Application).

03.09.2025

Mr. Zia-ul-Haq Makhdoom, Advocate for appellant.

Mr. Faiz Durrani, Advocate for respondent No. 1.

M/s. Zia Ahmed Awan & Syed Itrat Hussain Rizvi, Advocates for respondent 2 to 7.

M/s. Azmat Tufail & Muhammad Ashraf, Advocates for respondents No. 8 to 11.

4. Learned counsel for respondents No. 2 & 5 to 7 and respondents No. 8 to 11 file counter affidavits to the application bearing C.M.A. No. 1196 of 2025, filed under Order XXIII, Rule 1 read with Section 151 C.P.C., which are taken on record; copies whereof are supplied to learned counsel for the appellant.

By means of said C.M.A., the appellant seeks permission to withdraw the instant High Court Appeal with no order as to costs. The C.M.A. is supported by the accompanying affidavit of the appellant.

Learned counsel for the appellant contends that the appellant does not intend to contest the appeal and he confesses the impugned order dated 19.08.2024 passed in Suit No. 2011 of 2022, whereby the learned Single Judge of this Court directed the Nazir to disburse the profit amount of Rs. 19,151,464/- accrued on the sale consideration to the auction purchaser i.e. respondent No. 1 and deduction of 1% Nazir's fee of Rs. 5,600,000/-.

On the other hand, learned counsel for respondents No. 2, 5 to 7 & 8 to 10 oppose this C.M.A. on the grounds that the instant High Court Appeal is continuity of the main Suit for Administration, and in case of success of the appellant in the Appeal “profit amount” will be divided among the appellant and respondents No. 2 to 11, as per their shares, as the proceeding is pending in the Suit, wherein as per settled principle of law every plaintiff is a defendant and every defendant having the status of plaintiff. In support of their contentions, learned counsel have relied on the cases of *Federal Government Employees Housing Authority through Director General, Islamabad v. Ednan Syed and others* (PLD 2025 Supreme Court 11) and *Siraj Nizam v. Federation of Pakistan and others* (2024 SCMR 1184).

Heard learned counsel for the parties and perused the material available on record with their assistance.

It may be observed that the provisions of sub-rule (1) of Rule 1 of Order XXIII, C.P.C. legislatively recognizes the right and privilege innate in a plaintiff. He has undisputable, indefeasible and absolute right to file and withdraw his suit at any time. It is privileged domain of the plaintiff to exclusively decide about withdrawal of suit. The plaintiff thus enjoys the choice of the time and stage of withdrawal as well. There is no cavil to the proposition that the provisions of Order XXIII, Rule 1 C.P.C. also apply to the appeals and when appeal is withdrawn simpliciter, it has the effect of restoring the position as if the appeal had not been filed.

So far the contentions of learned counsel for respondents are concerned, there is no cavil to the proposition that the appeal is continuation of the suit. However, it does not mean that if the respondent has not challenged the order appealed against, he would seek his position in appeal as appellant by asserting

that the appeal is continuity of the suit. If respondents were aggrieved by the impugned order, they should have maintained their own appeal. So far the suit for administration is concerned, we agree that in such suit every defendant is a plaintiff, as his right in inheritance is involved which cannot be simpliciter withdrawn in case any of the defendant raises objection. However, right of appeal cannot be equated with right to sue, which is vested upon the party that does not confess the order/judgment and prefers to file appeal against such order/judgment. The appellant under sub-rule (1) of Rule 1 of Order XXIII, C.P.C. enjoys the right to withdraw the appeal unconditionally and even without permission of the Court; hence, this C.M.A. is allowed. Consequently, the instant High Court Appeal stands dismissed as withdrawn with no order as to costs, alongwith pending applications.

JUDGE

JUDGE

Athar Zai