THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C.P No. S-104 of 2026

[Azizullah Brohi Vs. Rajib Ali Bughio]

Petitioner	**:**	Through Mr. Najeeb Ali Abro, Advocate
Respondent	**:**	Through Mr. Karim Yar Bohyo, Advocate
Date of Hearing	**:**	**02-11-2026**
Date of Order	**:**	**13-11-2026**

O R D E R

ARBAB ALI HAKRO, J;- Through this petition, the petitioner (plaintiff) calls in question the Order dated 14.02.2026 (**the impugned order**) passed by the learned VII-Additional District Judge, Larkana (hereinafter referred to as '**the revisional court**') in Civil Revision No. 51 of 2025. By that order, the revisional court modified the order dated 19.08.2025 of the learned Senior Civil Judge-III, Larkana (hereinafter referred to as '**the trial court**') in F.C. Suit No. 57 of 2023. It set aside the permission granted to the petitioner to file a fresh suit and directed that the dismissal of his suit shall operate as a withdrawal simpliciter.

2. The petitioner sued the respondent and seven others for a declaration, cancellation and a permanent injunction in respect of Plots Nos. 13, 14, 32 and 33 in Deh Dadra, Taluka Bakrani. He claims those plots under the Sindh Goth Abad Scheme. The respondent resists the claim on the basis of 0-14 ghuntas out of Survey No. 618, which he says he purchased. The plaint was amended, and the amended issues were framed on 09.08.2024. The petitioner led his evidence and closed his case. On 19.08.2025, the suit was fixed for the defendants' evidence and for the hearing of pending applications. On that date, the petitioner filed a statement in the following words:[1]

> "*I do hereby withdraw the above suit due to some technicalities and further seek permission to file a fresh suit.*"

[1] Statement Ex.88, available at page 87 of the petition (Annexure 'G').

On the same day, the trial court dismissed the suit as withdrawn and observed that the petitioner "will be at liberty to file fresh as per law".[2] The petitioner then instituted F.C. Suit No. 76 of 2025. The respondent challenged the order in revision and prayed that it be set aside, and the suit remanded for recording his evidence and for decision on the merits.[3] The revisional court allowed the revision and directed as under:[4]

> ***"The impugned order dated 19.08.2025 is modified to the extent that the permission granted to the plaintiff to institute a fresh suit on the same cause of action is set aside. The dismissal of the earlier suit shall operate as withdrawal simpliciter, without liberty to file afresh. Any fresh suit instituted on the same cause of action shall be subject to the bar contained in Order XXIII Rule 1(4) CPC and shall be dealt with by the competent Court in accordance with law."***

3. Learned counsel for the petitioner contends that the trial court exercised lawful discretion, which the revisional court could not disturb. He argues that the petitioner acted with permission by filing the fresh suit and that any question as to the competence of that suit was for the court seized of it. He also contends that the revision was incompetent because the remaining defendants were not impleaded.

4. Learned counsel for the respondent opposes the petition. He contends that a statement seeking conditional withdrawal, which discloses neither a formal defect nor any legal error, cannot be accepted, and he supports the impugned order.

5. I have heard learned counsel and gone through the record with their assistance.

6. Two questions arise. The first is whether the revisional court was right to set aside the permission granted on 19.08.2025. The second is whether, having done so, it could treat the petitioner's request as an unconditional withdrawal and subject him to the bar on a fresh suit.

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[2] Order dated 19.08.2025, available at page 89 of the petition (Annexure 'G').
[3] Memo of Civil Revision No. 51 of 2025, available at pages 31 to 56 of the petition (Annexure 'B').
[4] Impugned order, paragraph 11, available at page 29 of the petition (Annexure 'A').

7. Under Order XXIII Rule 1(2) CPC, the court may permit a plaintiff to withdraw his suit with liberty to sue afresh only if it is satisfied that the suit must fail by reason of a formal defect or that other sufficient grounds exist. The plaintiff must state his reasons, and the court must pass a speaking order showing that it was so satisfied.[5] Unless the facts stated amount in law to a ground, the provision is not attracted at all.[6] A defect that can be cured by amendment, or one that goes to the root of the claim, is not a formal defect. Permission cannot be used to let a plaintiff fill the gaps in his case after evidence.[7]

8. The statement of 19.08.2025 refers only to "some technicalities". It identifies no defect, and the order passed on it records no satisfaction of the trial court. The suit had reached the stage of the defendants' evidence; the petitioner had closed his own evidence, and the plaint had already been amended once under Order VI Rule 17 CPC. To this extent, the objection of learned counsel for the respondent is well-founded, and the revisional court rightly held that the trial court had acted with material irregularity. That finding falls within the scope of Section 115 CPC and calls for no interference.

9. The petitioner's other grounds do not help him. The fresh suit rests entirely on the permission, which was itself unsustainable; filing it created no right that could shield the order. As to non-joinder, no relief was sought in revision against the remaining defendants. The petitioner himself has impleaded only the respondent in this petition.

10. The petitioner never offered to withdraw his suit unconditionally. His statement was a single request to withdraw and to sue afresh, and its two parts could not be separated so as to keep the withdrawal and drop the permission. The Supreme Court has addressed this very situation:[8]

> ***"If the permission however is being refused, the suit should not then be dismissed as withdrawn, because the plaintiff in such an eventuality may review his stance and then not***

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[5] *Muhammad Yar (deceased) through L.Rs. v. Muhammad Amin (deceased) through L.Rs.* 2013 SCMR 464.
[6] *Khawaja Bashir Ahmad and Sons (Pvt.) Ltd. v. Messrs Martrade Shipping and Transport GmbH* PLD 2021 SC 373.
[7] *Muhammad Yousaf v. Nazeer Ahmed Khan (deceased) through L.Rs.* 2021 SCMR 1775; *Muhammad Ashraf v. Muhammad Khan* 2025 SCMR 1066.
[8] *Muhammad Yar* (n.5 above), paragraph 4.

press for his request of withdrawal at all, because otherwise he may have to face the Bar and the preclusion of filing a fresh suit, which disability/ bar he may not like to incur and might like to continue with his same suit."

The revisional court set aside the permission but left the withdrawal in place. That removed the choice the law affords a plaintiff in this position and imposed on the petitioner the very bar he had sought to avoid. This part of the impugned order is contrary to the law as declared by the Supreme Court, which binds all courts under Article 189 of the Constitution.

11. Two further aspects confirm this. First, the bar against a fresh suit is set out in sub-rule (3) of Rule 1 and applies only where the plaintiff withdraws "without the permission referred to in sub-rule (2)". Sub-rule (4) addresses the withdrawal of one of several plaintiffs and is irrelevant to the present matter. Secondly, the respondent himself asked for the order of 19.08.2025 to be set aside and for the suit to be remanded for his evidence; he never sought to have the petitioner non-suited. The revisional court thus granted relief not prayed for, and the result is that the petitioner's claim stands shut out without any decision on the merits.

12. In its constitutional jurisdiction, this Court does not sit in appeal over the order of the revisional court. An order passed within jurisdiction does not become one without lawful authority merely because a different view is possible.[9] The finding on the permission is of that kind and is maintained. The direction converting the withdrawal into an unconditional one stands differently. It applies a statutory bar where the statute does not attract it, runs against binding law, and grants relief that no one sought. No further remedy lies against it, and it is liable to correction under Article 199 of the Constitution.

13. For the foregoing reasons, the petition is **partly allowed** in the following terms:-

(i) the finding of the revisional court that the permission granted on 19.08.2025 to file a fresh suit was unlawful is maintained;

(ii) the directions that the dismissal of the suit shall operate as a withdrawal simpliciter and that any fresh suit shall be subject

[9] *Noor Muhammad v. Sarwar Khan* PLD 1985 SC 131.

to the bar of Order XXIII Rule 1 CPC are set aside. In consequence, the order dated 19.08.2025 stands set aside in its entirety, and F.C. Suit No. 57 of 2023 is restored to its original number and to the stage at which it stood on that date, together with the pending applications;

(iii) F.C. Suit No. 76 of 2025, having been instituted on the basis of the permission now set aside, shall be dealt with by the trial court in accordance with law, in light of this order. It shall remain open to the petitioner, if he so elects, to withdraw the restored suit unconditionally, with the consequences that the law attaches to such withdrawal and

(iv) the trial court shall decide F.C. Suit No. 57 of 2023 on the merits as early as possible, preferably within six months, without being influenced by any observation made herein, which is confined to the question of withdrawal.

14. There shall be no order as to costs.

JUDGE

Zulfiqar