



2026:DHC:2899-08



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 16.02.2026***
Pronounced on: 08.04.2026

+ RFA(COMM) 102/2026 AND CM APPL. 10528/2026

KRISHAN CHAWLA

....APPELLANT

Through: Mr. Subhankar Sengupta and
Mr. Narender Yadav, Advocate.

versus

SANJEEV JAIN AND ORS.

.... RESPONDENTS

Through: Mr. Vinod Kumar Mantoo, Mr.
Hem Kumar and Ms. Niharika
Mantoo, Advs. for R-1 to 2.
Mr. Anuj Agarwal, Advocate
for R-3.
Mr. Mohd. Afaque, Advocate
for R-4.

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

1. The present appeal assails the Order dated 15.12.2025 (hereinafter referred to as the “impugned order”) passed by the learned District Judge (Commercial) (Digital-07), South-East District, Saket Courts, New Delhi (hereinafter referred to as the “Commercial Court”) in C.S. (COMM) No. 993/2025. By the impugned order, the suit filed by the Appellant seeking reliefs of declaration and injunction was dismissed as withdrawn simplicitor without liberty to file a fresh suit.



2026:DHC:2899-DB



2. Briefly stated, the Appellant instituted a commercial suit on 01.12.2025 seeking, *inter alia*, a declaration that certain cash receipts relied upon by Defendant No. 1 were false and fabricated, along with consequential injunctive reliefs restraining their use and enforcement of alleged rights arising from an agreement dated 01.02.2022 (executed on 01.08.2022). Along with the plaint, the Appellant filed an application seeking exemption from pre-institution mediation under Section 12A of the Act and an application under Order XXXIX Rules 1 and 2 CPC for interim relief.

3. The matter was first taken up on 03.12.2025, when arguments were heard on the application for interim relief. The Commercial Court rejected the said application, *inter alia*, on account of non-compliance with Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as “the Act”) and observing certain other defects like non-payment of adequate court fees, failure of plaintiff to show *bona fide* behind statement made in the plaint reflecting no cause of action. The detailed order was uploaded on 10.12.2025.

4. In view of the observations made by the Commercial Court regarding compliance with Section 12A of the Act and other defects, the Appellant sought withdrawal of the suit with liberty to file afresh after curing the defects. On 15.12.2025, such a request was made.

5. However, the Commercial Court declined to grant such liberty and treated the withdrawal as simpliciter, while further observing that the plea of withdrawal is reflection of conformity that the plaint



2026:DHC:2899-DB



disclosed no genuine cause of action and directing that a decree of dismissal be drawn.

6. Aggrieved thereby, the present appeal has been filed.

7. We have heard the learned counsels for the parties and perused the material placed on record.

8. Learned counsel for the Appellant submits that the grievance of the appellant is two-fold. Firstly, that the Commercial Court erred in refusing to grant liberty to withdraw the suit with permission to institute a fresh suit after complying with the mandatory requirement of pre-institution mediation under Section 12A of the Act and curing other procedural defects, thereby effectively foreclosing the Appellant's remedy at the threshold. Secondly, that the Commercial Court exceeded its jurisdiction by recording observations which were somewhat conclusive findings on the merits, at the pre-summoning stage, contrary to the settled scope of Order VII Rule 11 CPC, which mandates that only the averments in the plaint be considered, and further rendered observations inconsistent with its own earlier order dated 03.12.2025, wherein it had observed that the issues required adjudication at trial.

9. *Per contra*, learned counsel for Respondent Nos. 1 to 3 supported the impugned order, contending that the Commercial Court rightly examined the maintainability of the suit at the threshold and correctly observed that the plaint disclosed no genuine cause of action.



2026:DHC:2899-DB



10. It is submitted that non-compliance with Section 12A of the Act and deficiency in court fees justified such observation having the effect of rejection of the plaint, and that the request for withdrawal was not *bona fide* but an attempt to avoid an impending rejection under Order VII Rule 11 CPC. It was further submitted that the observation recorded by the Commercial Court were not mechanical but were also based the observations made in the earlier order dated 03.12.2025, wherein the Court had already indicated serious deficiencies in the suit.

11. Learned counsel for Respondent No. 4 stated that he has no objection to the appeal being allowed and liberty being granted to the appellant to file a fresh suit.

12. The principal question that arises for consideration is, whether in the facts of the present case, the Commercial Court was justified in refusing to grant liberty to the Appellant to withdraw the suit with permission to institute a fresh suit under Order XXIII Rule 1(3) CPC, and in proceeding to record observations touching upon the merits of the dispute at the pre-summoning stage.

13. Order XXIII Rule 1(3) of the CPC: -

“ORDER XXIII

Withdrawal and Adjustment of Suits

1. Withdrawal of suit or abandonment of part of claim –



2026:DHC:2899-DB



...

(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.”

(Emphasis Supplied)

14. Order XXIII of the CPC is circumscribed by the requirement that the Court must be satisfied that the suit suffers from a “formal defect” or that there exist “sufficient grounds” warranting such liberty. The Supreme Court in ***V. Rajendran v. Annasamy Pandian***, (2017) 5 SCC 63, has held that “formal defect” must be given a liberal interpretation and includes defects of a procedural nature, such as insufficient court fee, improper valuation, want of notice, misjoinder of parties, or failure to disclose a cause of action. The relevant portion is reproduced herein below-

“10. In K.S. Bhoopathy v. Kokila [K.S. Bhoopathy v. Kokila, (2000) 5 SCC 458], it has been held that it is the duty of the Court to be satisfied about the existence of “formal defect” or “sufficient grounds” before granting permission to withdraw the suit with liberty to file a fresh suit under the same cause of action. Though, liberty may lie with the plaintiff in a suit to withdraw the suit at any time after the institution of suit on establishing the “formal defect” or “sufficient grounds”, such right cannot be considered to be so absolute as to permit or encourage abuse of process of court. The



2026:DHC:2899-08



*fact that the plaintiff is entitled to abandon or withdraw the suit or part of the claim by itself, is no licence to the plaintiff to claim or to do so to the detriment of legitimate right of the defendant. When an application is filed under Order 23 Rule 1(3) CPC, the Court must be satisfied about the “formal defect” or “sufficient grounds”. **“Formal defect” is a defect of form prescribed by the rules of procedure such as, want of notice under Section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, misjoinder of parties, failure to disclose a cause of action, etc. “Formal defect” must be given a liberal meaning which connotes various kinds of defects not affecting the merits of the plea raised by either of the parties.***

(Emphasis Supplied)

15. In the present case, the defects noted by the Commercial Court in its order dated 03.12.2025, namely deficiency in court fees, non-compliance with procedural requirements, and absence of supporting documents, are procedural in nature and fall within the ambit of “formal defects” as contemplated under Order XXIII Rule 1(3) CPC. Such defects are inherently curable.

16. The suit was at a pre-summoning stage, and no vested right had accrued in favour of the defendants. In such circumstances, an opportunity to cure procedural defects ought ordinarily to be granted.

17. The Commercial Court, however, declined liberty while observing that the plea of withdrawal is reflection of conformity that the plaint disclosed no genuine cause of action. This reflects a conflation of distinct jurisdictions, as the scope under Order VII Rule 11 CPC is limited to examining the plaint on a meaningful reading of



2026:DHC:2899-DB



its averments, without entering into merits as held by the Supreme Court in *Popat and Kotecha Property v. State Bank of India Staff Association*, (2005) 7 SCC 510, and *Dahiben v. Arvindbhai Kalyanji Bhanusali*, (2020) 7 SCC 366. Further, in *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, it has been held that the power to reject a plaint is a drastic power, which must be exercised only where the plaint, on a meaningful reading, not a formal, does not disclose a clear right to sue and is manifestly vexatious and meritless, in the sense that it does not disclose a clear right to sue.

18. The Court, at this stage, cannot adjudicate disputed questions of fact, or record conclusive findings on the merits or even observations of such nature.

19. In the present case, the Commercial Court travelled beyond this limited inquiry by recording observations regarding lack of *bona fides* and absence of a genuine cause of action, which were not warranted at the pre-summoning stage.

20. In absence of an actual rejection of the plaint under Order VII Rule 11 CPC, the Commercial Court could not have indirectly non-suited the Appellant by denying liberty under Order XXIII Rule 1(3) CPC.

21. The refusal to grant liberty, in the facts of the present case, has the effect of attracting the bar under Order XXIII Rule 1(4) CPC, thereby foreclosing the Appellant's remedy despite the defects being



2026:DHC:2899-08



curable, which is unduly harsh. Procedural law is intended to facilitate adjudication on merits and not to foreclose remedies at the threshold on curable defects.

22. This Court is, therefore, of the considered view that the Commercial Court failed to exercise its discretion in accordance with settled principles of law. The refusal to grant liberty and the observations on merits are unsustainable.

23. Accordingly, the impugned Order dated 15.12.2025 and also the observations therein on merits of the case are set aside. The appeal is allowed, and the Appellant is granted permission to withdraw the suit with liberty to institute a fresh suit in accordance with law.

24. It is clarified that nothing contained in this judgment shall be construed as an expression on the merits of the case.

25. The appeal, along with all pending applications, stands disposed of in the above terms.

**VIVEK CHAUDHARY
(JUDGE)**

**RENU BHATNAGAR
(JUDGE)**

APRIL 08, 2026/p/kz/nc