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A No. 2990 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-08-2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A No. 2990 of 2026

IN

C.S(COMM DIV) NO. 99 OF 2026

M.Arumugam

..Applicant(s)

Vs

M/s.CP Foods
Rep.by its Partner Manikanda Prabhu
No.52, South Car Street,
Virudhunagar 626 001.

..Respondent(s)

Prayer:

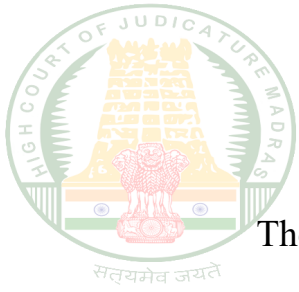
Judges Summons filed under Order XIV Rule 8 of O.S. Rules and Order XXIII Rule 1 (3) of C.P.C., read with Section 151 of C.P.C., to grant leave to the Applicant/Plaintiff to withdraw the above suit along with refund of court fee with liberty to institute fresh suit after complying with pre-mediation process under sec.12A of the Commercial Courts Act, 2015.

For Applicant(s):

Mr.Harishankar Mani
For Mr.B.Sudarshan

For Respondent(s):

Mr.S.Parthasarathy
Senior Counsel
For Mr.Abinav Parthasarathy



ORDER

The present application has been filed to grant leave to the Applicant/Plaintiff to withdraw the above suit along with refund of Court fee with liberty to institute fresh suit after complying with pre-mediation process under Section 12A of the Commercial Courts Act, 2015.

2. Heard both sides.

3. The present application had been taken out by the plaintiff, seeking permission to withdraw the suit, along with refund of Court fee and liberty to initiate a fresh suit after complying with the pre-mediation process as required under Section 12A of the Commercial Courts Act.

4. The learned counsel appearing for the applicant/plaintiff would submit that the defendant had taken out an application for rejection of the plaint on the sole ground that Section 12A of the Act had not been complied with.

5. The same was vehemently opposed by the learned Senior Counsel appearing for the respondent/defendant by contending that the applicant is neither entitled to the liberty as sought for nor the refund of Court fee as claimed by him. In that context, he had relied upon various judgments of this Court.



6. Replying to the contentions of the learned Senior Counsel, the learned counsel for the applicant/plaintiff had also relied upon various judgments, where refund of Court fee had been permitted and would further submit that the very same judgments relied upon by the learned Senior Counsel would also be an authority to grant liberty to file a fresh suit, as in those judgments, according to him, the suits had been rejected under Order VII Rule 11 for non-compliance with Section 12A of the Act and liberty had been granted.

7. That apart, he would submit that the respondent/defendant had laid a suit in O.S. No.92 of 2021 on the file of the Sub-Court, Virudhunagar, challenging the agreement upon which the present claim had been made. Hence, at the most, the applicant can only seek a counterclaim in the suit that had already been initiated and not by independently filing a suit on the very same document, which would only multiply the proceedings before different Courts and lead to conflicting decisions.

8. I have considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.

9. The applicant seeks to withdraw the suit with liberty to file a fresh suit on the same cause of action and has also sought for refund of Court fee. Even the judgments relied upon by the learned Senior Counsel appearing for the



respondent/defendant would indicate that, even in a case where the plaint is rejected on the ground of violation of Section 12A of the Commercial Courts Act, the plaintiff had been allowed to initiate a fresh suit on the very same cause of action, however, after complying with the provisions of Section 12A of the Commercial Courts Act.

10. In the present case, an application to reject the plaint on the very same ground had been taken out and the applicant/plaintiff, acceding to the ground raised, had sought withdrawal of the suit with liberty to initiate a fresh suit. It is to be noted that the judgment relied upon by the learned Senior Counsel in C.S.Comm.Div.)No.208 of 2022 and C.S(Comm.Div.)No.192 of 2022 etc., batch dated 27.09.2022 and 23.11.2022 respectively, arises out of a case where an application to reject the plaint was ordered, wherein the claim for refund of Court fee had been negatived. Similarly, the judgment of this Court in C.R.P.No.3168 of 2023 dated 12.02.2025, wherein the revision had arose out of an order passed under Section 11(A), wherein the revision was limited to the issue of refund of Court fee.

11. In the present case, even before adjudication of the application filed under Order VII Rule 11, the applicant/plaintiff had taken a wise decision to withdraw the suit and had sought for the liberty as prayed for, along with refund of Court fee. In that scenario, this Court finds no impediment in granting the



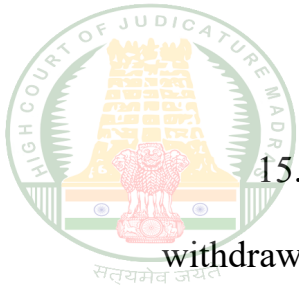
refund of Court fee as applicable under law.

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12. However, as regards the liberty, as pointed out by the learned Senior Counsel, when a suit had been instituted by the respondent/defendant challenging the very same agreement before the competent Civil Court, it is for the applicant/plaintiff to defend himself in the said suit and also raise a counterclaim as claimed in the present suit. This is in consonance with the very object of Order VIII Rule 6A of the Code of Civil Procedure, which had been introduced to avoid multiplicity of litigations between the same parties.

13. In the present suit, the *lis* between the parties and also the suit filed by the respondent/defendant are one and the same and, in that regard, the liberty as prayed for stands negatived. The applicant would be at liberty to take out the necessary application in the suit filed against him, which is pending consideration in O.S. No.92 of 2021 on the file of the Sub-Court, Virudhunagar.

14. It has also been indicated across the Bar that the applicant/plaintiff had been set *ex parte* therein and, in that regard, when an application to set aside the *ex parte* order is filed, the same shall be liberally considered by the learned Subordinate Judge, Sub-Court, Virudhunagar, in view of the present order passed.

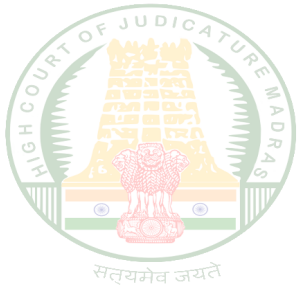


15. Accordingly, the application stands disposed of by permitting withdrawal of the suit in C.S(COMM DIV) No. 99 of 2026. However, the liberty as prayed for stands negated for the reasons enumerated supra. This Court also holds that the applicant/plaintiff would be entitled for refund of Court fee.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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K.KUMARESH BABU, J.

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C.S(COMM DIV) NO. 99 OF 2026
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