

**Order. No. 04**  
**15.11.2022**


Plaintiff along with counsel appeared. Representative of defendants also present. Counsel for plaintiff submitted application for withdrawal of the suit with permission to file a fresh one alleging that there are incorrect and incomplete averments in the plaint which amounts to formal defect in the suit and suit will ultimately fail by this reason of formal defect. Representative of respondents/defendants conceded the same.

Order XXIII, Rule 1 CPC empowers the plaintiff to withdraw his suit at any time after the institution of the suit with permission to file a fresh one subject to formal defect and subject to satisfaction of the court. There are incorrect and incomplete averments in the plaint. Correction of mother's name of plaintiff has not been sought in the plaint. Mother of plaintiff is not party to the suit. Incorrect and incomplete averments of plaint amounts to formal defect and suit of plaintiff will ultimately fail by reason of this formal defect.

Keeping in view formal defect in the suit, application for withdrawal of the suit with permission to file a fresh one is hereby accepted subject to cost of Rs. 200/-. Resultantly, suit in hand is dismissed as withdrawn with permission to file a fresh one subject to all legal limitations.

File be consigned to record room after necessary completion and compilation.

**ANNOUNCED**  
**15.11.2022**



**Zahir Khan**  
Civil Judge-I, Kalaya, Orakzai