



C.R.P.(MD) No.661 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2026

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

**C.R.P.(MD) No.661 of 2026
and
CMP(MD) No.3051 of 2026**

The Members of the Church Committee
Thottavaram C.S.I. Pastorate Church
Rep by its, Secretary

... Petitioner

vs.

1.N.James

2.The Bishop
C.S.I. Kanyakumari Diocese
Office, No.71
Dennis Street,
Agasteeswaram Taluk
Nagercoil
Kanyakumari District.

3.The Pastor
Thottavaram C.S.I Pastorate Church
Athoor Village
Moovattumugam Post
Thiruvattar Taluk
Kanyakumari District.

4.M.G.Jacob

5.Munisha

... Respondents



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PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.3 of 2025 in O.S.No.60 of 2024 dated 25.10.2025 on the file of Additional District Munsif, Padmanabapuram, Kanyakumari District.

For Petitioner : Mr.X.Xavier Rajini
For R1 : Mr.T.Cibi Chakraborty
For R2 : Mr.G.Sailendar Babu

ORDER

This Civil Revision Petition has been filed by the third defendant in the suit. It raises an interesting question of law as to whether the Court has the inherent power to permit withdrawal of a withdrawal of a suit.

2.O.S.No.60 of 2024 was presented by the first respondent herein for the following relief:-

“A. A decree declaring the 2024-2027 triennial elections of the Thottavaram C.S.I. Church held on 18.02.2024 as null and void.

B. A decree for permanent prohibitory injunction restraining the 3rd defendant members of the Church Committee represented by its Secretary from functioning as the Committee members of the Thottavaram C.S.I.Church.”



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3.This suit was filed by the plaintiff for himself and on behalf of the members of the Thottavaram CSI Pastorate Church. It is an Order I Rule 8 proceeding. After the suit had been presented and numbered, a brain wave struck the plaintiff that he could knock at the doors of this Court challenging the election by way a writ petition. Accordingly, he filed a memo before the Trial Court, seeking permission to withdraw the suit. Recording the memo, the suit was dismissed as withdrawn on 05.08.2024.

4.A writ petition was presented seeking more or less the same relief as sought for in O.S.No.60 of 2024. This Court entertained the W.P.(MD).No.14713 of 2024. After hearing all the sides, the writ petition came to be dismissed on 03.12.2024, holding that a writ petition is tenable, only when the CSI is discharging a public function and not when other matters are the subject matter of the writ petition. At that stage, the learned counsel for the writ petitioner sought liberty from the Writ Court to challenge the election, in a manner known to law. This Court granted the liberty. It is recorded in paragraph number 8 of the order.



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5.Strengthened by the liberty so granted, the petitioner filed I.A.No.3 of 2025, seeking permission of the Court to recall the order of dismissal of the suit as withdrawn on 05.08.2024. Notice was ordered in this application to the respondents. After hearing both sides, the learned Additional District Munsif, Padmanabhapuram, allowed the application on 25.10.2025, holding that the Court has the inherent power to restore a suit, which had been dismissed as withdrawn. Challenging the same, the present Civil Revision Petition.

6.The following facts are not in dispute.

7.A suit had been filed for declaration that the election for the Pastorate is null and void. The suit was withdrawn without liberty. For the very same relief, a writ petition came to be filed. The writ petition was dismissed on two grounds. First, the writ is not maintainable and second, the suit challenging the election had been withdrawn without a liberty to approach the High Court. While dismissing the writ petition, liberty was granted to the petitioner, who is the plaintiff/first respondent herein, to challenge the process of election. The doors of the Civil Court were not firmly locked by the Court. Taking advantage of this liberty, the petitioner filed an application for restoration.



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WEB COPY 8.I heard Mr.S.Xavier Rajini, for the petitioner, Mr.T.Cibi Chakraborty, for the first respondent and Mr.G.Sailendr Babu, for the second respondent.

9.Mr.S.Xavier Rajini urged that under Order XXIII Rule 1(3) of the Code of Civil Procedure, unless and until a liberty is granted, a party is not entitled to approach the Court again. He states that a perusal of the memo, filed at page 44 of the typed set of papers, indicates that a situation of abandonment by the plaintiff without any liberty having been sought for. The Court, having accepted the same, does not possess the power to recall the said order.

10.*Per Contra*, Mr.T.Cibi Chakraborty, relying upon the liberty granted in the writ petition states that, the petitioner moved the Trial Court invoking the said liberty. He further states that when there is no specific provision available under the Code of Civil Procedure for withdrawal of a withdrawal of a memo, resort can be had to Section 151 of the Code of Civil Procedure.



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11.In response, Mr.X.Xavier Rajini relies upon the judgement of a Division Bench of this Court in ***D.Neegar Prince Giftson Vs. Church of South India, O.S.A.No.270 of 2025***, dated 03.09.2025.

12.I have gone through the records. I have considered the submissions made by either side.

13.Here is a plaintiff, who has a grievance with respect to the manner in which an election, has been conducted for a Pastorate in a Church. He had presented the suit invoking Order I Rule 8 of the Code of Civil Procedure. The Trial Court might not have yet passed an order in the petition filed under Order I Rule 8 of the Code, but a perusal of the plaint shows that, the plaintiff had not only filed the suit on behalf of himself but also on behalf of the members of the Thottavaram CSI Pastorate Church. He withdrew the suit without liberty, yet, at the time of dismissal of the writ petition, this Court enabled him to work out his rights in a manner known to law.

14.As rightly contended by Mr.S.Xavier Rajini, the plaintiff is barred by virtue of Order XXIII Rule 1(3) of the Code from filing a fresh suit on the same cause of action. However, in my view, Order XXIII



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Rule 1(3) of the Code does not prevent the plaintiff from approaching the very same Court, seeking permission to have the suit restored by withdrawing the memo for withdrawal of the suit that had been filed earlier.

15.The Code of Civil Procedure under Section 151, merely recognizes the inherent powers of the Court. *De hors* Section 151, a Court has the inherent power to regulate the procedure before it. If the area of procedure is occupied by a Parliamentary Statute, then the Court would have to defer to the statute, instead of invoking its inherent powers. In case, there is a gap or no provision has been made in the Code of Civil Procedure with respect to an aspect, then the Court necessarily can draw from its inherent power and pass appropriate orders *ex debito justitiae*. My reading of the Code of Civil Procedure does not lead me to any provision which governs the withdrawal of a withdrawal. Hence, the only provision available is the catch-all inherent power under Section 151 of the Code of Civil Procedure.



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16.The plaintiff withdrew the suit hoping that he will get some remedy in the writ petition. He has been ill-advised. That does not mean that he should be crucified in the altar of procedure.

17.The basic principle of civil jurisprudence is '*ubi jus ibi remedium*'. The plaintiff has a grievance. He should thus have a forum to address the same. The forum, as directed by the Full Bench of this Court in ***D.Bright Joseph Vs. Church of India (CSI) Synod Secretariat and others, 2024 (2) CTC 369***, is the Civil Court. After incurring some expenditure in filing a suit and a writ petition, wisdom seems to have been dawn on the plaintiff. He is back before the Civil Court. To the question whether there is a bar under the Code as found under Order XXIII Rule 1(3) for withdrawal of a withdrawal of a suit, I find none. If the circumstances of the case so permit, I am of the view that a Court has the inherent power to permit a party to withdraw the withdrawal, so that the parties are restored on to their original position on the date of the presentation of the suit. The learned Trial Judge has applied the correct principle of *ex debito justitiae* to restore the suit, in order to do substantial justice between the parties.



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18.I should add here that the exercise of an inherent power is within the discretionary jurisdiction of the Trial Court. Unless and until, it is irrational or perverse, this Court should not interfere with such an exercise, while dealing with a revision under Article 227 of the Constitution of India.

19.A careful perusal of the Division Bench judgement in ***D.Neegar Prince's case*** as cited by Mr.S.Xavier Rajini, shows that the issue that has been presented before me did not arise even faintly before the Division Bench. The issue before the Division Bench was whether the plaintiff had an inherent right to abandon a proceeding. The Division Bench held in positive and further directed that whatever interim orders that had been passed after the abandonment in the suit, would die with the suit. The ratio of that judgment is absolutely inapplicable to the facts at hand.

20.Before I conclude, the plaintiff, having drawn the defendants to the Court at Padmanabapuram as well as to this Court in its writ jurisdiction, ought not to have been permitted to get the suit restored for the asking. While confirming the order of the learned Additional District Munsif at Padmanabapuram, Kanyakumari District, I impose



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a cost of Rs.10,000 (Rupees Ten Thousand only) on the plaintiff to be paid to the contesting defendant within a period of three weeks from today.

21.With imposition of costs, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No

10.03.2026

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To

The Additional District Munsif,
Padmanabapuram, Kanyakumari District.



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V. LAKSHMINARAYANAN, J.

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