

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.180/2005**

Decided on : 22nd April, 2013

HARI OM MEHTA Appellant
Through: Mr. Nishant Datta, Ms. Sampath Sudha
and Ms. Garima Hooda, Advocates.

versus

NIRMAL DAS & ANR Respondents
Through: Mr. G.S. Sharma, Advocate.
Ms. Priya Kumar & Mr. Adhish
Srivastava, Advocates for Mr. Rohit
Gandhi, Advocate in person.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

Rev. Pet. No.119/2011

1. This is an application for review of the order dated 24th November, 2010.
2. I have heard the learned counsel for the appellant/applicant and gone through the record.
3. The main contention of the learned counsel for the appellant is that the present appeal was dismissed as having become infructuous and as withdrawn on account of the statement purported to have

been made by Mr.Rohit Gandhi, counsel for the appellant on 24.11.2010 to the effect that since Gurbux Singh, legal heir of Nirmal Das has further obtained probate accordingly, the appellant be permitted to withdraw the present appeal with liberty to challenge both the probates; one which was granted in favour of Nirmal Das and the other which has been obtained by Gurbux Singh. The ground for recall or review of the order dated 24.11.2010 was that Mr.Rohit Gandhi, learned counsel had not obtained instructions from the appellant for the purpose of withdrawing the appeal.

4. The scope of review is very limited. As per Order 47 Rule 1, a review application would lie only when there is an error apparent on the face of the record or some evidence which was not earlier within the knowledge and the control of the party has been discovered by him.
5. Admittedly, these are not two reasons for which the review application has been filed in the instant case. The review application has been filed primarily on the ground that the counsel was not authorized to make a statement seeking dismissal of the

present appeal as having become infructuous and seeking withdrawal on account of subsequent developments. The vakalatnama which has been signed by the party clearly mentions that a party will be bound by any statement of fact made by the counsel.

6. In the instant case, the statement which has been made by Mr.Rohit Gandhi is a statement of fact and the appellant is bound by the same. If the appellant is permitted to withdraw from the statement made by his counsel on the ground that his counsel was not duly authorized to make such statement, then it will lead to various serious consequences inasmuch as, at any point of time when the counsel makes a statement, a party may turn around and say that the counsel did not have requisite authorization. This will be against the terms of vakalatnama signed by him as well as it will keep the litigation open for all times to come.
7. The review application in my view does not have any merit, and accordingly, the same is dismissed.

V.K. SHALI, J.

APRIL 22, 2013/RN