

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No.5347 of 2015

Date of decision : November 30, 2015

Raj Kumar Singh

..... Petitioner

Versus

Bhuri Devi

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.Jai Kumar Chauhan, Advocate for the petitioner.

Mr.D.S.Bali, Senior Advocate with
Mr.Ram Avtar Yadav, Advocate for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (Oral)

The petitioner is aggrieved of the order dated 09.07.2015 (Annexure P-15) vide which the application seeking dismissal of the application filed by the respondent under Section 151 read with explanation to Rule 3 of Order 23 of Code of Civil Procedure for setting aside of the judgment and decree dated 31.07.1982 in Civil Suit No.170 of 1982 has been dismissed.

It is a matter of record that Mr.Jai Kumar Chauhan, learned counsel appearing on behalf of petitioner submits that as per the liberty granted by this Court in CR No.2918 of 2008 decided on 28.10.2010, the respondents were to file an application in Civil Suit No.301 of 2006 for recalling of order dated 10.04.2007, and not in Civil Suit No.170 of 1982 decided on 31.07.1982 which was an exparte decree and not a consent decree. Thus the trial Court committed illegality and perversity in dismissing the application. He further submits that after passing of the order in Civil Suit No.301 of 2006, it was withdrawn without any liberty. The

respondent had filed a civil suit No.81 of 2007 which was dismissed vide order dated 17.08.2007 (Annexure P10) being not maintainable as per provisions of Order 23 Rule (4) and Order 2 Rule 2 Code of Civil Procedure. He further submits that application in Civil Suit No.170 of 1982 would not be maintainable as decree dated 10.04.2007 was not a consent decree.

Mr.D.S.Bali, learned Senior Advocate and Mr.Ram Avtar Yadav, Advocate, appearing on behalf of respondent submits that petitioner had obtained an ex-parte judgment and decree dated 31.07.1982 in Civil Suit No.170 of 1982 against the father without impleading other brothers and sisters as admittedly the property in the hands of the father, was ancestral property. He further submits that this Court vide order dated 28.10.2010, not only gave liberty to move an application in earlier suit No.301 of 2006 but also to avail such legal remedy to challenge the orders passed from time to time in previous suit. In these circumstances, the application was filed in the Civil Suit No.170 of 1982. However, he would be also taking appropriate remedy by moving an application in Civil Suit No.301 of 2006 in accordance with law. He further submits that Karam Chand brother of petitioner and respondent during the pendency of the suit in collusion with the petitioner and without seeking a written instructions from Bhuri Devi-respondent, withdrew the Civil Suit No.301 of 2006 and thus prays for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book.

Noticing the aforementioned fact, it would be appropriate to reproduce the order dated 28.10.2010 passed in CR No.2918 of 2008 :-

“Present petition is filed challenging the order dated 17.08.2007 passed by the learned Additional Civil Judge (Senior Division), Panchkula, whereby suit filed by the plaintiff – petitioner herein was dismissed being not

maintainable in view of Order 23 Rule 1 (4)(b) C.P.C. for the reason earlier suit No. 301 of 2006 was withdrawn by the plaintiff without obtaining any leave of the Court to file any other suit on 10.04.2007.

After arguing almost for 20 minutes, learned counsel for the petitioner states that present petition be permitted to be withdrawn with liberty to move an appropriate application in earlier suit No. 301 of 2006 for recalling the order dated 10.04.2007.

Present petition is dismissed as withdrawn with liberty to the petitioner to avail such legal remedy, which are available under the law challenging the orders passed in the previous suit. However, for consuming the time of the Court, it is directed that petitioner shall pay Rs.15,000/- as exemplary cost in favour of Punjab and Haryana Bar Association Advocates' Welfare Fund within 10 days from today. It is made clear if cost is not paid, then liberty granted to the petitioner shall stand withdrawn and petition shall stand dismissed without any liberty."

A perusal of the order shows that this Court had given liberty to respondent No.1-Bhuri Devi to move an application in Civil Suit 301 of 2006 for recalling of the order dated 10.04.2007. However, operative order was also meant that liberty was given to petitioner to avail such legal remedy which was available under the law. The import of the aforementioned order, though does not debar the respondent to move an application in Civil Suit No.170 of 1982 but in my view, it

would be a farcical exercise, in pursuing the application filed in Civil Suit No.170 of 1982 as it was an ex-parte decree and remedy if any, necessarily to challenge same by filing independent suit.

The respondent should have moved an application in accordance with law not strictly confining to the provisions of Order 23 but any other provision for recalling of the order dated 10.04.2007 by stating out the reasons viz-a-viz the authority to give strength to their opinion. The Hon'ble Supreme Court in **Himalayan Cooperative Group Housing Society Vs. Balwan Singh 2015(7) SCC373** has laid down the principles regarding the powers of Advocate for withdrawing the suit. The same reads thus:-

- (i) *Lawyers owe fiduciary duties to their clients- Lawyers should follow the clients's instructions rather than substitute their judgment for that of the client.*
- (ii) *A lawyer must be specifically authorized to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement.*
- (iii) *Lawyers should follow the client's instructions rather than substitute their judgment for that of the client.*
- (iv) *In some cases lawyers can make decisions without consulting client-while in others, the decision is reserved for the client.*
- (v) *It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights.*

The order dated 10.04.2007 also reads thus:

“Learned counsel on behalf of the plaintiff has made a statement to the effect that he does not want to proceed further with the present suit and it is consigned. In the light of statement of learned counsel for the plaintiff, the present suit is

dismissed as withdrawn. File be consigned to the record room.”

The aforementioned order would reveal that in the suit No.301 of 2006 titled as ***Bhuri Devi Vs. Raj Kumar and Others***, counsel had not sought any instructions from the plaintiff to withdraw the suit. The principles laid down by the Supreme Court is directly applicable in the facts and circumstances of the case. Accordingly, I do not find any illegality and perversity of the order dated 09.07.2015 declining the application seeking dismissal of the application filed by the respondent in Civil Suit No.170 of 1982. The respondent would be set at liberty to move an application in earlier suit No.301 of 2006 for recalling the order dated 10.04.2007 in accordance with law particularly in view of the concession granted in the order dated 28.10.2010.

Civil Revision is accordingly dismissed.

(AMIT RAWAL)
JUDGE

November 30, 2015
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