

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10335 OF 2016

Progressive Education Society ... Petitioner
vs.
Shri. Dilipsingh Gulabsingh Pardeshi & ors. ... Respondents

Mr. Shirish V. Pitre, Advocate for the petitioner.
Mr. Subhash Langote i/by Mr. V. A. Madane, Advocate for
respondent no.1.
Ms. Aparna Vhatkar, A.G.P. for the State.

Coram : Smt. R. P. SondurBaldota, J.
Date : 17th October, 2016

P.C. :

1. This petition is directed against the order dated 16th January, 2016 by which the School Tribunal allowed the application of respondent no.1 for restoration of his appeal by recalling the order dated 30th April, 2011. By the order recalled, respondent no.1 was permitted to withdraw his appeal unconditionally.

2. The challenge to the order is twofold. Firstly, that the application for recall of the order permitting unconditional withdrawal was not maintainable under any provision of law. Secondly, that there was no merit in the case pleaded for recall of the order. According to respondent no.1, the application was filed under the inherent powers of the Court under Section 151 of Civil Procedure Code ('CPC' for short). As regards the merits, respondent no.1 has stated in detail in his application as to how the petitioner took advantage of the situation. Undisputedly,

there were settlement talks between the parties. By way of settlement, respondent no.1 was asked to give a letter of apology and he had given a letter of apology. Later, the letter of apology was demanded in a modified form to the satisfaction of the Chairman of the petitioner. Respondent no.1 had then signed on the typed letter of apology received by him from the petitioner. Despite that, the settlement talks did not come through. Hence, respondent no.1 filed application for recalling of the order permitting him to withdraw his appeal.

3. Mr. Pitre, the learned Advocate for the petitioner submits that, in view of the specific provision of Order 23 CPC, on unconditional withdrawal of the appeal, the dispute is brought to an end. It can neither be revived nor can there be a fresh proceeding on the same cause of action. In the facts and circumstances of the case, withdrawal of the appeal by respondent no.1 cannot be said to be unconditional in true sense of the term. It was in the process of and as a term of settlement between parties. The responsibility for failure of the settlement apparently rests with the petitioner. In these circumstances, the School Tribunal has correctly exercised its inherent powers under Section 151 of Civil Procedure Code in order to prevent injustice to respondent no.1 and recalled its order permitting withdrawal of the appeal. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]