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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3266-2014

Date of decision : 23.04.2016

Hari Chand

... Petitioner

Versus

Anoop Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Jasuja, Advocate
for the petitioner.

Mr. Umesh Kanwar, Advocate
for the respondents.

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 impugned order dated 07.05.2012 (Annexure P-1), 26.11.2012 (Annexure P-3) and order dated 23.12.2013 (Annexure P-5), whereby the application dated 03.11.2012 seeking withdrawal of the statement allegedly suffered by the counsel on 07.05.2012 has been dismissed and the appeal filed there against the same has also been dismissed.

Mr. Sandeep Jasuja, learned counsel appearing on behalf of the petitioner submits that the suit was instituted by invoking the provisions of Order 37 of the Code of Civil Procedure. Prior to the date of withdrawal of the suit, the matter was fixed before the Lok Adalat for arriving at a settlement.

However, the settlement could not be arrived at. Mr. Pardeep Kataria, counsel for the plaintiff made a statement regarding the compromise. the suit was withdrawn, whereas no compromise in writing was ever effected. In this regard, an application was moved, which has erroneously been dismissed. He submits that at the best, statement of the plaintiff could have been recorded and the suit could not have been withdrawn by recording the statement of the counsel. In support of his contentions, he relies upon the judgment of Hon'ble Supreme Court rendered in **“Himalayan Cooperative Group Housing Society V/s Balwan Singh”, 2015 (7) SCC 373.**

Mr. Umesh Kanwar, learned counsel for the respondents submits that there is no illegality and perversity in the order, under challenge. The order is perfect, legal and justified and urges this Court for affirmation of the impugned orders.

I have heard the learned counsel for the parties and appraised the paper book. It is matter of record that the case was listed before the Lok Adalat on 24.02.2012, 28.04.2012 and ultimately it was listed on 07.05.2012, when the counsel for the plaintiff suffered a statement and the following order was passed:-

“Today Sh. Pardeep Kataria, Adv. has got recorded his separate statement of the even date to the effect that he is not interested to proceed with the present civil suit as parties have effected a compromise and court fee may be refunded. Whereas, Sh. S.K. Gumber, Adv. counsel for defendant has stated at bar that he admitted the correctness of his above statement. On joint request of counsels for the parties case is ordered to be put up on

26.05.2012 in the coming Mega Lok Adalat for further proceedings.”

On perusal of the aforementioned order, it is evident that it is only the counsel who suffered a statement and there is no statement or affidavit of the plaintiff in support of the statement suffered by the counsel. Hon'ble Supreme Court has culled out the principle under what circumstances the lawyers/Advocates are enjoined upon an obligation to withdraw the suit. The present case falls within the aforementioned principle. In my view, the trial Court ought not to have allowed the suit to be withdrawn until and unless, statement or affidavit of the plaintiff had been recorded or placed on record.

Keeping in view the aforementioned facts and circumstances of the case, impugned orders dated 07.05.2012 (Annexure P-1), 26.11.2012 (Annexure P-3) and dated 23.12.2013 (Annexure P-5) are hereby set aside. The suit is ordered to be restored to its original number and shall proceed in accordance with law.

With the aforesaid observations, the revision petition stands allowed.

23.04.2016
yogesh

(AMIT RAWAL)
JUDGE