

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4378 of 2015(O&M)

Date of Decision: 5.12.2016

Joginder Singh

--- Petitioner

versus

Sukhbir Kaur alias Paramjit Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Arun Takhi, Advocate
for the petitioner**

**Mr. Arnav Sood, Advocate
for respondent Nos. 1 and 2**

Rekha Mittal, J.

The present petition directs challenge against order dated 29.8.2014 (Annexure P-5) passed by the Civil Judge (Junior Division), Hoshiarpur whereby suit filed by the petitioner/plaintiff has been dismissed as withdrawn.

The sole submission made by counsel for the petitioner is that

even if counsel for the petitioner/plaintiff had pleaded no instructions, suit could not be dismissed as withdrawn and, at best, it could be dismissed for non-prosecution. It has further been argued that as counsel for the petitioner pleaded no instructions, the Court was obligated to issue a notice to the petitioner/plaintiff before passing an adverse order.

Counsel for the respondent has not advanced any meaningful arguments to support the order with regard to dismissal of the suit as withdrawn.

I have heard counsel for the parties, perused the paper book particularly the statement of Sh. S.K.Jhamat, Advocate, counsel for the petitioner before the trial court and order impugned.

Be that as it may, it is an undisputed position of the case that counsel for the petitioner/plaintiff got recorded his statement pleading no instructions on behalf of the plaintiff. However, the trial court has dismissed the suit as withdrawn when otherwise in absence of the plaintiff or his counsel, the Court, at best, could dismiss the suit for non-prosecution even if the Court was of the view that no notice was required to be issued to the party on whose behalf no instructions have been pleaded by his counsel.

In this view of the matter, the order impugned cannot be allowed to sustain and liable to be set aside.

For the foregoing reasons, the petition is allowed, the impugned order is set aside and the civil suit filed by the petitioner is ordered to be revived at the Board of the trial court with a direction to proceed with the case, in accordance with law.

(Rekha Mittal)
Judge

5.12.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No