

224.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.5708 of 2014

Date of decision:04.03.2016

Virwati and others

... Petitioners

versus

Satish Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Arvind Kashyap, Advocate,
for the petitioners.

Mr. Kulbhushan Sharma, Advocate,
for the respondents 1A to 6.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The application for restoration of the suit which had been dismissed on 03.10.2007 was filed on a plea that the petitioner had engaged a new counsel on 29.09.2007 with instructions not to appear on his behalf and that he had engaged another counsel. Yet another counsel caused an inspection to be made on 08.10.2007 and found to his dismay that the suit had been dismissed as withdrawn as settled out of court. According to the petitioner, the counsel had no authority who was not on record to represent him and that the dismissal was erroneous.

2. If the suit had been dismissed as withdrawn without authority, there ought to be a proof that the counsel who was on record had been informed about the cancellation of the authority. No attempt was made by the petitioner to show that there was any cancellation of the power granted to the counsel. Again, it is not a matter which could be revived as though it was a suit which was dismissed for default under Order 9 Rule 8 CPC when it could be restored through an application under Rule 9 Rule 9 CPC. On the other hand, it was a case of dismissal as withdrawn which constitutes an abandonment of action under Order 23 Rule 1 CPC. If such an order of dismissal were to be withdrawn, it could be only in a situation where there had been no compromise and the statement so recorded in court was wrong or a mistake. The inherent power for a court to recall its order if there was a mistake should be founded on what the application states. There was no plea that there had been no compromise for withdrawing the suit on file and for fresh consideration. If there was no plea that there was no compromise, then the application for restoration itself was incompetent.

3. There is no error for intervention. Revision petition is dismissed.

(K.KANNAN)
JUDGE

04.03.2016
sanjeev