

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 591 of 2014

Date of Decision: April 04, 2016

Ram Lal

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN

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

Mr. Aseem Aggarwal, Advocate,
for the respondents.

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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?*

K.KANNAN, J (Oral)

- 1) The plaintiff, whose suit was dismissed, had filed an appeal and sought for withdrawal of appeal as well as his suit with liberty to file a fresh suit on a plea that the Department concerned of the Central Government had not been impleaded and, therefore, the suit would suffer from a material defect. The respondents contested the same and contended that the application was only an attempt to get

over the adverse findings against the petitioner rendered by the trial Court. The respondents also relied on certain decisions of this Court, which had held that the withdrawal of the suit at the appellate stage must be strictly construed and cannot be merely allowed at the asking, while rejecting the prayer for withdrawal of the appeal. A suit with liberty to file a fresh suit. The Court modified the prayer for allowing the withdrawal of appeal only.

2) The order is erroneous. If the appellate Court found that there is no case made for allowing the application, it could have only dismissed the application and allowed for continuance of appeal. There is no jurisdiction for the appellate Court to allow the withdrawal of appeal and the suit when there was no prayer for it, for, the appellant was bound to be seriously prejudiced by the operation of Order 23 Rule 1(4) CPC.

3) Learned counsel for the petitioner wants no more than an opportunity to argue the appeal on merits. Such a prayer is acceded to. The order passed by the Court below is modified only to the extent of dismissing the application filed before the Court and for revival of the appeal and for disposal in accordance with law.

4) The revision petition is disposed of accordingly.

April 04, 2016

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(K.KANNAN)
JUDGE