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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR-5920-2014****Date of decision : 15.02.2016**

Kumar Pal and another

...Petitioners

Versus

Shish Pal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWALPresent: Mr. Mohnish Sharma, Advocate
for the petitioners.

None for respondent(s).

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 petitioners-plaintiffs are aggrieved of the order dated 08.10.2012 as well as order dated 09.05.2014 whereby the appeal has been dismissed as withdrawn and the application under Order 41 Rule 19 of the Code of Civil Procedure (hereinafter called 'CPC') for re-admission of the appeal has been dismissed.

Mr. Mohnish Sharma, learned counsel appearing on behalf of the petitioners-plaintiffs relies upon the judgment rendered by Hon'ble Supreme Court in **"Himalayan Cooperative Group Housing Society V/s Balwan Singh" 2015 (7) SCC 373**, to

contend that an act of the lawyer withdrawing the appeal has been

explained. He submits that no prejudice would be caused to the other side or the Court in case, the appeal is ordered to be heard on merits.

There is no representation on behalf of the served respondents.

I have heard the learned counsel for the petitioner and appraised the paper book.

I am in agreement with the aforementioned submissions made by the learned counsel for the petitioner and the principle culled out by the judgment of Hon'ble Supreme Court in **Himalayan Cooperative Group Housing Society's case** (supra). The relevant portion of the judgment reads thus:-

"(i) Lawyers owe fiduciary duties to their clients – Lawyers should follow the client's instructions rather than substitute their judgment for that of the client.

(ii) A lawyer must be specifically authorized to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement.

(iii) Lawyers should follow the client's instructions rather than substitute their judgment for that of the client.

(iv) In some cases lawyers can make decisions without consulting client – While in others, the decision is reserved for the client.

(v) It is often said that the lawyer can make decisions as

to tactics without consulting the client, while the client has a right to make decisions that can affect his rights”

In view of such provisions, the counsel could not have withdrawn the appeal without having written instructions or personal appearance, much less, statement of his client. The Court below ought not to have been dismissed the application seeking recalling of the order dated 08.10.2012.

Keeping in view the aforementioned facts, the impugned order dated 08.10.2012 is hereby set aside and the application filed under Order 41 Rule 19 CPC is allowed and the appeal is restored back to its original number. The Appellate Court is directed to decide the appeal on merits in accordance with law.

With the aforesaid observations, the revision petition is allowed.

15.02.2016
yogesh

(AMIT RAWAL)
JUDGE