

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

**Regular Second Appeal No.4401 of 2009(O&M)
Date of Decision: August 30, 2016**

Parkash and others

.....APPELLANTS

VERSUS

Partap and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Bansal, Advocate
for the appellants.

Mr. Shailender Sharma, Advocate
for respondents No.1 and 2.

SURINDER GUPTA, J.(Oral)

At the very outset, learned counsel for the appellants has argued that the first Appellate Court, while accepting the appeal filed by respondents, has observed in para 10 that the counter-claim earlier filed by appellants is still pending and this suit filed by the plaintiffs-appellants was held as not maintainable. Learned counsel for the appellants while conceding these findings recorded by the first Appellate Court, seeks permission to withdraw this appeal, with liberty to approach the court concerned for revival of the counter-claim, which was consigned, without deciding the same on merit, as the main case was dismissed as

withdrawn.

2. Learned counsel for respondents No.1 and 2 has no objection, if the counter-claim is restored and decided on merits.

3. In view of the above submissions, this appeal is allowed to be withdrawn, with liberty to the appellants to seek restoration of the counter-claim filed by them in Civil Suit No.59 of 07.02.1995, dismissed as withdrawn on 08.01.1999 by the Civil Judge (Junior Division), Dasuya. As the counter-claim filed in that suit was not decided, the Court will restore the same at its original number and decide the same on merits. It is, however, made clear that nothing observed by Courts below in this case shall have any bearing on the merits, while deciding the counter-claim. On filing of the application seeking restoration of the counter-claim by the appellants, notice will be given to counsel for the plaintiffs/respondents in that suit, by the trial court and the same shall be disposed of within a period of one year of appearance of counsel for plaintiff before it.

(SURINDER GUPTA)
JUDGE

August 30, 2016.
deepak/jv

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No