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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 09.08.2016

+ C.R.P. 62/2014 & CM No.8488/2014

ASHOK KUMAR SHARMA

..... Petitioner

Through

Mr.Bineesh K., Adv. alongwith
petitioner in person

versus

SH. RAM KUMAR SHARMA

..... Respondent

Through

Mr.D.N.Goburdhun and Mr.Balendru
Shekher, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. By the present petition petitioner seeks to impugn the order dated 24.3.2014 by which order the application of the petitioner for revival of the suit was dismissed.
2. Brief facts are that the plaintiff filed a suit for partition against the defendant with respect to the suit property. On 19.10.2010, Mr.C.B.Garg, the counsel who had been engaged by the petitioner made a statement without oath that he had been instructed to withdraw the present suit as the plaintiff does not want to claim any right, title or interest to the suit property. In view of the statement recorded of the learned counsel for the petitioner, the suit was dismissed as withdrawn on 19.10.2010.
3. The petitioner thereafter moved the present application stating that no instructions had been given to his counsel to withdraw the suit. It is also

stated that a complaint has been filed against the counsel before the Bar Council of Delhi. The trial court by the impugned order dismissed the application of the petitioner noting that the vakalatnama given by the petitioner in favour of his Advocate Mr.C.B.Garg shows that the petitioner had authorised the counsel to appear and to withdraw the suit.

4. Learned counsel appearing for the petitioner has vehemently argued that no such instructions were given to the counsel to withdraw the suit. He submits that the petitioner has been agitating for several years and there was no reason or occasion to abandon his claim. To a question posed by the court as to the outcome of the complaint filed before the Bar Council he has pointed out that the complaint has been dismissed by the Bar Council by an order dated 30.8.2013 whereby the Bar Council came to the conclusion that there is no sufficient evidence on record to hold the concerned advocate guilty of professional misconduct.

5. Learned counsel appearing for the respondent has relied upon judgments of the Supreme Court in *Jagtar Singh vs. Pragat Singh and Others, (1996) 11 SCC 586* and *Bakshi Dev Raj(2) and Another vs. Sudheer Kumar, (2011) 8 SCC 679* to contend that in similar facts and circumstances the Supreme Court has held that the order of withdrawal cannot be challenged on the ground that the counsel did not have a right to make a statement. The remedy of the petitioner in case no such instructions were given lie somewhere else.

6. I may only note two facts. Firstly, a perusal of the application filed by the petitioner shows that there appears to have been some interactions between the petitioner and the counsel as there is an allegation made that the counsel had threatened the petitioner to misuse blank cheques, stamp papers

and pronotes. Purpose of the petitioner having executed blank cheques, stamp papers and pronotes is not shown but presumably the petitioner had confidence in the counsel. Secondly, I cannot help noticing that the Bar Council of Delhi has by a detailed order dated 30.8.2013 come to a conclusion that there is no sufficient evidence to form an opinion that the counsel was guilty of professional misconduct.

7. The Supreme Court in the case of *Jatar Singh vs. Pargat Singh and Others (supra)* held as follows:-

“3. The learned Counsel for the petitioner has contended that the petitioner had not authorised the counsel to withdraw the appeal. The Court after admitting the appeal has no power to dismiss the same as withdrawn except to decide the matter on merits considering the legality of the reasoning of the trial Court and the conclusions either agreeing or disagreeing with it. We find no force in the contention. Order III, Rule 4, CPC empowers the counsel to continue on record until the proceedings in the suit are duly terminated. The counsel, therefore, has power to make a statement on instructions from the party to withdraw the appeal. The question then is: whether the court is required to pass a reasoned order on merits against the decree appealed from the decision of the Court of the Subordinate Judge? Order XXIII, Rule 1(1) and (4) give power to the party to abandon the claim filed in the suit wholly or in part. By operation of Section 107(2) of the CPC, it equally applies to the appeal and the appellate Court has co-extensive power to permit the appellant to give up his appeal against the respondent either as a whole or part of the relief. As a consequence, though the appeal was admitted under Order XXXI, Rule 9, necessarily the Court has the power to dismiss the appeal as withdrawn without going into the merits of the matter and deciding it under Rule 11 thereof.

4. Accordingly, we hold that the action taken by the counsel is consistent with the power he had under Order III, Rule 4, CPC. If

really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere and the procedure adopted by the Court below is consistent with the provisions of CPC. We do not find any illegality in the order passed by the Additional District Judge as confirmed by the High Court in the revision.”

8. The above proposition was followed by the Supreme Court in the case of *Bakshi Dev Raj (2) vs. Sudheer Kumar (supra)*.

9. It is clear that the vakalatnama executed by the petitioner permitted the counsel to withdraw the suit. The counsel has accordingly as stated on instructions as per powers given to him by the petitioner has sought to withdraw the suit. The conduct of the counsel for the petitioner is in consonance with the powers under Order 3 Rule 4 CPC.

10. In view of the legal position as stated by the Supreme Court and the facts as stated above, in my opinion, there is no infirmity in the impugned order. The petition is accordingly dismissed.

JAYANT NATH, J.

AUGUST 09, 2016/n