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

\+ W.P.(C) 6521/2013 & C.M. No.14176/2013

AJAY KUMAR DABAS & ANR

..... Petitioners

Through Mr. Rajat Bhardwaj, Adv.

versus

S.D.M/R.A (KANJHAWALA) & ORS

..... Respondents

Through Mr. Ravi Gupta, Sr. Adv. with Mr. Satyavan Khandelwal, Ms. Bhoomika Verma and Mr. Sachin Jain, Advs for R-3.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% **22.07.2016**

The petitioners seek a prayer that the order passed by the Financial Commissioner on 06.11.2012 be set aside. The Financial Commissioner on 06.11.2012 has passed the following order:-

"Present: Sh. Pankaj Gupta, counsel for the appellant, Sh. Sanjay Kumar,

Sh. Satyawan, Counsel for R-2, Sh. Charan Das.

1. *Heard Sh. Pankaj Gupta, Ld. Counsel for the appellant, Sh. Sanjay Kumar, in obedience of the order passed by this Court on 23.10.2012 he has submitted a formal application for withdrawal of the appeal. He submits through his*

application that in view of certain compromise that he claims he has arrived at with the respondent No. 2, he is withdrawing his appeal from this Court. As there are no further grounds to continue this case in this Court, the case is disposed of as withdrawn.

2. *The application for impleadment filed by Sh. Chander Bhushan Prasad, Advocate has now become infructuous*
3. *File be consigned to the record room after completion."*

The petitioner before this Court is Ajay Kumar Dabas. His submission is that he had moved an application seeking impleadment in the aforenoted proceedings; he wanted to be substituted in place of the original petitioner i.e. Sanjay Kumar; before his application could be decided, this order was passed on 06.11.2012. This order is liable to be set aside.

The respondents have put in appearance. They have disputed this stand.

Record has been perused. Record evidences that proceedings had been initiated by one Sanjay Kumar against the SDM, Kanjhawala. The order of 06.11.2012 is reflective of the fact that Sanjay Kumar had given instructions to his counsel Pankaj Gupta to withdraw these proceedings. These proceedings were accordingly withdrawn under his instructions. The application filed by the applicant for impleadment had accordingly been noted to have become infructuous. The submission of the learned counsel for the petitioner that on this application, notice had been issued on 13.04.2012 is noted. This application for impleadment was being followed up by the petitioner/Ajay Kumar Dabas. Record further shows that on 23.10.2012, the counsel for Sanjay Kumar had informed the Financial Commissioner that he has moved an application for withdrawal of this appeal which he has filed as way back as on 21.02.2012. The Financial Commissioner had noted this but had advised the petitioner that since this application had been filed way back, a fresh application for withdrawal of his appeal be filed and the matter had then been posted for 06.11.2012. It is not the case of the petitioner that he was unaware of these proceedings.

This is also borne out from the fact that the proceedings before the Apex Court had also been initiated in Civil Appeal No. 1227/2007 by Sanjay Kumar. The Apex Court had on 18.10.2013 noted that the impleadment of Sanjay Kumar through Ajay Kumar Dabas and others had been allowed. On a subsequent date, the Apex Court in the same appeal had noted the submission of the respondents that this appeal has now become infructuous in view of an order passed by the Revenue Assistant against which the present petitioner/Ajay Kumar Dabas had filed an appeal. The appeal was accordingly dismissed as infructuous with a direction that the order of the Revenue Assistant Commissioner has to be decided on its merits. This order was passed by the Apex Court on 15.04.2014. It reads herein as under:-

" Having heard counsel for the parties, we find substance in the

plea raised on behalf of the applicants / respondents that this appeal has been rendered infructuous in view of the subsequent order passed by the Revenue Assistant Commissioner. Hence, this appeal is dismissed.

However, we are informed that the appellant has filed an appeal against the order passed by the Revenue Assistant Commissioner.

It goes without saying that the appeal which has been preferred by the appellant against the order of Revenue Assistant Commissioner has to be decided on its own merit.

Since the appeal is dismissed as infructuous, no order is required to be passed on the application for recalling / modification. The same is also dismissed."

On that date, Mr. Rajat Bhardwaj, Advocate who is counsel appearing for Ajay Kumar Dabas before this Court today had also put in his appearance before the Apex Court. On that date, when this statement was recorded and the appeal had been rendered infructuous, the petitioner/Ajay Kumar Dabas was fully aware of the fact that there was no proceeding pending before any Revenue Authority. The appeal before the Financial Commissioner had already been withdrawn as way back on 06.11.2012. It does not now lie in the mouth of the petitioner to submit that the order dated 06.11.2012 was passed behind his back and the Court did not consider his impleadment application. The Apex Court in fact had impleaded the petitioner but on a subsequent date i.e. on 15.04.2014, the appeal had been rendered infructuous with liberty to the parties to get their matter decided before the appellate body of the Revenue Assistant Commissioner. There was no matter pending before the appellate body of the Revenue Assistant Commissioner on that date. Even before the Apex Court i.e. on 15.04.2014, the petitioner was well represented.

The petitioner now challenging the order dated 06.11.2012 does not deserve to be considered sympathetically; this petition is clearly without any merit. It is accordingly dismissed.

INDERMEET KAUR, J

JULY 22, 2016
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