

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

**Civil Revision No.4404 of 2013 (O&M)
Date of Order: 14.12.2017**

Bank of India

..Petitioner

Versus

Shri Kailash Chander and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Khushpreet Bains, Advocate, for
Mr. G.S.Anand, Advocate,
for the petitioner.

Mr. Satish Jain, Advocate,
for respondent nos.3 to 5.

ANIL KSHETARPAL, J(Oral)

Petitioner is a nationalized bank, aggrieved by order dated 25.04.2012, passed by the learned first appellate court, refusing to recall order dated 01.12.2003.

Civil Suit No.32 dated 09.03.1988 titled as Bank of India Vs. M/s Bharti Printers & Others for recovery of the suit amount was decreed in favour of the bank vide judgment and decree dated 04.08.1999.

Kailash Chander and Jagdish Chander filed a first appeal before the learned Additional District Judge. During the pendency of the appeal, Mr. Ravinder Arora, counsel representing the bank made a statement on 07.11.2003 that the bank has already received payment in the case. Consequently, appellants withdrew their appeal.

Later on the petitioner-bank filed an application for recalling order dated 01.12.2003, with a request to re-hear the appeal on merits. It is

submitted in the application that in fact Shri Ravinder Arora, Advocate, had made a statement on 07.11.2003 under a mistaken belief. It was further asserted that in fact another civil suit titled as Bank of India v. Kailsh Chander was decreed on 27.03.2003 and in that case judgment debtor has approached the bank for compromise which was accepted and consequently payment was made. It was submitted that some how papers of the aforesaid decree got mixed up with the papers of this appeal and as such wrong communication was sent to the advocate in this case.

Learned first appellate court chose to dismiss the application on the ground that the Court has no power to recall the order by which the appeal had been dismissed as withdrawn.

In the considered opinion of this Court, courts have power under Section 151 Code of Civil Procedure to meet with a situation, which is not provided for in the Code. Petitioner bank immediately on coming to know of the mistake moved an application which was supported by an affidavit. It is further not in dispute that public money is involved and respondents had not made any payment. Once it is established on the file that the statement was made by counsel under a mistake, which resulted into withdrawal of the appeal, the Court had power to recall the same and order decision of the appeal on merits.

Taking into consideration the aforesaid facts and the discussion made above, the order dated 25.04.2012 is set aside and the first appeal filed by the respondents is restored to its original number. The learned first appellate court is directed to decide the appeal on merits.

Parties through their counsel are directed to appear before the learned first appellate Court, on 17.01.2018.

The revision petition is allowed.

December 14, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No