

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

CR No.545 of 2015

Date of Decision: 01.08.2017

State Bank of India

.....Petitioner

Versus

Ram Singh

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. IPS Doabia, Advocate
for the petitioner.

None for the respondent.

RAJ MOHAN SINGH, J.(ORAL)

[1]. Petitioner-Bank has assailed the order dated 10.11.2014 passed by Civil Judge (Junior Division), Naraingarh, whereby application for recalling the order dated 24.07.2014 and for restoration of the suit to its original number was dismissed.

[2]. Ciivl Suit No.342 of 2012 titled State Bank of India Vs. Ram Singh son of Sunder Singh and Civil Suit No.401 of 2013 titled State Bank of India Vs. Ram Singh son of Jeewan Singh were pending in the same Court i.e. Additional Civil Judge (Senior Division), Naraingarh. Out of the aforesaid two suits, Civil Suit No.401 of 2013 was to be withdrawn on the basis of compromise executed between the parties. The said suit was ultimately got dismissed as withdrawn on 01.07.2014. The Bank was represented by Sh. H.K. Sharma Advocate in the said suit.

Civil Suit No.342 of 2012 was assigned to Sh. Sanjeev Gupta, Advocate. In the said proceedings, evidence of the plaintiff was closed and thereafter, evidence of the defendant started.

[3]. On 01.07.2014, no DW was present and the case was adjourned to 14.07.2014 for evidence of the defendant at his own responsibility. Last opportunity was granted. On the same day, second suit was got dismissed as withdrawn through Sh. H.K. Sharma, Advocate. The misconception of facts arose in the mind of the Advocate in respect of withdrawal of the Civil Suit No.342 of 2012 and that misconception was further aggravated when Sh. Ramesh Takhi, Chief Manager of the Bank gave a statement in respect of compromise with the defendant. On the basis of separate statement got recorded by the Chief Manager of the Bank, the suit was dismissed as withdrawn vide order dated 24.07.2014. Presence of Sh. H.K. Sharma, Advocate was again recorded in the said order.

[4]. Sh. Sanjeev Gupta, Advocate filed an application for recalling of the order dated 24.07.2014 and for restoration of the suit. The reference was also made to the statement of the Chief Manager and withdrawal of the suit under some misconception of facts viz-a-viz the connected civil suit, which was to be withdrawn on the basis of compromise.

[4]. In compliance of orders dated 23.08.2016 and

28.11.2016 passed by this Court, an affidavit filed by Raj Kumar Chhoker, Regional Manager, Regional Business Office-1, Panchkula is to the effect that no other work has been allotted to the counsel and his explanation has also been sought in the matter. Counsel has also filed his affidavit that the case was withdrawn under some wrong impression.

[5]. Notice of motion was issued on 23.01.2015. At one point of time, respondent was represented by an Advocate. It was so recorded in the order dated 13.07.2015, but thereafter, learned counsel for the respondent absented from the Court proceedings on 07.12.2015, 17.03.2016, 28.11.2016, 20.01.2017 and today also none has come to attend the case.

[6]. Faced with this situation, this Court proceeded to hear the learned counsel for the petitioner.

[7]. Having considered the submissions made by the learned counsel for the petitioner, I am of the view that Civil Suit No.342 of 2012 was got dismissed as withdrawn under some wrong impression. Though Sh. Sanjeev Gupta, Advocate was engaged to represent the cause of the plaintiff-Bank in Civil Suit No.342 of 2012, but perusal of the order dated 24.07.2014 shows that the order was passed in the presence of Sh. H.K. Sharma, Advocate for the plaintiff. Sh. H.K. Sharma, Advocate is none else, but the counsel who was engaged in Civil Suit

No.401 of 2013, which was ultimately got dismissed as withdrawn on the basis of compromise on 01.07.2014.

[8]. In view of above, I deem it appropriate to preserve the cause of action in Civil Suit No.342 of 2012. Impugned orders are accordingly set aside. The suit is ordered to be restored to its original number. Trial Court may take all consequential steps to restore the suit and issue process to the parties thereafter.

[9]. Disposed of.

01.08.2017
prince
Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No