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

CWP-22387-2015

Date of decision : 17.02.2017

Major Gian Singh Charitable Education Trust and others

... Petitioners

Versus

Lok Adalat, Chandigarh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vishal Sodhi, Advocate
for the petitioners.

Mr. Atul Lakhanpal, Senior Advocate with
Mr. Gagandeep Singh, Advocate
for respondent Nos.2.

Mr. P.S. Mattewal, Advocate
for respondent No.3.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned order dated 30.08.2014 (Annexure P-13), whereby on the statement made by the counsel for the petitioners, the Lok Adalat had granted liberty to withdraw the suit and as well as the order (Annexure P-24), whereby an application for recalling of the same has also been dismissed.

Mr. Vishal Sodhi, learned counsel appearing on behalf of the petitioner submits that the petitioners had instituted suit claiming following relief:-

"It is, therefore, respectfully prayed that a suit for mandatory injunction directing the defendants to vacate the premises consisting of first floor of Annexe portion of House No.39,

Sector 9-A, U.T. Chandigarh and for recovery of ₹ 1,80,000/- as damages @ ₹ 5,000/- per month along with future damages @ ₹ 5,000/- per month from the date of filing of the suit till the actual possession is delivered to the plaintiffs with future interest @ 12% per annum, may be decreed."

The aforementioned suit was contested by the respondent(s) by filing the written statement. However, though the possibility of compromise, the matter was referred to the Lok Adalat. Since the matter could not be compromised, the counsel did not have any power to withdraw the case. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in "Himalayan Cooperative Group Housing Society V/s Balwan Singh" 2015 (7) SCC 373.

On the contrary, Mr. Atul Lakhanpal, learned Senior Counsel assisted by Mr. Gagandeep Singh, learned counsel appearing on behalf of respondent No.2 submits that the objection taken in the written statement reveals that the suit for mandatory injunction, thus, was not maintainable as the relationship between the parties was of a landlord and tenant. The remedy lies elsewhere. No prejudice or harm has been caused to the petitioner, in case, the order is allowed to be sustained. It would be a farcical exercise, in case he continues with the suit.

I have heard the learned counsel for the parties and appraised the paper book.

Without commending upon the merits and demerits of the pendency of the suit and stand taken in the written statement which shall be within the domain of the civil court, I am of the view that counsel could not have suffered a statement, in the absence of specific instructions/affidavit of the petitioner/plaintiff in view of the *ratio*

decidendi culled out by the Hon'ble Supreme Court in "Himalayan's case" (supra).

The Court should be more circumspect in allowing the suit to be withdrawn on the statement of the counsel, must insist for the copy of the affidavit, in order to avoid such circumstances. At the best, the Court could have recalled the order, when application was moved, but the same has erroneously been dismissed.

Leaving the parties to take appropriate remedy in accordance with law with regard to the maintainability of the suit, the orders under challenge are set aside and the suit is ordered to be restored to its original number.

With the aforesaid observations, the present writ petition stands allowed.

17.02.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No