

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

C.R.No.1644 of 2016
Date of Order: 02.02.2018

Puran Singh

....Petitioner

Versus

Gursewak Singh and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harpal Singh Sirohi, Advocate for the petitioner.

Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate for respondent Nos.1 & 2.

AMIT RAWAL, J (ORAL)

Present revision is directed against the impugned order dated 18.1.2016 passed by learned Addl. District Judge, Amritsar whereby the application of the petitioner, seeking restoration of the appeal, which was dismissed as withdrawn, has been dismissed.

Learned counsel for the petitioner submitted that the counsel Sh. Manpreet Singh Gulati was not having correct instructions for withdrawal of the appeal. Even otherwise, without obtaining affidavit of the petitioner, the counsel could not withdraw the appeal. In support, learned counsel relies upon a judgment of Madras High Court reported as '**Mrs. Lakshmi Versus Khader Basha, 2001(2) CTC 203**'.

Per contra, learned counsel for the respondents submitted that once the application for restoration had been submitted by the same counsel, who had filed the appeal, no illegality could be made out in the impugned

order and thus the application has rightly been dismissed.

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

The law with regard to withdrawal of the suit or appeal is no longer res integra. No doubt the application was submitted by the same counsel but there was some miscommunication between the applicant and his counsel. A party could not be prevented from pursuing the appeal preferred under Section 96 CPC. In my view, no harm could be caused to the other party if the impugned order is set aside.

In view of aforesaid, present petition is allowed and order dated 18.1.2016 is recalled and the appeal is restored to its original number subject to payment of Rs. 5,000/- as costs to be paid to the party opposite.

Parties are directed to appear before the learned Lower Appellate Court on 28.02.2018 for adjudication on merits.

February 02, 2018
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No