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

**Civil Revision No.1631 of 2017
Date of Decision: 19.11.2018**

**Mohd. Babu (deceased) through his LRs
.....Petitioners**

Vs

SalmaRespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mohd. Salim, Advocate
for the petitioners.

Mr. Sunny K. Singla, Advocate
for the respondent.

Mr. Akash Singla, Advocate for
Mr. Yaser Ali Khan.

Mr. Goldy Jakhar, Advocate for
Mr. H.S. Brar, Advocate
Secretary, Bar Council of Punjab & Haryana.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 10.12.2013 and 10.01.2017 passed by the Addl. Civil Judge (Sr. Divn.) Malerkotla vide which suit was dismissed as withdrawn on the statement of learned counsel for the plaintiffs and the application for restoration of the same was also dismissed.

[2]. On 07.03.2017, notice of motion was issued on the plea

of learned counsel for the petitioners that the lawyer, who made the statement before the trial Court was never engaged by the plaintiffs, rather his father was engaged. Being son of the Advocate, the lawyer appeared in the case. Learned counsel also stated that the counsel, who appeared in the case was not even an Advocate and was never authorized to make statement in respect of compromise.

[3]. In view of allegations made during course of hearing before this Court, notice was issued to Mr. Yaser Ali Khan on 30.08.2018.

[4]. Vide order dated 11.10.2018, enrollment certificate of Mr. Yaser Ali Khan son of Mohammad Munir Khan was also summoned from the Secretary of Punjab & Haryana Bar Council.

[5]. In pursuance of the aforesaid direction, enrollment certificate of Mr. Yaser Ali Khan as an Advocate was brought by the official of the Bar Council. Perusal of the same would show that Mr. Yaser Ali Khan was earlier enrolled in Bar Council of U.P. Vide order dated 08.09.2009 passed by the Bar Council of India, his candidature was referred to Bar Council of Punjab and Haryana. Thereafter he was enrolled by the Bar Council of Punjab and Haryana vide its resolution No.90/2009 dated 21/23.08.2009.

[6]. Sh. Malkeet Singh, Addl. Secretary of the Bar Council of Punjab and Haryana is present in Court and he has verified the enrollment No.P/3020-1-A/2007 issued to Mr. Yaser Ali Khan, Advocate and the same has not been suspended so far.

[7]. Learned counsel for the petitioners submitted that the order dated 10.02.2013 is not in conformity with Order 23 Rule 3 CPC as no written compromise was placed on record, nor any statements of the plaintiffs were recorded.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. The plea of the petitioners in respect of Mr. Yaser Ali Khan, Advocate on roll of the Bar Council of Punjab and Haryana stands refuted by way of documentary evidence placed by office of Bar Council of Punjab and Haryana.

[10]. The second submission of learned counsel for the petitioners is that Mr. Yaser Ali Khan was never authorized to make statements for withdrawal of the suit on the basis of compromise. The power of attorney available on record of the trial Court would show that Mr. Yaser Ali Khan was signatory to the power of attorney. As per interpretation attached with the power of attorney, an Advocate is duly empowered to act on behalf of the party for whom he is engaged. Ratio of Y.

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and another, 2015(1) R.C.R. (Civil) 89 can be relied.

[11]. The aforesaid precedent coupled with the interpretation attached to Order 3 Rule 4 CPC would show that the authority of Mr. Yaser Ali Khan, Advocate was never revoked by the plaintiffs in the application filed for restoration of the suit. Date of knowledge pleaded by the petitioners is 05.05.2014, whereas in the cross-examination of AW-1 Mohd. Ramzan, it was admitted that on 10.12.2013, his brother Mohd. Babu was sick and could not come to Court and he came on that day at about 4/4.30 p.m. and on that very day Mohd. Munir Khan, Advocate was not present and his clerk told him that the case was dismissed as withdrawn. Mr. Yaser Ali Khan, Advocate used to appear in the Court on each and every date of hearing and factum of dismissal of the case as withdrawn on 10.12.2013 came to the knowledge of the plaintiffs on that very day. Factum of appearing only on 05.05.2014 was nullified.

[12]. The limitation for filing restoration of the suit in terms of Article 122 of Limitation Act is of 30 days, but no application for condonation of delay was filed. The filing of application after a period of 4/5 months was barred by limitation for which no specific explanation has come forth.

[13]. Learned counsel for the respondent placed reliance on order dated 29.05.2014 passed in CR No.6333 of 2012 vide

which revision petition filed by respondent/Salma was dismissed as withdrawn on the basis of compromise. The aforesaid revision petition was filed against the order passed by the lower Appellate Court in an appeal arising out of the application under Order 39 Rules 1 and 2 CPC. Despite the stay granted by the High Court, respondent withdrew the revision petition on the basis of compromise. Withdrawal of the aforesaid revision petition would show that there was a compromise between the parties on the basis of which Mr. Yaser Ali Khan, Advocate made a statement before the trial Court withdrawing the suit and the respondent made a statement in the High Court on 29.05.2014 for withdrawal of the revision petition in which stay was granted against the plaintiffs.

[14]. In view of aforesaid pertinent facts on record, the statement made by learned counsel for the plaintiffs for withdrawal of the suit cannot be viewed to be an act of *mala fide* in terms of powers and authority given in power of attorney. If an Advocate has requisite authorization by means of power of attorney to act on behalf of his client and once the Advocate gets power as in terms of Order 3 Rule 4 CPC, the said power can only be determined with the leave of the Court, otherwise, an Advocate shall be an Advocate for all intents and purposes. Even a compromise can be signed by the Advocate on behalf of

the plaintiff. The requirement of Order 23 Rule 3 CPC can be inferred. In view of facts on record and the filing of application for restoration of the suit was patently time barred, even as per knowledge pleaded by the plaintiffs in the cross-examination.

[15]. For the reasons recorded hereinabove, I find no reasons to interfere in the impugned orders passed by the trial Court. This revision petition is dismissed.

November 19, 2018

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No