

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

C.R.No.3719 of 2015 (O&M)

Date of Decision: May 24, 2018

Parminder Singh

...Petitioner

Versus

Punjab State Power Corporation Limited, Patiala & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Ms.Alisha Arora, Advocate,
for the petitioner.

Mr.Gursimranjit Singh, Advocate,
for respondent Nos.1, 3 & 4.

Mr.PKS Phoolka, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

The present revision is at the instance of the petitioner-plaintiff against the order dated 12.3.2015 (Annexure P-6), whereby the application for review of the order dated 22.4.2013, has been dismissed.

Ms.Alisha Arora, learned counsel for the petitioner submitted that the plaintiff instituted the suit for grant of compensation of ₹49,21,000/- for damages and compensation on account of the financial loss by way of wrongful and negligent act of the defendants of having suffered electrocution and permanent disability.

The aforementioned suit was decreed by the trial Court vide judgment and decree dated 26.7.2012, whereby the compensation to the tune of ₹3,59,636.25P was awarded. The aforementioned judgment and

decree was assailed by defendant No.2 Harish Goyal, Cable Operator and as well as Punjab State Power Corporation Ltd. Since the petitioner-plaintiff was also aggrieved of the judgment and decree, for, lesser compensation was awarded, filed two applications, i.e., one for condonation of delay and another for indigent person. The counsel, without instructions from the plaintiff, withdrew the applications vide order dated 22.4.2013 and having availed the services of different lawyer, application under Section 114 and Order 47 Rule 1 CPC was filed, but the same has erroneously been rejected vide impugned order dated 12.3.2015. In support of her contention, learned counsel for the petitioner relied upon the judgment rendered by the Hon'ble Supreme Court in **Himalayan Cooperative Group Housing Society Versus Balwan Singh**, 2015 (5) JT 624, wherein it has been held that the lawyer cannot be permitted to withdraw the application without any affidavit or the statement of the party.

Mr.Gursimranjit Singh, learned counsel for respondent Nos.1, 3 and 4 and Mr.PKS Phoolka, learned counsel for respondent No.2 submitted that the appeal was hopelessly barred by limitation and since the petitioner-plaintiff was asked to pay the court fees, withdrew the applications and, therefore, the appeal was dismissed being barred by law of limitation, for, the appeal was treated to be barred by law of limitation.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of the learned counsel for the petitioner.

It is a fit case where the Court should have allowed the application for recalling of the order whereby the counsel had suffered a statement for withdrawing two applications without any authority and

permission of the plaintiff. In such circumstances, the Court should have called upon the counsel to submit the affidavit of the party in order to avoid such situation. Similar proposition of law arose for consideration in the judgment cited supra, wherein, while adjudicating fiduciary relationship between a client and advocate, it has been held that powers in the power of attorney cannot be exercised with impunity in the cases where conscious decision is taken to withdraw a suit, for that independent affidavit of the party is required in order to rule out an element of fraud or extraneous situation. It would be apt to reproduce the principles culled out in the aforementioned judgment which read thus:

“i) Lawyers owe fiduciary duties to their clients – lawyers should follow the client's instructions rather than substitute, their judgment for that of the client.

ii) A lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to blind his client to a compromise/settlement.

iii) Lawyers should follow the client's instructions rather than substitute their judgment for that of the client.

iv) In some cases lawyers can make decisions without consulting client – while in other, the decision is reserved for the client.

v) It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make a decision that can affect his rights.”

For the reasons stated above, the impugned orders Annexures

P2 and P6 are set-aside. Appeal is restored to its original number.

Parties, through their counsel, are directed to appear before the Lower Appellate Court on 5.7.2018. Lower Appellate Court shall decide the appeal along with the applications for limitation and indigent person in accordance with law.

Revision petition stands allowed.

May 24, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No