

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

**C.R. No.5855 of 2016 (O&M)
Date of Decision: January 16, 2018**

Om Parkash

...Petitioner

Versus

Nirmala and others

..Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Divya Suri, Advocate
for the petitioner.

Mr. Inderjeet Singh, Advocate
for respondent No.1.

FATEH DEEP SINGH, J.

The petitioner Om Parkash has preferred this revision petition against his sister respondent-Nirmala and others by invoking the provisions of Section 115 of the Code of Civil Procedure (in short, 'CPC') read with Article 227 of Constitution of India, whereby, he has sought to challenge the impugned order dated 05.08.2016 Annexure P/9 on the grounds that same was erroneous and the Subordinate Court lacked jurisdiction and there has been improper exercise of inherent powers under Section 151 of CPC.

Heard learned counsel for the parties. Nirmala daughter of Kundal Lal, the then plaintiff filed against her brother present petitioner

Om Parkash and others a suit for declaration over a dispute of the legacy left behind by their deceased father Kundan Lal arising from a house detailed in the plaint Annexure P/1 claiming that the owner of the property Kundal Lal died 15 years ago and at the time of filing of the suit the share of the property fell in equal parts between the plaintiff and her brother/present petitioner Om Parkash, the then defendant No.1 and Krishna Devi, the latter having died and whose share devolved upon her heirs. By another quirk of fate, Ramesh Kumar, claiming himself to be son of Smt Krishna Devi also filed against Om Parkash and Nirmala and others another suit for declaration and permanent injunction. The suit preferred by Nirmala on the basis of statement of her Advocate Mr. R.K. Taneja made before the Civil Judge Junior Division, Kurukshetra on 16.7.2012 was withdrawn, which is reproduced as under to lay emphasis:-

“It is stated that parties to the suit had amongst themselves amicably settled regarding which the plaintiff has earlier in this case also made a statement. Therefore, does not want to pursue with the suit.”

Thus, a plain reading of the statement shows that the parties to the suit have amongst themselves amicably settled their dispute and, therefore, plaintiff did not want to pursue with the suit and as a consequence, the same was dismissed as withdrawn. Similarly the suit filed by Ramesh/plaintiff was taken up in the Lok Adalat on the application of the plaintiff, where the plaintiff made a statement withdrawing the suit on the ground of compromise. The orders are reproduced as under to lay emphasis:-

“File taken up in Lok Adalat on the application moved by Ld. Counsel for the applicant/plaintiff.

Plaintiff made statement withdrawing the suit on the ground of compromise. His statement is recorded separately. Heard. In view of the statement made by plaintiff, suit stands dismissed as withdrawn. File be consigned to records.”

Thus, from this all, it highlights that both the suits on account of compromise stood dismissed as withdrawn. It is subsequently thereto an application was moved by Nirmala for restoration of her suit. The precise grounds were that she believed the assurance given by the defendant, and as such has given the statement before the Court on 16.7.2012 Annexure P/3. Neither any conditions of the compromise and eventualities were ever spelled out which could necessitate the plaintiff to rake up the plea that the other party has gone back on their compromise and she was entitled for the restitution of her rights. It is the simple statement withdrawing the suit on the basis of compromise.

Learned counsel could not convince this Court how or in what means the plaintiff is entitled to seek relief for continuation of her suit which she had earlier withdrawn. Neither there is any plea having mistakenly done so on wrong legal advice or misconduct on the part of the counsel, thus, giving her right to seek such a remedy. Learned counsel for the petitioner has placed reliance on **2013((25) RCR (Civil) 832 Smt Simal and others vs. M/s Maharashtra Savings, New Delhi** to hammer home the point that since the suit has simply been withdrawn without any condition having been recorded in compromise, thus, no such application under Section 151 CPC was maintainable for recalling the order and the plaintiff may have recourse to other remedy. The suit was still at preliminary stage and, thus, the plaintiff cannot seek invocation of inherent powers of the

Court for reviving of the suit in question. Since it was the own volition of the plaintiff, who filed the suit which was listed before the competent Court of appropriate jurisdiction and it was on the voluntary act of the plaintiff she has withdrawn her suit. To the mind of this Court, it is not an eventuality to undo the injustice by exercising its powers and, more so, it is by now well settled proposition of law that provisions of Section 151 CPC which are purely to supplement and not to replace the remedy provided by the Code. The plaintiff is well within her right to have recourse to other provisions of law rather than coming up before this Court through the instant revision petition. More so, by virtue of Section 20 of Legal Service Authorities Act, 1987 (in short, 'the Act') once a cognizance has been taken by the Lok Adalat and by virtue of Section 21 of the Act such an award of Lok Adalat attains the position of decree of a civil Court and, therefore, the plaintiff needs to have recourse as per law and not to file direct civil revision. How the learned Court below considering the application of the plaintiff-applicant for restoration of suit allowed the same and restored the suit to its original number is certainly inherent lack of jurisdiction as once an award has been passed by the Lok Adalat the only remedy available to the then applicant/plaintiff was to invoke the writ jurisdiction of this Court under Articles 226 and 227 of Constitution of India. More so, by doing so the learned Civil Judge, Junior Division has not only passed inherently illegal *void ab initio* order but has certainly misused its powers transgressing its limits under the canons of Legal Jurisprudence. The Presiding Officer certainly has acted in a flagrant manner and the impugned order is certainly bad in law. Thus, this Court by exercising its powers under Section 151

CPC allows the present revision petition, thereby, setting aside the impugned order dated 05.08.2016 passed by the Court below.

(FATEH DEEP SINGH)
JUDGE

January 16, 2018

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No