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

CR-5933-2015 (O&M)

Date of decision : 15.02.2018

Sadeeq

... Petitioner(s)

Versus

Baldev Singh

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjeev Sharma, Advocate
for the petitioner.

Mr. J.S. Bhullar, Advocate for
Mr. MJS Bedi, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order dated 20.02.2014, whereby an application for recalling of the order dated 03.12.2009, vide which, the suit bearing No.580 of 2008 titled as “Sadeeq V/s Baldev Singh” for permanent injunction was withdrawn by the counsel for the plaintiff without obtaining affidavit or instructions, has been dismissed.

Mr. Sanjiv Sharma, learned counsel appearing on behalf of the petitioner-plaintiff submits that the petitioner-plaintiff had filed the civil suit for permanent injunction restraining the defendant from causing interference into the possession of the plaintiff over the house comprising of Rect. No.14 Killa No.22/1 (0-19), situated in Village Fattu Wala, Tehsil and

District Ferozepur, accompanied by an application under Order 39 Rule 1 & 2 CPC. The matter was referred to the Lok Adalat. However, learned counsel representing the plaintiff, without instructions or affidavit of the client, withdrew the aforementioned suit on 03.12.2009. An application (Annexure P-3) for recalling of the order was moved, which has erroneously been dismissed. 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(3) RCR (Civil) 394, thus, urges this Court for setting aside the impugned order dated 20.02.2014, under challenge.

Learned counsel for the respondent-defendant submits that before the Lok Adalat, a specific statement was made that the respondent-defendant has nothing to do with the property and he has unnecessarily been arrayed as party in the suit and rightly so, the application has been dismissed as there is no provisions for restoration, thus, urges this Court for dismissal of the present revision petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and merit in the submissions of Mr. Sharma. The Hon'ble Supreme Court in Himalayan Cooperative Group Housing Society's case (supra) has laid down certain principles in cases, where the lawyer makes a statement withdrawing the suit or the defence of the defendants, the same reads 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 bind 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 others, 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 decisions that can affect his rights.”

The present case is identical of that nature, where the counsel without seeking instructions or affidavit of the plaintiff, had withdrawn the suit, which is not permissible in the eyes of law. The Court below ought to have adopted a pragmatic and reasonable approach in considering the application (Annexure P-3), but the same has erroneously been dismissed.

For the foregoing reasons, the impugned orders dated 20.02.2014 and 03.12.2009, are not sustainable in the eyes of law and the same are hereby set aside, subject to the payment of cost of ₹200/- as the petitioner-plaintiff is represented by the Legal Aid Counsel. The suit of the plaintiff is ordered to be restored to its original number.

The present revision petition stands allowed.

15.02.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**