

111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 7141 of 2017(O&M)
Date of decision : 15.03.2018

Raj Kumar

.....Petitioner

versus

Smt.Ram Wati

.....Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr.Mukesh Rao, Advocate
for the petitioner.

KULDIP SINGH, J. (Oral)

CM-4569-CII-2018

This is an application for condonation of delay of 321 days in
refiling the present petition.

For the reasons recorded in the application, the delay is
condoned.

CM stands disposed of.

Main case

Heard.

Impugned in the present petition is order dated 16.01.2015
(Annexure P-2) passed by Presiding Officer, Daily Lok Adalat-cum-Civil
Judge(Sr.Division), Faridabad, whereby the suit filed by the plaintiff-
petitioner was dismissed as withdrawn by the counsel. Also impugned is
order dated 30.08.2016 (Annexure P-5) vide which review application was
dismissed.

It comes out that suit for recovery was pending in which defendant was ex parte. It appears that the matter was fixed before the Daily Lok Adalat on 16.01.2015 where the counsel for the plaintiff-petitioner made a statement that the matter has been compromised, therefore, he does not want to proceed with the present suit and withdraws the same. Accordingly the suit was dismissed as withdrawn/compromised and as per Section 21 of the Legal Services Authority Act, 1987, the Court fee was ordered to be refunded. A review application against the said order was filed by the plaintiff after about four months which was also dismissed vide order dated 30.08.2016.

Learned counsel for the petitioner has argued that he had not given any instruction to the counsel to withdraw the suit and that withdrawal of the suit is without any authority. He has also not taken back the Court fee. Learned counsel has relied upon the authority of the Apex Court in **Himalayan Cooperative Group Housing Society v. Balwan Singh, 2015 AIR(SC) 2867**, wherein it has been observed as under:-

“23. Apart from the above, in our view lawyers are perceived to be their client’s agents. The law of agency may not strictly apply to the client – lawyer’s relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject matter of the retainer. One of the most basic principles of the lawyer-client relationships is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe their principals and, thus, have to respect the client’s autonomy to make decisions at a minimum, as to the objectives of the representation. Thus,

according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now well settled that 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. To put it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyers conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel."

Learned counsel has also produced judgment of the Coordinate bench passed in case bearing CR No.316 of 2015 titled as Krishan v. Chattar Singh and others decided on 31.05.2017 wherein, in case of withdrawal of a suit by the counsel, the revision was allowed. When the facts of this case are examined, it comes out that the matter was fixed before the Lok Adalat. Defendant was ex parte in this case. It was before the Lok Adalat that the counsel had made the statement that the matter has been compromised, therefore, he withdraws the suit. The contention of learned counsel for the petitioner that he had not given such instructions to the counsel cannot be accepted from its face. There was no reason for the counsel to state so before the Lok Adalat, particularly when there was no opposite party/counsel any authority and the matter might have been fixed before the Lok Adalat on the request of the plaintiff since defendant was ex parte. It is possible that the plaintiff has now changed his mind. The order was passed by the Lok Adalat. In the authority of the Apex Court in the case

of Himalayan Cooperative Group Housing Society(supra), the comments are regarding compromise. In this case there is no compromise and the suit has been simply withdrawn stating that the matter has been compromised between the parties. Admittedly, in case if there is a compromise between the parties and compromise order is sought, the said compromise is to be placed on the file and the statement of the parties is to be recorded. It is not so in the present case. It depends upon the facts of each case as to whether the statement of counsel should be taken as an instruction from the party?”. I am of the view that if for every withdrawal of the suit/petition or application, the presence of the parties is insisted upon by the Courts, it will create a chaos. It being so, I am of the view that in the present case, the counsel apparently acted on the instructions of the plaintiff and withdrew the suit before the Lok Adalat, therefore, there is no infirmity or illegality in the order passed by the Courts below. As such, the revision is dismissed.

Since the main revision has been allowed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

15.03.2018
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No