

“Present: Shri R.L. Luthra, counsel for appellant.
Shri Naresh Batra, GPA of respondent in person.
Counsel for the appellant has made the statement

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that already possession has been taken by decree holder-respondent in this appeal through learned trial Court and this appeal has become infructuous. So, in view of his statement, appeal stands disposed off having become infructuous. Trial Court file be sent back with copy of this order and file of this Court be consigned.

Sd/- 7.3.2014
(Ranjit Kumar Jain)
Additional District Judge,
Chandigarh.”

After passing of said order, present application under Section 151 of Civil Procedure Code, 1908, was filed on 11.11.2014 for recalling the order. The trial Court has taken the view that on the basis of statement suffered by counsel for applicant, appeal was withdrawn. Therefore, it cannot be restored.

The learned counsel for petitioner has placed reliance upon authority of Apex Court in *Singh Ram (D) through L.Rs. Versus Sheo Ram and others*, 2014 AIR (SC) 3447, to press that in case of usufructuary mortgage, mere expiry of a period of 30 years from the date of creation of mortgage does not extinguish the right of mortgagor under Section 62 of Transfer of Property Act. The said authority is regarding merits of the appeal.

The short question before this Court is as to when the appeal was withdrawn on the statement of counsel that it has become infructuous then whether same can be restored on subsequently filing an application under Section 151 Civil Procedure Code, 1908 ?

I am of the view that appeal was admittedly withdrawn. It was for the party to verify whether the appeal becomes infructuous or survives on merits. Once the appeal is withdrawn, power under

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Section 151 of Civil Procedure Code, 1908, cannot be exercised subsequently, to restore the same saying that statement was wrongly made.

Consequently, instant revision is dismissed.

(KULDIP SINGH)
JUDGE

15.2.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No