

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 82-2017 (O&M)

Date of decision: 03.04.2018

Ram Kishan @ Kishan Lal

.....Petitioner

versus

Bishan Dayal and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sudhanshu Makkar, Advocate for the petitioner
Mr.Kunal Mulwani, Advocate for respondent no.1

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 14.12.2016 (Annexure P-11) passed by learned Additional District Judge, Bhiwani (wrongly mentioned as Motor Accident Claims Tribunal), whereby an application dated 8.9.2015, filed by the plaintiff for restoration of the appeal and setting aside the order dated 26.2.2015, withdrawing the appeal, allegedly on the bona fide mistake of the counsel was dismissed.

I have heard learned counsel for both the parties and have also carefully gone through the file.

It comes out that vide judgment dated 5.8.2006, a preliminary decree for partition was passed wherein it was observed that at the time of final partition, trial Court shall take into consideration the factum of exclusive possession of the parties to the suit. During proceedings of the final decree, a report of the Local Commissioner (Annexure P2) was

obtained, who also submitted the site plan. Accordingly, final decree was passed by the trial Court vide order dated 1.3.2011 (Annexure P3). The present petitioner who was defendant in the said case was not satisfied with the said decree and filed appeal before the learned Additional District Judge, Bhiwani. It also comes out that in the meanwhile, execution was filed before the trial Court, which was dismissed by the trial Court vide order dated 22.3.2013, stating that neither the decree holder nor the JDs are giving any suggestions, therefore, the execution was dismissed. The said order was also challenged by the decree holder before the lower appellate Court. Ultimately, the learned Additional District Judge, Bhiwani, vide order dated 30.5.2015, set aside the order of the Executing Court and directed to enforce the final decree. In the meanwhile, in the proceedings in the appeal against the final decree, counsel for the present petitioner Mr.D.D.Aggarwal made a statement on 26.2.2015 stating that the appeal against the execution is pending, therefore, he withdraws the appeal. Accordingly, learned Additional District Judge (wrongly written as Additional Sessions Judge), Bhiwani passed the order in the Daily Lok Adalat, whereby in view of the statement of the counsel for the appellant, appeal was dismissed as withdrawn.

Thereafter, after about little less than seven months i.e. On 8.9.2015, an application was filed by the present petitioner for setting aside the order dated 26.5.2015 and restoring the appeal deciding the same on merits on the ground that it was a bona fide mistake on the part of the counsel. The said application was dismissed vide impugned order dated 14.12.2016.

Learned counsel for the petitioner states that it was a bona fide

mistake on the part of the counsel to make statement withdrawing the appeal on the ground that the appeal against the execution is also pending. Execution was dismissed by the Executing Court.

First of all, it comes out that the present application was filed after little more than six months of the passing of the impugned order. It is not understood that the plaintiff did not come to know about the withdrawal of the appeal. Lower Appellate Court restored the execution vide order dated 30.5.2015. Even thereafter, application was filed after more than three months.

Learned counsel for the appellant has relied upon the authority Himalayan Cooperative Group Housing Society vs. Balwan Singh, 2015 AIR (SC) 2867, to state that Advocate could not make a statement or compromise without the instructions of the client. Further reliance is placed upon the authority in Shaikh Salim Haji Abdul Khayumsab vs. Kumar and others, 2006 AIR (SC) 396. Further reliance is placed on the authority in Lala Mata Din vs. A. Narayanan, 1969(2) Supreme Court Cases 770, wherein in application for condonation of delay, it was held that mistake of the counsel without any mala fide motive cannot be tainted not to condone the delay.

Learned counsel for the appellant has stated that he was in possession of the Western portion and Eastern portion has been allotted to him in the preliminary decree. Therefore, he has preferred an appeal against the passing of the final decree. Mere fact that appeal against the order of the Executing Court was pending was no ground to withdraw the appeal.

On the other hand, learned counsel for respondent has contended that one shop out of the Eastern portion was sold by the present

petitioner regarding which suit for specific performance was filed and decreed by allowing symbolic possession to the tenant.

I am of the view that the appeal was unconditionally withdrawn on account of pendency of the appeal against the execution. It was not withdrawn on any other ground. Appeal was withdrawn in the Daily Lok Adalat by the counsel who is stated to be quite senior. Therefore, it cannot be said that there was a bona fide mistake on the part of the counsel. A specific area was allotted to the present petitioner in the final decree and he dealt with the part of the same. Therefore, there is no ground to allow restoration of the appeal by setting aside the impugned order.

Resultantly, the present revision petition stands dismissed.

Since the main case has been dismissed, therefore, the pending CM, if any, also stands disposed of.

03.04.2018

gk

(Kuldip Singh)

Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

No