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

**Civil Revision No.6389 of 2018 (O&M)
Date of Decision: 15.11.2019**

HARISH CHANDER

.....Petitioner

Vs

**HARYANA URBAN DEVELOPMENT AUTHORITY AND ANR
....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sachin Gupta Ladwa, Advocate
for the petitioner.

Mr. Anil Chawla, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has challenged the order dated 12.07.2018 passed by the District Judge, Kaithal vide which the application for restoration of appeal was dismissed.

[2]. At one point of time, the appeal was pending before the District Judge in which statement was made by Sh. Sushil Kumar Goyal, Advocate for the appellant/petitioner-herein in the context of withdrawal of the appeal. For ready reference the statement so recorded by the Court is reproduced hereasunder:-

“Statement of Shri Sushil Kumar Goel, Advocate for

appellant.

Without oath.

I withdraw the appeal in view of the fact that I have been given the liberty in the impugned judgment to apply for allotment of plot under oustee quota along with earnest money in pursuance of any public advertisement issued by the defendants in future and appellant would apply for the same accordingly.”

RO&AC

Sd/-
District Judge, Kaithal
24.5.2018”

[3]. Thereafter the order was passed by the District Judge, Kaithal on the basis of aforesaid statement and the appeal was ordered to be dismissed as withdrawn vide order dated 24.05.2018. The application filed for recalling of the aforesaid order and for restoration of the civil appeal was dismissed vide order dated 12.07.2018 and the present revision has been filed against the said order.

[4]. Perusal of the record would show that the suit filed by the plaintiff for mandatory injunction was dismissed by the trial Court vide judgment and decree dated 22.08.2012. It was observed in relief clause that the plaintiff is at liberty to apply for allotment of plot under *oustee* quota along with earnest money in pursuance of any public advertisement issued by the defendant (HUDA) in future. The appeal was preferred in which impugned proceedings have taken place.

[5]. Learned counsel for the petitioner submitted that there was no occasion for the petitioner to reiterate before the lower

Appellate Court, the grounds on which his suit was dismissed by the trial Court. Initially the appeal was dismissed on the ground of limitation. CR No.2051 of 2014 was preferred by the petitioner and the same was allowed vide order dated 01.05.2018 and the appeal before the lower Appellate Court was restored after condonation of delay.

[6]. In view of law laid down by the Hon'ble Apex Court in **State of Maharashtra vs. Ramdas Shrinivas Nayak and another, 1982 AIR (SC) 1249; Commissioner of Customs, Mumbai vs. Bureau Veritas and others, (2005) 3 Supreme Court Cases 265; Jagvir Singh & Ors. vs. State (Delhi Admn.), 2007(3) R.C.R. (Civil) 375** and **Om Parkash vs. Principal, Government Sr. Secondary School, Nilokheri and others, 2012(19) R.C.R. (Civil) 279**, in the event of finding of error in recording the order, it was incumbent upon the petitioners to move an application for correction before the same Court. The petitioner has rightly approached the Court of District Judge for recalling the order dated 24.05.2018.

[7]. After considering the facts and circumstances of the case, I find that the suit was dismissed by the trial Court owing to the policy decision of the HUDA and that very ground was allegedly pleaded by learned counsel for the petitioner before the lower Appellate Court which resulted in dismissal of the

appeal as withdrawn.

[8]. In view of **Jet Ply Wood Private Ltd. & Anr vs. Madhukar Nowlakha & Ors., 2006(2) R.C.R. (Civil) 593**, this Court has inherent power to allow recall of the order and restore the appeal to its original number. In any case restoration of appeal would not give rise to any such hardship to the respondents. At the most the appeal will be heard on merits. Respondents would be at liberty to oppose the entitlement of the appellant in appeal on merits by referring to the policy decision of the department/HUDA based on Full Bench decision of this Court in **Rajiv Manchanda and others vs. Haryana Urban Development Authority and another, 2018(4) R.C.R. (Civil) 508**.

[9]. For the reasons recorded hereinabove, the impugned order dated 12.07.2018 passed by the District Judge, Kaithal is set aside. The revision petition is allowed. Consequently, the appeal before the District Judge, Kaithal is ordered to be restored to its original number. The Appellate Court shall proceed to decide the appeal on merits.

November 15, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No