

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 346 of 2020

- Laxmikant, S/o Late Juraan, Aged About 65 Years, R/o. P.V. No. 72, Village Chandanpur, Police Station and Tehsil Pakhaanjoor, District Uttar Bastar, Kanker (Chhattisgarh) (Plaintiff In Civil Suit No. 11 A/08 And Appellant In Civil Appeal No. 5 A/15), District : Kanker, Chhattisgarh

---- Petitioner

Versus

1. Dinesh Vishwas, S/o Late Juraan, Aged About 73 Years, R/o P.V. No. 72, Village Chandanpur, Police Station and Tehsil Pakhaanjoor, District Uttar Bastar, Kanker Chhattisgarh....(Defendant In Civil Suit No. 11 A/08 And Respondent In Civil Appeal No. 5 A/15).
2. State of Chhattisgarh Through The District Collector, Collectorate, District Uttar Bastar, Kanker (Chhattisgarh).....(Defendant In Civil Suit No. 11 A/08 And Respondent In Civil Appeal No. 5 A/15).

---- Respondents

For petitioner	:	Mr. Siddharth Dubey, Advocate.
For respondent/State	:	Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

01/02/2021

1. The petition has been brought being aggrieved by the order dated 13.07.2017 (Annexure P-2) passed by the learned Additional District Judge, Bhanupratappur, District-Kanker, Chhattisgarh dismissing the appeal filed by the petitioner.
2. It is submitted by the learned counsel for the petitioner that the counsel for the appellant/petitioner, without there being any instructions from him, filed an application for withdrawal of the appeal and the same same been erroneously allowed by the appellate Court against the provisions of law, hence, the impugned order is not sustainable. Prayer has been made to quash the same.

3. Perused the impugned order dated 13.7.2017 (Annexure P-2). The order-sheet mentions that the counsel for appellant appeared before the Court and filed an application for withdrawal of the appeal. It was mentioned in the application that the counsel had sent number of notices to the appellant but the appellant has not appeared, therefore, the appellant counsel has prayed that he does not want to continue with appeal and he may be permitted to withdraw the same. The learned trial Court granted permission and passed the order of dismissal of the appeal on the basis of the withdrawal application.
4. The procedure in appeal is specifically provided under Order 41 of the Code of Civil Procedure. There is no such rule present under Order 41 according to which a prayer can be made for withdrawal of an appeal. Order 41 Rule 17 of CPC provides for dismissal of appeal for appellant's default. Apart from that there is no other Rule in Order 41 of CPC under which any prayer can be made for withdrawal of an appeal.
5. Withdrawal of civil suit is provided under Order 23 Rule 1 CPC, according to which after the institution of suit, the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim. The words are specific that withdrawal of a civil suit can only be made under this provision and it is nowhere provided that Order 23 of CPC is applicable to appeal also. Hence, the application filed by the counsel for appellant before the appellate Court by itself was without any authority of law. Secondly, the statement made in the application, which is also mentioned in the order-sheet, that the counsel was not in contact with the appellant concerned, it can be clearly presumed that the counsel was not having any instruction from the appellant i.e. petitioner herein, for filing application for withdrawal that he had filed.
6. Order 3 Rule 1 of CPC provides that a pleader may give appearance on behalf of the party engaged by him. Filing of an application by the counsel before the appellate Court on 13.7.2017 cannot be said to be made on behalf of this appellant, hence, again the application filed was without any authority of law and it appears that the counsel has acted of his own without any instruction of this petitioner. The learned

appellate Court has equally contributed in passing the order which is totally illegal and incorrect. Hence, for these reasons, I am of this view that the petitioner is entitled for the relief as claimed.

7. Accordingly, the petition is disposed of at the motion stage itself. The impugned order dated 13.7.2017 passed by the Additional District Judge, Bhanupratappur in Civil Suit No.58/2015 is hereby quashed. The appellant is directed to give appearance before the concerned Court on **24.02.2021**.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha