

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

**RA-CW No. 115 of 2021 (O&M) in
CWP No. 6558 of 2021
Date of Decision: 17.05.2021**

Smt. Swarnpreet Kaur and others

.....Applicants-Petitioners

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Gurpartap Singh – GPA holder of petitioner Nos. 1 & 2,
in person.

Ms. Shruti Jain Goyal, Deputy Advocate General, Haryana.

*[The aforesaid presence is being recorded through video conferencing since
the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

CM No. 6477-CWP of 2021

Present application under Section 5 of the Limitation Act, 1963 read with Section 151 CPC moved by the applicants-petitioner Nos. 1 & 2 through their GPA holder – Mr. Gurpartap Singh, is for condonation of delay of **five (05) days** in filing of the review of judgment / final order dated 22.03.2021 in CWP No. 6558 of 2021 passed by this Court.

Application is **allowed**. The delay of five **(05) days** in filing the review application, being insignificantly small, is **condoned**.

Registry to place the same at appropriate place in the paper-book and paginate accordingly.

RA-CW No. 115 of 2021

This is an application filed by General Power of Attorney (GPA) holder of applicants / petitioner Nos. 1 & 2, seeking review of the order dated 22.03.2021 passed by this Court, whereby their writ petition was disposed off in view of the prayer made by their counsel during the course of arguments, to not press the writ petition in view of the observations made by this Court and instead approach the Department of Town & Country Planning (DTCP) and Haryana Urban Development Authority (HUDA) for seeking external development works around the Complex.

[2] The attorney holder has argued in person, and submitted that he had never authorized his counsel to withdraw the writ petition *qua* the challenge to the impugned occupation and completion certificates (**Annexures P-13 & P-21**). It is further submitted that as the hearing of the case took place through virtual Court and the petitioners had no opportunity of hearing the proceedings in the Court room, therefore, there arose no occasion either for them or for their Power of Attorney holder to give appropriate instructions. It is, therefore, argued that the instant application be allowed, and the matter be heard on merits.

[3] We have heard the review applicant at length and have perused the paper-book, especially the contents of review application filed by the petitioners as well, considering the fact that the matter has been argued by a party in person. However, we are of the opinion that instant application is devoid of any merit.

[3.1] The parameters for exercising powers for reviewing an order are very limited. We can review an order in case a material fact has been

ignored by the Court, while passing the order. However, no such fact has been shown to us that has either not been considered or ignored while passing the order dated 22.03.2021. Infact, a perusal of the review application filed by the petitioners would show that the grounds taken before us are as if an appeal is being preferred against our own judgment. It is settled position of law that the scope of review is only to rectify factual or legal error which is apparent on the face of record. Any other aspect which touches the merits of the case and would require us to re-open the issue again in order to ascertain the factual contentions is completely beyond the scope of review. Hence, without going into detail on the grounds taken by the petitioners, we find that the issues raised therein are beyond the scope of review application, and hence declined.

[3.2] As far as the main argument raised before us for seeking review during the course of oral arguments, regarding no instructions having been given by the petitioners to their counsel is concerned, suffice it say, said argument is completely fallacious. A bare perusal of the *vakalatnama* signed by the petitioners would show that their counsel was authorized to withdraw/compromise the matter in case need arises and this act has been duly ratified by the petitioners in *vakalatnama* itself. For ready reference, Clauses 4 and 8 of the *vakalatnama* are reproduced as under:

“4. *To withdraw or compromise the said case or submit to arbitration any differences or disputes that my arise touching or in any manner.*

8. *And I / We the undersigned do hereby agree to rectify and confirm all acts done by the Advocate or his substitute in the matter as my / our own acts, as if done by me / us to all intents and proposes. ”*

[3.3] It is not in dispute that at the time of arguing the matter before us, the counsel was duly authorized to appear and plead on behalf of petitioners in terms of Order 3 Rule 4 of CPC. It is further clear from the order dated 22.03.2021 that in view of the fact that we were not inclined to interfere in the case on merits, the counsel while exercising his legal judiciousness decided to withdraw the writ with a liberty to pursue the remedies which lie elsewhere. Once that is so, the petitioners cannot be permitted to now allege that in view of lack of instructions given to the counsel, he was not competent to withdraw. Although, it is always desirable for a counsel to seek written instructions before taking action which might lead to litigation at subsequent point of time, however, even this recourse of taking instructions is also not always practically possible. At this stage, we would like to refer to the judgment passed by Hon'ble Supreme Court in ***Jagtar Singh Versus Pargat Singh, 1996(11) SCC 586***, wherein the Hon'ble Supreme Court while considering a similar issue has held as under:-

“ 3. The learned counsel for the petitioner has contended that the petitioner had not authorised the counsel to withdraw the appeal. The Court, after admitting the appeal has no power to dismiss the same as withdrawn except to decide the matter on merits considering the legality of the reasoning of the trial court and the conclusions either agreeing or disagreeing with it. We find no force in the contention. Order 3, Rule 4, Civil Procedure Code empowers the counsel to continue on record until the proceedings in the suit are duly terminated. The counsel, therefore, has power to make a statement on instructions from the party to withdraw the appeal. The question then is : whether the court is required to pass a reasoned order on merits against the decree appealed from the decision of the Court of the Subordinate Judge? Order 23,

Rule 1(1) and (4) give power to the party to abandon the claim filed in the suit wholly or in part. By operation of Section 107(2) of the Civil Procedure Code, it equally applies to the appeal and the appellate Court has co-extensive power to permit the appellant to give up his appeal against the respondent either as a whole or part of the relief. As a consequence, though the appeal was admitted under Order 31, Rule 9, necessarily the Court has the power to dismiss the appeal as withdrawn without going into the merits of the matter and deciding it under Rule 11 thereof.

- 4. Accordingly, we hold that the action taken by the counsel is consistent with the power he had under Order 3, Rule 4, Civil Procedure Code. If really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere and the procedure adopted by the Court below is consistent with the provisions of Civil Procedure Code. We do not find any illegality in the order passed by the Additional District Judge as confirmed by the High Court in the revision.”**

[3.4] Similarly, the Hon’ble Supreme Court in ***Bakshi Dev Raj and another Versus Sudhir Kumar, 2011(4) SCC (Civil) 353***, had again reiterated the proposition of law as held in ***Jagtar Singh’s case (supra)*** and held that any act by the counsel having a valid power of attorney in terms of Order 3 Rule 4 of CPC is legally permissible. For ready reference, the relevant paragraph 15 of the judgment is reproduced as under:-

- “ 15. The analysis of the above decisions make it clear that the counsel who was duly authorised by a party to appear by executing Vakalatnama and in terms of Order 3 Rule 4, empowers the counsel to continue on record until the proceedings in the suit are duly terminated. The counsel, therefore, has power to make a statement on instructions from the party to withdraw the appeal. In such circumstance, the counsel making a statement on instructions either for withdrawal of**

appeal or for modification of the decree is well within his competence and if really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere. Though learned counsel for the appellant vehemently submitted that the statement of the counsel before the High Court during the course of hearing of Second Appeal No. 19 of 2005 was not based on any instructions, there is no such material to substantiate the same. No doubt, Mr. Garg has placed reliance on the fact that the first appellant was bedridden and hospitalized, hence, he could not send any instruction. According to him, the statement made before the Court that too giving of certain rights cannot be sustained and beyond the power of the counsel. It is true that at the relevant time, namely, when the counsel made a statement during the course of hearing of second appeal one of the parties was ill and hospitalized. However, it is not in dispute that his son who was also a party before the High Court was very much available. Even otherwise, it is not in dispute that till filing of the review petition, the appellants did not question the conduct of their counsel in making such statement in the course of hearing of second appeal by writing a letter or by sending notice disputing the stand taken by their counsel. In the absence of such recourse or material in the light of the provisions of the Civil Procedure Code as discussed and interpreted by this Court, it cannot be construed that the counsel is debarred from making any statement on behalf of the parties. No doubt, as pointed out in Byram Pestonji (supra), in order to safeguard the present reputation of the counsel and to uphold the prestige and dignity of legal profession, it is always desirable to get instructions in writing.”

(JASWANT SINGH)
JUDGE

'*dk kamra*'

JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>