

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

CR-4754-2018 (O&M)

Reserved on: 03.02.2023

Date of pronouncement: 13.02.2023

Sukhdev and others

...Petitioners

Versus

Balbir Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. R.S. Dhiman, Advocate for the petitioners.

None for the respondent.

H.S. MADAAN, J.

Under challenge in this revision petition is order dated 04.05.2018 passed by Addl. District Judge, Chandigarh vide which he had dismissed an application under Section 151 CPC moved by the petitioners for recalling of order dated 12.12.2015 passed by the then Addl. District Judge, Chandigarh, vide which the appeal filed by the petitioner/appellants had been withdrawn by their counsel statedly without their consent, permission and knowledge and to allow the prayer for restoration of the appeal at its original number and its decision on merits.

2. Briefly stated facts of the case are that an appeal filed by appellants Sukhdev Singh and others against Balbir Singh and others

was pending in the Court of Addl. District Judge, Chandigarh in which judgment and decree dated 29.11.2014 passed by the then Civil Judge (Jr. Divn.) Chandigarh dismissing the suit for decree of mandatory injunction and recovery filed by appellant/plaintiffs had been challenged. The appellants had engaged Sh. Harish Bhardwaj, Advocate to pursue that appeal on their behalf. As a matter of fact, Sh. Harish Bhardwaj, Advocate had represented the appellant/plaintiffs before the trial Court also.

According to the applicants/appellants, Sh. Harish Bhardwaj, Advocate had connived with respondent/defendants Balbir Singh etc., and had withdrawn the said appeal by making a statement in the Court on 24.11.2015. According to applicants/appellants, Sh. Harish Bhardwaj, Advocate had withdrawn the appeal without their consent, therefore, order is liable to be recalled. They had moved an application in that regard before Addl. District Judge, Chandigarh. Notice of that application was given to the respondents who put in appearance and filed written reply, contesting the application, contending that it was based upon wrong assertions. As a matter of fact, Sh. Harish Bhardwaj, Advocate had made a statement in the Court with regard to withdrawal of the appeal on instructions of appellants/applicants and if he had done so without instructions from applicants, then the applicants would definitely have initiated proceedings against him before Bar Council of Punjab & Haryana,

Chandigarh but no document is available on the file in that regard. The applicants have concocted this story because respondent Balbir Singh had filed a civil suit for recovery of Rs.50 lacs as damages from applicants for leveling of false and frivolous allegations against them. The respondent had prayed for dismissal of the application.

3. Vide order dated 04.05.2018, the application was dismissed. The operative part of the order runs as under:-

“5. After having heard learned counsel for the parties and after having gone through the case file minutely, this court has arrived at the conclusion that the application in hand deserves dismissal primarily on account of the reason that judicial conscience of this court is fully satisfied that actually the applicants have moved the present application only in order to exert pressure upon the respondent because the whole story concocted by the applicants does not seem to be probable because admittedly Sh. Harish Bhardwaj Advocate had defended the case of the applicants before Id. Trial court and thereafter he had been again engaged by them for pursuing the appeal instituted by them and also for defending their rights in the counter-appeal filed by respondent and this fact establishes that applicants had reposed full faith in Sh. Harish Bhardwaj, Advocate. Even otherwise, admittedly the said appeal had been dismissed as withdrawn vide order dt. 12.12.2015 whereas the present application has been moved on 5.4.2017 and it means that present application has been moved after 16 months approximately from the date of dismissal of the said appeal and it is absolutely improbable that applicants had not been in touch with their counsel for such a long time to make enquiry with regard to progress of their case and this fact is absolutely not prob-

able that factum of dismissal of the appeal had not come to their knowledge for a period of 16 months especially when the court orders are being uploaded on court website regularly and anybody can obtain the copy of the order from the court website. Although in all the authorities, which have been relied upon by ld. Counsel for the applicants, it has been observed that court is competent to recall the said order, but those orders had been passed in peculiar facts and circumstances of those cases, whereas in the present case, this court is of the considered opinion that actually Sh.Harish Bhardwaj Advocate has made the statement in the court on the instructions of the applicants/appellants and now they have moved the present application by concocting a false story. Hence the present application stands dismissed. File be consigned to records.”

4. Feeling aggrieved by the said order, the applicant/petitioners have approached this Court by way of filing the present revision petition, notice of which was given to the respondent, who had earlier put in appearance but subsequently stopped doing so.

5. I have heard learned counsel for the revision petitioners besides going through the record and I find that the order under revision is quite detailed and well reasoned. It does not suffer from any illegality or infirmity. No element of arbitrariness or perversity in passing of the order comes out to be there. The application for recalling of the order dismissing the appeal as withdrawn and restoring it at its original number was rightly declined by the Court of Addl. District

Judge, Chandigarh. There is no reason to upset the said order by exercising revisional jurisdiction. The revision petition is found to be without merit and is dismissed accordingly.

13.02.2023
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No