2023:PHHC:162382

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-8270-2016(O&M)
Date of Decision: December 18, 2023

Satish Kumar

...Petitioner

Versus

SDO (Operation) Sub Division, DHBVN Narwana and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Naveen Gupta, Advocate
for the petitioner.

Mr.Arvind Seth, Advocate
for the respondents.

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ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 25.05.2016 (Annexure P-1), passed by learned lower Appellate Court, whereby, an appeal of the petitioner against the judgment and decree dated 22.01.2016, was dismissed as withdraw. Besides the same, the petitioner also challenged the order dated 16.09.2016 (Annexure P-5) passed by learned lower Appellate Court, whereby, an application for restoration of the appeal has been dismissed.

In pursuance of the notice issued, the respondents made appearance through counsel.

Learned counsel for the parties heard.

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The essential facts, as culled from the paperbook, are as follows:-

That, initially, the petitioner (who was plaintiff before learned Court below) had filed a suit against the respondents (who were defendants before learned Court below), thereby, seeking declaration qua the legality and validity of the checking report and subsequent memo, as detailed therein, by way of which, a penalty of Rs.15,55,657/- had been assessed. The copy of the plaint is Annexure P-3. The said suit was dismissed vide judgment and decree dated 22.01.2016, copy whereof is Annexure P-6. Feeling aggrieved by the aforesaid judgment and decree, the petitioner-plaintiff had filed the appeal. During the pendency of the appeal, on 25.05.2016, learned counsel making appearance on behalf of the petitioner-appellant, had made a statement, which reads as under:-

> *"Stated that I do not want to proceed further with this appeal. Withdraws the same. Be consigned to the record room."*

Thus, the appeal was dismissed. However, feeling aggrieved by the aforesaid order of dismissal of the appeal, in this manner, the petitioner had filed an application for restoration of the appeal and the same was also dismissed vide order dated 16.09.2016, copy whereof is Annexure P-3.

Feeling aggrieved by the order of dismissal of the application for restoration of the appeal, the petitioner had filed the present revision petition.

At the very outset, it is submitted by learned counsel for the

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petitioner that in fact, the counsel making appearance on behalf of the petitioner-appellant before learned lower Appellate Court, had erroneously made the statement for withdrawal of the appeal, though, there were no instructions, at the behest of the petitioner-appellant. Rather, withdrawal, as such, was made by learned counsel, goes against the express instructions of the petitioner.

In the given circumstances, it is submitted that the counsel, as such, had transgressed the authority, which was given to him, to pursue the appeal. As such, a prayer has been made for acceptance of the revision petition and to restore the appeal in question.

On the other hand, learned counsel for the respondents has assiduously resisted the claim of the petitioner. He submits that in fact, by way of filing of the power of attorney, in favour of the counsel, there was an implied authority extended to the advocate concerned, to withdraw, compromise or for the disposal of the case on merits. In the given circumstances, it is submitted that learned lawyer had very rightly withdrawn the appeal, by making statement before the Court and in these circumstances, it was only at the behest of the statement, so made, that the appeal was withdrawn. In such circumstances, no case is made out for restoration of the appeal. As such, the order qua dismissal of the restoration application, has been correctly passed by learned lower Appellate Court.

As already reproduced aforesaid, the appeal was withdrawn by the counsel by making statement that he does not want to proceed further with the appeal. In the said statement, he had not stated about any such

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instructions, having received from the petitioner, who was appellant before learned lower Appellate Court. A lawyer generally has no implied or apparent authority to make an admission or statement, which would directly surrender or conclude the substantial legal rights of the client, unless such an admission or statement is clearly a proper step in accomplishing the purpose, for which the lawyer was employed.

In the given circumstances, learned counsel, as such, had no authority to bind his client, by way of making of the statement. The authority, which the counsel has, to work upon, is for achieving the client's legal goal, while the client has the authority to decide on, what the goal will be. If the statement so made, fall within the parameters, which vouchsafe the interest of the legal goal of the client, then, the lawyer, as per the attorney, executed in his favour, shall be within his right to make their statement, but however, if the statement is made, without consulting the client, it is more likely to constitute, ineffective assistance of the counsel. In the given circumstances, when there is nothing, as such, coming on record, about any authority given, to simply make a statement of withdrawal of the appeal, when no reason, as such, is assigned, it gives rise to the probability of the statement made by the counsel, of his own, more specifically, keeping in view the tone and tenor of making of the said statement. Otherwise also, it is always appropriate about the Court not to shut rights of the parties concerned on technicalities. Rather, it is interest of justice, that the matter should be decided on merits, while providing an opportunity of hearing to both the sides.

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Considering the aforesaid observations, the impugned order dated 16.09.2016 is hereby set aside and the appeal, as such, before learned lower Appellate Court, stands restored, to its original number. The parties are directed to make appearance before lower Appellate Court on 18.01.2024.

In view of the aforesaid terms, the present revision petition stands allowed.

December 18, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**

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