

CR-1639-2023 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1639-2023 (O&M)

Date of Decision: 02nd April, 2024

Kirpal Singh (since deceased) through his LRs

... Petitioners

V/s.

Dalip Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Vipin Mahajan, Advocate
for the petitioners.

ANIL KSHETARPAL, J.(Oral)

1. Through this revision petition, the petitioners assails the correctness of the order dated 16.11.2022, passed by the First Appellate Court while dismissing the petitioner's application in review/recall of order dated 18.09.2015.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed:-

Plaintiffs filed a suit for the grant of decree of declaration as well as possession, which was decreed on 04.02.2014. Sh. Kirpal Singh through his legal representatives filed an appeal which was withdrawn on the statement of the counsel on 18.09.2015. Thereafter, the petitioners filed an application for review/recall of order withdrawing the appeal. It was claimed by the petitioners that they never authorised their counsel Sh. Amit Saini, Advocate to withdraw the appeal.

3. Keeping in view the aforesaid facts, the Court recorded the statement of Sh. Amit Saini, Advocate who represented the appellant. The statement of Sh. Amit Saini, Advocate has been noticed in Para 19 of the impugned order which reads as under:-

“19. However, Shri Amit Saini Advocate also appeared and suffered separate statement that he had filed an appeal titled as Kirpal Singh vs Dalip Singh in District Courts Pathankot being the earlier counsel of the case. On 14.07.2015 he telephonically informed applicant Ajay Singh to come on the date of hearing i.e. 15.07.2015 as the case was listed for the arguments, but he informed him that he is unable to appear on 15.07.2015, so kindly an adjournment be taken. Again a day before hearing, he called telephonically to appellant Ajay Singh to come present in the Court on 27.08.2015 as the case has again been listed for the arguments. The appellant did not turn up again on 27.08.2015 as he told him that he will not come on the said date. The cases were not listed for arguments due to his prior request to the Court as appellant Ajay Singh had already informed him that he is unable to appear. On 17.09.2015 he again telephonically contacted the appellant Ajay Singh to come present in the Court for arguments, but he asked him to withdraw the appeal. As such on the instructions of Ajay Singh, he had withdrawn the present appeal. Even the Advocate’s Clerk Ravinder Singh who has referred the case to him was asked by him to contact Ajay Singh telephonically. Appellant Ajay Singh was telephonically contacted by him as he even told said Ravinder Singh to withdraw the present appeal. On the same day, I telephonically informed the appellant accordingly.”

4. Thereafter the Court dismissed the application.

5. Learned counsel representing the petitioners contends that no authorization was given to Sh. Amit Saini, Advocate to withdraw the appeal. He submits that the Court should have restored the appeal and proceeded to decide the matter after considering the same on merits.

6. This Court has considered the submissions.
7. Admittedly, as per power of attorney, there is no dispute that Sh. Amit Saini, Advocate was engaged by the petitioners to file the appeal. The Power of Attorney executed by the petitioners did authorise his counsel to withdraw the appeal. In order to verify the correctness of the facts, the First Appellate Court recorded the statement of Sh. Amit Saini, Advocate, who has specifically stated that he contacted Sh. Ajay Singh (Petitioner 1(i)) on 17.09.2015 telephonically, who instructed him to withdraw the appeal. Subsequently, Sh. Amit Saini, Advocate also requested Sh. Ravinder Singh, Clerk who had referred the matter to him to contact telephonically Ajay Singh, LR of the deceased petitioner. He after speaking to the petitioners again informed the counsel to withdraw the appeal.
8. In such circumstances, this Court does not find it appropriate to interfere with the order passed by the First Appellate Court.
9. Dismissed.
10. All the pending application(s), if any, are also disposed of.

02nd April, 2024

Seema

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes /No