A JAGTAR SINGH

*v.*

PARGAT SINGH AND ORS.

NOVEMBER 27, 1996

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Code of Civil Procedure, 1908 : Section 107(2) Order III Rule 4, Order XXIII, Rule 1(1) and (4) and order XXXXI Rule 9.*

C *Declaratory suit filed by the respondent—Suit decreed by Trial Court—Appeal preferred by petitioner—Statement made by counsel before Appellate Court that petitioner did not intend to proceed with appeal—Consequently appeal dismissed as withdrawn—Order of Appellate Court confirmed by High Court—Appeal before Supreme Court—Held, Order III, Rule 4, CPC empowers the counsel to continue on record until the proceedings in* D *the suit are duly terminated—The counsel, therefore, has power to make a statement on instructions from the party to withdraw the appeal—Court has the power to dismiss the appeal as withdrawn without going into the merits of the matter—There is no illegality in the order passed by the Appellate Court as confirmed by the High Court.*

E CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 22201 of 1996.

From the Judgment and Order dated 19.7.96 of the Punjab & Haryana High Court in C.R. No. 4233 of 1995.

F R.S. Sihota, Ms. Suresh Kumari, G. Upadhyay and R.D. Upadhyay for the Petitioner.

The following Order of the Court was delivered :

G This Special leave petition arises from the order of the High Court of Punjab & Haryana made, on July 19, 1996 in Civil Revision No. 4233/95.

Respondent No. 1, elder brother of the petitioner filed the suit for declaration against the petitioner and three brothers that the decree dated May 4, 1990 was null and void which was decreed by the Subordinate H Judge, Hoshiarpur on September 29, 1993. The petitioner has filed an

appeal in the Court of the Additional District Judge, Hoshiarpur. The counsel made a statement on September 15, 1995 that the petitioner did not intend to proceed with the appeal. On the basis thereof, the appeal was dismissed as withdrawn. The petitioner challenged the order of the appellate Court in the revision. The High Court confirmed the same in the impugned order. Thus, this special leave petition.

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 The Court after admitting the appeal has no power to dismiss the same as withdrawn except to decide the matter on merits considering the legality of the reasoning of the trial Court and the conclusions either agreeing or disagreeing with it.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 III, Rule 4, CPC 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 XXIII, 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 CPC, 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 XXXXI, 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.

Accordingly, we hold that the action taken by the counsel is consistent with the power he had under Order III, Rule 4, CPC. 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 CPC. We do not find any illegality in the order passed by the Additional District Judge as confirmed by the High Court in the revision.

The Special leave petition is accordingly dismissed giving liberty to the petitioner to proceed in accordance with law.

T.N.A. Petition dismissed.