

(2008) 12 AHC CK 0008
In the Allahabad High Court

Smt. Krishna Kumari and Another	Vs	APPELLANT
Brijesh Kumar Gupta and Others		RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 4(2)

Citation : (2009) 1 AWC 419 : (2009) 106 RD 332

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Heard learned Counsel for the parties.

2. This first appeal from order was decided on merits on 13.9.2007. The counsel for the respondent No. 3 had not appeared even in the revised list though the name of Sri A.K. Mishra was shown. Now another counsel appearing for the respondent No. 3 has moved this application for the recall of the judgment and order dated 13.9.2007 on the ground that his name was not printed.

3. It is not disputed that for the same respondent Shri A. K. Mishra was also appearing and his name was duly printed in the cause list. His vakalatnama was not withdrawn and therefore it cannot be said he ceased to have instructions. No leave was granted to the new counsel to appear replacing the earlier counsel. The Division Bench of this Court in Balram Tiwari and others Vs. Regional Transport Authority, Varanasi and another, , had deprecated the practice of engaging a new counsel without terminating the instructions of the previous counsel.

4. Order III, Rule 4 (2), C.P.C. specifically provides that every appointment of the counsel by party shall be deemed to be in force until determined with the leave of the Court. A Division Bench of this Court in Bijli Cotton Mills (Pvt.) Ltd. Vs. Chhaganmal Bastimal and Others, while considering the above provision laid down that the authority of the counsel once engaged can be terminated by the

client but this cannot be done orally and must be done in writing with the permission of the Court in the manner laid down by Rule 4 (2) of Order III, C.P.C.

5. In the instant case, it is not the case of the applicant/respondent No. 3 that instructions were withdrawn from the earlier counsel and his power stood terminated in writing with the leave of the Court. Thus, there was no termination of the authority of the earlier counsel.

6. Now when the party to the proceedings have chosen to engage two counsel without terminating the authority of the earlier counsel and the name of any of them is duly printed and no one attends the Court, it is obligatory for the party to give sufficient explanation for the absence of the both. The non-printing of the name of the subsequent counsel itself would not be a sufficient ground to recall the judgment and order passed on merits.

7. A similar view has also been expressed by another Division Bench of this Court recently in Smt. Veena Agarwal Vs. Unjha Ayurvedic Pharmacy and Others,

8. Therefore, I am of the view that: non-printing of the name of the subsequent counsel is not a valid ground for recall of the order.