

**Court No. - 36**

**Case :-** SECOND APPEAL No. - 626 of 2006

**Appellant :-** Rajneesh Kumar And Others

**Respondent :-** Santosh Kumar And Others

**Counsel for Appellant :-** Manish Kumar Nigam,Rahul Sahai

**Counsel for Respondent :-** R.K. Misra,Arvind Kumar,Kshitij Shailendra,Neeraj Agarwal

**Hon'ble Kshitij Shailendra,J.**

1. I am in great pain in passing this order. I thought many a times whether I should go in such details of the issue involved or simply direct placing this case before another Bench. Ultimately, taking into consideration the welfare and bright future of the learned young members of the Bar and to ensure that flag of our esteemed institution of justice should always stand high and inter se faith and trust in between the Bar and the Bench may not weaken day-by-day, I proceeded with the order. The issue, *prima facie*, may appear to be too small but has significant value in the interest of our institution.

2. As per daily notice displayed on the notice board, 2.00 P.M. is the time fixed for cases in which compromise has taken place or prayer for withdrawal is there. Other mentioned listed matters are taken up thereafter.

3. The instant appeal was listed today in the cause list at serial No. 3157 with following details:-

3157	DF	SAPL/626/2006 (MEERUT)	RAJNEESH KUMAR AND OTHERS vs SANTOSH KUMAR AND OTHERS	MANISH KUMAR NIGAM, RAHUL SAHAI	NEERAJ AGARWAL, ARVIND KUMAR, <b>KSHITIJ SHAIENDRA (Elevated)</b> , NASIR HUSSAIN
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4. Today, Shri Siddharth Srivastava, Advocate brief holder of Shri Rahul Sahai, learned counsel for the appellants, appeared and stated that in this appeal an application for withdrawal is there, which may be allowed. The Court, as usual, believing the statement of counsel, allowed the withdrawal application and dismissed the appeal as withdrawn.

5. Later on, the Bench Secretary informed me that I was counsel in this appeal. The Court, then, checked up the record and found that earlier Shri Neeraj Agarwal, Advocate was representing respondent No. 1, however, the said respondent engaged me as a counsel on 15.08.2021. Vakalatnama signed by respondent No. 1 in my favour contained an endorsement of "No Objection" made by Shri Neeraj Agarwal, Advocate. Accordingly, I pursued this matter as well as other matters arising out of same dispute inter-se parties on behalf of respondent No. 1. I remember that in one of the matters, even judgment was reserved by this Court after hearing me and Shri Sahai for hours but judgment could not be pronounced and the matter was released by the concerned Bench. Even comprehensive written arguments were filed by both sides in that matter which contained details of litigation giving rise to instant appeal too. Before any of these matters could be decided, I was elevated to the Bench in February, 2023.

6. As far as withdrawal application is concerned, its copy was served upon Shri Neeraj Agarwal, Advocate on 30.09.2024. However, there is nothing wrong in service of copy of application on Shri Agarwal as he might be again having instructions from his client to now pursue the matter after my elevation, however,

question is of not informing the Bench about the fact by either side that I was actively pressing the rights of respondent No. 1. The bare application came up before me on 04.10.2024, on which date, as usual, the Court directed the Office to list the application with previous papers on 11.11.2024 as I fix dates on all applications without calling them to save time as more than 100 applications are listed per day. Therefore, the matter is listed today.

7. Learned brief holder of Shri Rahul Sahai, Advocate, today, did not inform the Court that this matter should be placed before another Bench for passing orders on withdrawal application. Even on 04.10.2024, no mention was made in that direction, otherwise the Court would have directed listing of withdrawal application before another Bench on that very day. Since, I was not apprised of the aforesaid situation, I allowed the withdrawal application in Court and dismissed the appeal as withdrawn. However, after the aforesaid situation came to my notice, I was compelled to change the order in these terms.

8. Bench functions on the faith reposed in members of the Bar and vice-versa. Both are complement to each other and work with one aim only, i.e., to administer justice for the society. It is the pious duty of both sides not to give rise to a situation that may shatter confidence reposed by us on us. The responsibility of members of the Bar increases more when their action may result in maligning or to an extent questioning the image of a judge in the eyes of public at large which may get an occasion to say that HIGH COURT JUDGES ARE NOW DECIDING CASES WHICH THEY WERE PURSUING FOR THEIR CLIENTS.

9. In view of above, conduct of Shri Siddharth Srivastava, Advocate, who is supposed to go through the record and check the list also before addressing the Court, is found to be not fair. The mistake may be intentional, unintentional, deliberate or indeliberate, but one thing is clear that the Court and its proceedings cannot be taken for granted. However, taking a lenient view of the matter, no strict observation is being made in this regard. Nevertheless, warning is issued to Shri Srivastava, who is a young counsel making regular appearance before this Court, to be more careful in future while addressing the Court.

10. **List before another Bench after obtaining nomination from Hon'ble The Chief Justice, if possible, in the first week of December, 2024.**

**Order Date :- 11.11.2024**  
Sazia

**(Kshitij Shailendra, J)**