

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

C.R.A No. 92 of 2018.

Date: Order with signature(s) of the Judge(s)

Hearing of Case.

1. For Hearing of CMA No.8241/2022.
2. For Hearing of Main Case.

20th September, 2023.

Mr. Zakir Hussain Bhugio advocate for the Applicant.
Mr. Hussain Bux Saryo advocate for Respondent No.3.

Heard learned counsel for the respective parties.

Admittedly Civil Appeal No.90/2017 was admitted for regular hearing before the Additional District Judge-III Malir at Karachi. Same was listed for arguments, however, one Ghulam Mustafa Rajput advocate appeared and filed statement available at Page 135-A seeking simpler withdrawal of appeal. At this juncture learned counsel for Respondent No.3 contends that as per impugned order learned counsel for appellant submitted in writing withdrawal. Page 137 & 139 reflects two Vakalatnamas. Admittedly Vakalatnama available at Page 137 is not reflecting the name of Ghulam Mustafa Rajput, whereas, in second Vakalatnama available at Page 139 on that with handwriting his name is mentioned. Besides learned appellate court judge has emphasized that learned counsel for the appellant was competent to withdraw the appeal in view of authorization he has referred the same.

Perusal of same reflecting that there is no specific authority for withdrawal of appeal. Further appellate court says that appellant was present. Admittedly such statement was not taken on record signed by the appellant and appeal was allowed to be withdrawn. Subsequently, appellant filed application for restoration of appeal on the plea that Ghulam Mustafa Rajput was not his counsel. However, by order dated 24.05.2018 that application was dismissed. It is pertinent to mention that settled proposition of law is that lis shall be decided on merit not on the

technicalities. When admittedly appellate filed application for restoration and he has agitated that he has not authorized Ghulam Mustafa Rajput. Under that situation fair trial as enshrined in Article 10-A of Constitution of Pakistan 1973 provide that full opportunity shall be provided to decide the issue on merits, hence, no one shall be knocked out on technicalities. Accordingly, impugned order dated 24.05.2018 and order dated 19.01.2018 are hereby set-aside. Appeal is restored in its original position and appellate court shall decide the same within one month after hearing the parties.

In view of above instant Civil Revision Application is disposed of.

M.Zeeshan

JUDGE