



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**DATED THIS THE 14<sup>TH</sup> DAY OF NOVEMBER, 2024**  
**BEFORE**  
**THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV**  
**WRIT PETITION NO. 19500 OF 2022 (S-RES)**



**BETWEEN:**

1. SRI ASHWITH KUMAR  
S/O KRISHNAPPA POOJARY  
AGED ABOUT 29 YEARS  
R/AT 1-112/A  
DHOTA HOME  
MERAMAJALU VILLAGE AND POST  
BANTWAL TALUK  
D K DISTRICT - 574 143

... PETITIONER

(BY SRI. K RAVISHANKAR., ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
REP. BY ITS SECRETARY TO GOVERNMENT  
DEPT OF RURAL DEVELOPMENT AND  
PANCHAYATH RAJ (ZP)  
VIDHANA SOUDHA  
BANGALURU - 560 001
2. THE CHIEF EXECUTIVE OFFICER  
D K ZILLA PANCHAYATH  
MANGALURU  
URVA STORES  
D K DISTRICT - 575 001.





3. THE MERAMAJALU GRAMA PANCHAYATH  
REP BY ITS  
PANCHAYATH DEVELOPMENT OFFICER (PDO)  
MERAMAJALU GRAMA PANCHAYATH  
BANTWAL TALUK  
D K DISTRICT - 574 143

... RESPONDENTS

(BY SRI. SHARANJITH SHETTY, ADVOCATE FOR R2;  
SRI VENKATESH SOMAREDDI, ADVOCATE FOR R3;  
SRI S. TAVARESH NAIK, AGA FOR R1)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED NOTIFICATION DATED 16.09.2022 ISSUED BY THE R2 BEARING NO.DA KA ZI PUM/AADALITHA/CR 98/21-22 IN SO FAR IT RELATED TO THE POST OF CLERK CUM DATA ENTRY OPERATOR TO THE R3 PANCHAYATH (PRODUCED VIDE ANNEXURE-F) TO THE WRIT PETITION AND ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY,  
ORDER WAS MADE THEREIN AS UNDER:  
CORAM: HON'BLE MR JUSTICE S SUNIL DUTT YADAV

### **ORAL ORDER**

The Learned counsel for the petitioner has filed a memo seeking for withdrawal of the petition which reads as follows:

*"It is submitted that after the interim order passed by this Hon'ble Court on 28.09.2022, the 3<sup>rd</sup> respondent has recommended the case of the petitioner for promotion from attendant to clerk-cum-Data entry operator by virtue of the resolution dated 19.09.2024. It is submitted that in view of*



*the subsequent development in the above matter, the petitioner is withdrawing the present writ petition. Hence this memo may be taken on record and writ petition may be dismissed as withdrawn in the interest of justice and equity."*

2. However, the Registry has raised an office objection to the memo filed by the counsel for the petitioner which reads as hereunder:

*"Reg: 1) Rectification of office objections raised in memo for withdrawal of WP filed by adv. for petitioner i.e., signature of the petitioner is not forthcoming in the memo."*

3. Learned counsel for the petitioner Sri. K. Ravishankar submits that the office objection raised by the Registry would defeat the object and purpose of the duly signed 'Vakalatnama' by the parties authorising the advocates to appear and plead on behalf of the parties. It is further submitted that the Registry henceforth should refrain from raising such office objections.

4. Heard.



5. In terms of Order III Rule 4 of CPC<sup>1</sup>, a pleader is permitted to act on behalf of a person upon authorization through a signed document in writing. Once the counsel is authorised by a party to appear on behalf of him by executing a signed document viz., Vakalatnama, in terms of Order III Rule 4 of CPC, it empowers the counsel to conduct the case and take necessary steps to conduct the proceedings.

6. In the Vakalatnama filed by the counsel for petitioner, the relevant instructions reads as follows:

"I/We hereby authorize him/them on my/our behalf to enter into a compromise in the above matter, to execute any decree/order therein to appeal from any decree/order therein and to appeal to act to plead in such appeal in any preferred by any other

---

<sup>1</sup> Order III Rule 4 of CPC from Karnataka Amendment which are relevant reads as follows:  
*"4. (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document subscribed with his signature in his own hand by such person or by his recognised agent or by some other person duly authorised by or under a power of attorney to make such appointment and the appointment has been accepted in writing by the pleader.*

*(2) Every such appointment shall be filed into Court. Except as otherwise provided in this rule, no such appointment shall be deemed to have been until its determination with the leave of the Court by a document subscribed with his signature in his own hand by the client or his recognised or authorised agent or by the pleader, as the case may be, and filed into Court; or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client."*



party from any decree/other therein. I/We authorize him/them to withdraw the Appeal/petition/any other proceedings at his/their discretion."

7. Accordingly, in light of the duly signed vakalatnama, the counsel for the petitioner was authorized to withdraw the petition.

8. It is pertinent to note the observations made by the Apex Court in **Jagtar Singh v Pragat Singh**<sup>2</sup> wherein, it was held that the counsel for the parties are at liberty to make a statement on instruction from the party to withdraw the case. The relevant observations made by the Apex Court are as follows:

*"2. Respondent 1, elder brother of the petitioner filed the suit for declaration against the petitioner and three brothers that the decree dated 4-5-1990 was null and void which was decreed by the Subordinate Judge, Hoshiarpur on 29-9-1993. The petitioner has filed an appeal in the Court of the Additional District Judge, Hoshiarpur. The counsel made a statement on 15-9-1995 that the petitioner*

---

<sup>2</sup> (1996) 11 SCC 586



*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.*

**3.** *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 23 Rules 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 41 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.*

*4. 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."*

9. However, in the cases where it is contested that the counsel has not acted in the interest of the parties, the the Apex Court in **Bakshi Dev Raj (2) and Another v. Sudheer Kumar**<sup>3</sup> has held that the necessary remedy is elsewhere. The relevant observations made are as follows:

---

<sup>3</sup> (2011) 8 SCC 679



*"30. ...In such a circumstance, the counsel making a statement on instructions either for withdrawal of appeal or for modification of the decree is well within his competence and 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."*

10. Accordingly, the Registry is directed not to raise office objections to the effect signature of the petitioner is not forthcoming in the memo for withdrawal. Learned counsel is fully authorised to take action on behalf of the clients. Such office objection raised discredits the authority vested on the counsel.

11. It is needless to state that as a directory measure the counsel can have the instructions in writing from the parties, as has observed by the Apex Court in **Byram Pestonji Gariwala v. Union Bank of India**<sup>4</sup> that, *"a wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither*

---

<sup>4</sup> (1992) 1 SCC 31





*his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of the counsel as well as uphold the prestige and dignity of the legal profession."*

12. Accordingly, in light of the memo filed, the petition is **dismissed**.

**Sd/-  
(S SUNIL DUTT YADAV)  
JUDGE**

VP