

Justice is Important, Rules of Procedure are Handmaids: Discussion in View of SC Verdict



The purpose of various provisions relating to appeal, revision, rectification, etc. is to achieve justice and to avoid injustice. Concerned appellate authorities, revision authorities, tribunals and courts are established towards the goal of rendering justice. In case of tax laws, it can be said that the ultimate purpose of all such proceedings should be considered as to impose tax correctly as per law and to refund excessive tax paid by assessee. It is true that one has to seek remedy or relief in many situations and for that he should also be vigilant to get justice and to see that he is not deprived of his privileges, and for that one should take his own actions to initiate proceedings towards availing justice. Procedures are prescribed under general laws as well as specific laws. However, courts and authorities have some inherent powers to serve purposes of judicial system to render justice and to avoid abuse of process of law and courts. A litigant has power to withdraw his petition or appeal. He also has privilege to withdraw the petition for withdrawal. Unless there are specific prohibitions or restrictions, the courts must be liberal in following or allowing processes to meet the end of justice and to render justice instead of denying justice. Suppose a person has withdrawn his petition or appeal and subsequently he wants to seek justice by consideration of his appeal (which has been withdrawn) he should be allowed to have privilege to restore the appeal. However, the courts should be careful to follow principals of natural justice so that while allowing justice there should not be injustice against other parties. The author discusses these aspects with reference to a latest judgment of the Supreme Court.



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Ground Reality – Laws are Complex

It is assumed that everyone generally knows law. However, it is true that laws are very complex and procedures make them more complex. This is evident from the fact that many a time even judgements of the Supreme Court are doubted and then reviewed

and reversed by larger benches of the Supreme Court. These aspects must be recognised while thinking of any litigation. The finality of litigation is generally a long distant dream. Over long period of time, during which litigation lingers, the law may become more complex due to development of law by amendments, clarifications and

new judicial pronouncements. It is also unfortunate that our government has tendency to unsettle settled legal positions by frequently amending laws and that gives ground for further litigation. All these result into uncertainty and contingencies in our life and even when we do not want to indulge into any litigation, many times we are forced to face litigation. It is an established fact that wherever there is intervention of governments, there is more litigation.

Filing of Petitions or Appeals

A litigant may file a petition or appeal on consideration of some aspects of the issue at hand as per his understanding of law and as may be advised by persons concerned. Before filing a petition or appeal, one should also check before hand as to whether it is possible to withdraw petition or appeal. Sometimes it may not be advisable to file a petition or appeal if the concerned authority has right to review other aspects also which are related to the matter. For example CIT(A) has also powers to enhance assessment. In such situation one may be exposed to the risk of enhancement on other issues which have been settled in assessment.

One should, therefore, check the extensiveness of powers of concerned authority/tribunal/court, possibility of withdrawal of petition or appeal, etc.

Withdrawal of Petition or Appeal

After filing of a petition or appeal, the litigant may find that it is not necessary to pursue the petition/appeal and may think to withdraw the same. The withdrawal of petition or appeal is generally permissible but some enactments provide restrictions on such withdrawal. If there is restriction, the same may not be permitted to be withdrawn. In case of revenue petitions or

After filing of a petition to withdraw, the petitioner appellant may find that he made a mistake by withdrawing the petition or appeal due to wrong reasons like wrong advice or wrong perceptions on the issue or it might have been withdrawn due to certain promises made by the opposite party. Even otherwise due to changes in legal position one may feel that he made mistake by withdrawing the petition or appeal. In such circumstances, it may be necessary that the withdrawal petition be withdrawn and original proceedings be restored. ☺

appeals where appellate authority or revision authority or other authority concerned has power to enhance demand, the withdrawal may not be permitted. One should consider these aspects more carefully. For example, in case of appeal before CIT(A), the appellant/assessee may not be allowed to withdraw appeal because the CIT(A) has power to enhance the assessment.

Withdrawal of Withdrawal Application

After filing of a petition to withdraw, the petitioner/appellant may find that he made a mistake by withdrawing the petition or appeal due to wrong reasons like wrong advice or wrong perceptions on the issue or it might have been withdrawn due to certain promises made by the opposite party. Even otherwise due to changes in legal position one may feel that he made a mistake by withdrawing the petition or appeal. In such circumstances, it may

be necessary that the withdrawal petition be withdrawn and original proceedings be restored. This becomes more important when the stake is high, the changed situation or legal position warrant that original petition or appeal should be properly prosecuted to seek justice and relief.

Restoration of Original Petition/ Appeal

We find that in case of dismissal of petition or appeal for some technical or other reasons or for non-attendance, one can apply for restoration of petition or appeal and proceed on the same after authority concerned or court passes an order to restore the petition or appeal. Similar will be effect in case of withdrawal of a petition to withdraw is permitted. That is withdrawal of withdrawal application results into original petition or appeal being restored. In such circumstances, the opposite party can raise objection on withdrawal of withdrawal application because he has to face litigation on a matter that was settled earlier. The courts should, therefore, provide opportunity of hearing to opposite party to meet the principal of natural justice. The opposite party can raise his objections and pray the court that the petition for withdrawal of withdrawal petition should be dismissed – he can show reasons for such prayers.

Principal of Natural Justice

It is needless to mention that in any proceeding, principal of natural justice should be followed. This is applicable to original petitions or appeal, application for withdrawal of original petition or appeal and also withdrawal of withdrawal petition, etc. A withdrawal of petition/ appeal, etc. can generally be with the permission of court or authority concerned. A withdrawal can be prejudicial to other party.

Therefore, the other party can raise an objection. And the courts or authority should, therefore, provide opportunity of hearing to opposite party to meet the principal of natural justice. This is equally applicable to withdrawal of appeal or petition as well as withdrawal of withdrawal petition, which result into restoration of appeal or petition. The opposite party should get a copy of petition and supporting documents and also an opportunity to represent his case. To be fair, it is always desirable that copy of petitions and its supporting documents in totality should also be provided to all opposite parties at the stage of filing of petition or appeal. Copy of documents subsequently filed can also be provided to all opposite parties so that they can give their representations. However, in practice we find that people try to avoid providing copy of documents to the opposite parties and then linger the case until they get directions of court or authority. This is one of the main reasons for pendency of cases in courts and cases taking long time for disposal.

Practice Support

The following care should be taken as general rules:

Petitions should be reasoned: There should be reason for making a petition or appeal and it should

Withdrawal of the withdrawal application should also be based on some reason and logic and it should be in interest of justice. The petition should also be within a reasonable time. The withdrawal of withdrawal petition should be allowed only after giving an opportunity of hearing to the opposite party.

not be just to indulge into litigation. **Whether withdrawal is permitted:** Before filing a petition or appeal, it should be ascertained as to whether it can be withdrawn later on or that there can be situations in which withdrawal may be desirable. Authorities having powers to take views against the petitioner, which can result into harm, should be considered.

The petition should be withdrawn only if there are some important reasons. The petition for withdrawal should contain such reasons which should be supported by evidence, logic and reasoning.

Efforts should be made to ensure that the court or authority passes an order on such application for withdrawal after giving an opportunity to the opposite party or the other party likely to be affected like government. Presumption is not proper. In case court finds that the petition itself was frivolous, it can pass appropriate orders as to cost to compensate the opposite party. This should also be considered even while filing a petition or an appeal.

Withdrawal of the withdrawal application should also be based on some reason and logic and it should be in interest of justice. The petition should also be within a reasonable time. The withdrawal of the withdrawal petition should be allowed only after giving an opportunity of hearing to the opposite party.

Section 151 of the Civil Procedure Code

Section 151 of the Code of Civil Procedures 1908 is the section which was specifically under consideration and on which a recent judgement of the Supreme Court has been passed. The Section reads as follows (with highlights provided by author)

"151. Saving of inherent powers of Court:

Their lordships of the Supreme Court expressed the opinion that the application praying for withdrawal of the withdrawal application was maintainable and accordingly order has been passed. As such, the impugned judgement of the Allahabad High Court has been set aside and the Appeal has been allowed by the Supreme Court.

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

From a reading of this Section we find that court can exercise its inherent powers to (a) render justice and (b) to avoid abuse of the process of the court and that such powers are not curtailed by other provisions of the Code. This provision can also be applied in relation to matters dealt by other enactments wherein specific procedures are also prescribed.

Examples of Some Specific Procedures

Under different enactments we find specific procedures including forms prescribed there-under to initiate progress and conclude proceedings. The procedures and forms are prescribed to standardise them and to provide guidelines to public, authorities and courts. For example, in relation to direct and indirect tax laws, company law, FEMA and SEBI, we find various rules and forms for applications, appeals, certificates, etc. in relation to various matters. We also find procedures in relation to various matters. In absence of such specific

procedures general procedures as per Code of Civil Procedures can be applied.

Recent Supreme Court Decision
In Rajendra Prasad Gupta Vs. Prakash Chandra Mishra & Ors decided on 12.01.2011, an appeal, by special leave, was filed against the judgement of the Allahabad High Court dated 06.02.2004 passed in FAFO No.2103/2003. The appellant RAJENDRA PRASAD GUPTA was the plaintiff in Suit No. 1301 of 1997 before the Court of Civil Judge (Junior Division) Varanasi.

He filed an application to withdraw the said suit. (As per author, the withdrawal petition was pending without passing any order by the court when petitioner applied to withdraw the same as appears from facts). Later on he changed his mind and before an order could be passed in the withdrawal application, he filed an application praying for withdrawal of the earlier withdrawal application. The second application (to withdraw the withdrawal petition) was dismissed and that order was upheld by the High Court. Therefore, the appeal

by special leave was filed before the Supreme Court.

The High Court took the view that once the application for withdrawal of the suit is filed, the suit stands dismissed as withdrawn even without any order on the withdrawal application and, therefore, the second application was not maintainable at all.

The Supreme Court did not agree with this view and observed and held on the following lines:

- a. Rules of procedure are handmaids of justice.
- b. Section 151 of the Code of Civil Procedure gives inherent powers to the court to do justice.
- c. That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited,
- d. It is not that every procedure is prohibited unless expressly permitted.
- e. There is no express bar in filing an application for withdrawal of the withdrawal application.
- f. Referring to the judgement in case of *Narsingh Das Vs. Mangal Dubey*, ILR 5 All 163 (FB) (1882) and observation of Mr. Justice Mahmood, (the celebrated

Judge – so described by their lordship) of the Allahabad High Court, noted the observations therein as follows:-

"Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed."

The above view was followed by a full bench of the Allahabad High Court in *Raj Narain Saxena Vs. Bhim Sen & others*, AIR 1966 Allahabad 84 FB. The Supreme Court agreed with this view.

Accordingly, their lordships of the Supreme Court expressed the opinion that the application, praying for withdrawal of the withdrawal application was maintainable and accordingly order has been passed. As such, the impugned judgement of the Allahabad High Court has been set aside and the Appeal has been allowed by the Supreme Court. (See Annexure I)

Rectification of Mistakes in Tax Matters

Tax authorities are empowered

The rules pronounced in relation to rectification of mistakes by Tribunal in case of *Honda*

Siel (supra.) can fruitfully be applied to any court or authority. If an authority or court has committed a mistake, it should be allowed to be rectified so as to make the order as per law. There should be greater scope of rectification even on the basis of change in law due to amendments or subsequent judgements of the Supreme Court or the High Court having jurisdiction in the matter. ”



to rectify the mistakes that are apparent from records, for example, Section 154 and 254 (2) of the Income-tax Act, 1961, which empower tax authorities and tribunal respectively to rectify mistakes apparent from records. However, the provisions in this regard are considered as very limited in scope to rectify mistakes that are apparent from records. In reality if one goes by spirit, it can be said that the purpose of such provisions is to ensure correct assessment and collection of tax. If assessee has paid lesser tax, then a rectification should be allowed to collect correct tax. Similarly if assessee has paid excessive tax, then a rectification should be allowed to refund excessively collected tax. However, there is a lot of litigation on that aspect of what can be rectified itself.

We also find that provisions are made to dispose-off rectification petitions by the assessing officers, and appellate authorities within prescribed time frame. However, practical experience shows that in case of tribunal, rectification petitions are fixed for hearing and decided quickly, however, other authorities do not take disposal of rectification petitions seriously and quickly and many times assesses are required to file fresh applications to get extended limitation.

In ***Honda Siel Power Products Ltd. Vs. CIT [2007] 295 ITR 466 (SC)***, the tribunal had decided the issue relating to enhancement of cost of depreciable assets against the assessee. However, in a rectification petition, the assessee pointed out that a decision of coordinate bench cited by it, before the tribunal was not considered and, therefore, the order suffered from mistake apparent from record. On consideration of the rectification petition, the tribunal held that a decision of a coordinate bench of tribunal was cited before it, but

through over-sight it had missed the judgement of coordinate bench while dismissing the appeal of the assessee on that issue and, therefore, tribunal rectified its order to make it confirming to the decision of coordinate bench, which was cited before it. Here, we can say that the tribunal has adopted a purpose seeking and justice rendering attitude and rectified its order to make it as per law.

However, revenue took narrow technical view and preferred appeal before the Delhi High Court. Delhi High Court allowed appeal of revenue and held that the tribunal under Section 254(2) has no power to review its order and the mistake rectified was not a mistake apparent from record. Therefore, the High Court set aside the order in rectification petition passed by the Tribunal and restored the original order.

Therefore, the assessee appealed before the Supreme Court and the Supreme Court reversed the decision of the High Court. The main reasons and the law laid down by the Supreme Court are as follows:-

A. In case of Appeal before Appellate Tribunal fundamental principle is that no party appearing before Tribunal should suffer on account of mistake committed by the Tribunal. Failure to consider decision of coordinate Bench cited by assessee is a mistake.

B. The purpose behind the enactment of rectification provisions like Section 254(2) of the Income-tax Act, 1961, dealing with the power of the Appellate Tribunal to amend any order passed by it under sub-section (1), if any mistake apparent from the record is brought to its notice, is based on the fundamental principle that no party appearing before the Appellate Tribunal, be it an

Prescribed procedures are with a view to standardise steps, procedures, formats in which documents are to be prepared, presented and served, etc. Procedures are general guidelines. Ultimate and foremost purpose of courts and authorities is to render justice and to ensure that the subject matter is decided as per law. The procedures are to help and they are not to create obstacles in the process of law and *en route* the justice. Therefore, procedures which help in rendering justice can be adopted and need not be denied by courts. A technical defect in procedure is also curable and can be rectified. ☺☺

assessee or the Department, should suffer on account of any mistake committed by the Tribunal.

- C. This fundamental principle has nothing to do with the inherent powers of the Tribunal.
- D. If prejudice has resulted to the party and the prejudice is attributable to the Tribunal's mistake, error or omission, and which error is a manifest error, then the Tribunal would be justified in rectifying its mistake.
- E. When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of the Tribunal to set it right.
- F. Atonement to the wronged party by the court or the Tribunal for the wrong committed by it has nothing to do with the concept of inherent power of review.
- G. "Rule of precedent" is an important aspect of legal certainty in the rule of law.

H. "Rule of precedent" is not obliterated by Section 254(2).

In view of the author, these rules pronounced in relation to rectification of mistakes by Tribunal in case of Honda Siel (supra.) can fruitfully be applied to any court or authority. If an authority or court has committed a mistake, it should be allowed to be rectified so as to make the order as per law. There should be greater scope of

rectification even on the basis of change in law due to amendments or subsequent judgements of the Supreme Court or the High Court having jurisdiction in the matter.

Conclusion

Prescribed procedures are with a view to standardise steps, procedures, formats in which documents are to be prepared, presented and served, etc. Procedures are general guidelines.

Ultimate and foremost purpose of courts and authorities is to render justice and to ensure that the subject matter is decided as per the law. The procedures are to help and they are not to create obstacles in the process of law and *en route* the justice. Therefore, procedures which help in rendering justice can be adopted and need not be denied by courts. A technical defect in procedure is also curable and can be rectified.

Annexure I

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(s). 984 OF 2006
RAJENDRA PRASAD GUPTA Appellant (s)
VERSUS
PRAKASH CHANDRA MISHRA & ORS. Respondent(s)
O R D E R

Heard learned counsel for the appellant and respondent
Nos. 1 to 3. No one appeared for respondent No. 4.

This Appeal, by special leave, has been filed against the impugned judgment of the High Court of Allahabad dated 06.02.2004 passed in FAFO No.2103/2003.

It appears that the appellant was the plaintiff in Suit No. 1301 of 1997 before the Court of Civil Judge (Junior Division) Varanasi. He filed an application to withdraw the said suit. Subsequently, it appears that he changed his mind and before an order could be passed in the withdrawal application he filed an application praying for withdrawal of the earlier withdrawal application. The second application had been dismissed and that order was upheld by the High Court. Hence, this appeal by special leave.

The High Court was of the view that once the application for withdrawal of the suit is filed, the suit stands dismissed as withdrawn even without any order on the withdrawal application. Hence, the second application was not maintainable. We do not agree. Rules of procedure are handmaids of justice. Section 151 of the Code of Civil Procedure gives inherent powers to the court to do justice. That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is prohibited unless expressly permitted. There is no express bar in filing an application for withdrawal of the withdrawal application.

In *Narsingh Das Vs. Mangal Dubey*, ILR 5 All 163 (FB) (1882), Mr. Justice Mahmood, the celebrated Judge of the Allahabad High Court, observed:-

"Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed."

The above view was followed by a Full Bench of the Allahabad High Court in *Raj Narain Saxena Vs. Bhim Sen & others*, AIR 1966 Allahabad 84 FB, and we agree with this view. Accordingly, we are of the opinion that the application praying for withdrawal of the withdrawal application was maintainable. We order accordingly.

In the result, the impugned judgement of the High Court is set aside and the Appeal is allowed. No costs.

The suit shall proceed and to be decided on merits, Expeditiously.

.....J. (MARKANDEY KATJU)

.....J. (GYAN SUDHA MISRA)