

GAHC010051382024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/44/2024

MRIDULA KALITA AND ANR
D/O- NARESWAR KALITA,
W/O- LATE LALIT CHANDRA DEKA
VILL. GERIMARY CHAPORI (BIDYA NAGAR),
P.O. AND P.S.- MANGALDAI,
DIST.- DARRANG, ASSAM, PIN- 784125.

2: DIKSHITA DEKA
D/O- LATE LALIT CHANDRA DEKA
(BEING MINOR REPRESENTED BY HER MOTHER/ NATURAL GUARDIAN
PETITIONER NO. 1)
VILL. GERIMARY CHAPORI (BIDYA NAGAR)
P.O. AND P.S.- MANGALDAI
DIST.- DARRANG
ASSAM
PIN- 784125

VERSUS

CHAMPA RAM DEKA AND 3 ORS
S/O- LATE BASURAM DEKA
VILL.- BARPATHAR,
P.O. AND P.S.- SIPAJHAR,
DIST.- DARRANG, ASSAM, PIN- 784145.

2:THANGESWARI DEKA
W/O- SRI CHAMPA RAM DEKA
VILL.- BARPATHAR
P.O. AND P.S.- SIPAJHAR
DIST.- DARRANG
ASSAM
PIN- 784145.

3:THE BRANCH MANAGER

SBI LIFE INSURANCE CO. LT.D OF MANGALDAI BRANCH
P.O. AND P.S.- MANGALDAI
DIST- DARRANG
ASSAM
PIN- 784125.

4:THE BRANCH MANAGER
LIFE INSURANCE CORPORATION OF INDIA (LICI)
MANGALDAI BRANCH
P.O. AND P.S.- MANGALDAI
DIST- DARRANG
ASSAM
PIN- 784125

For the petitioner (s) : Mr. M. Ahmed, Advocate

For the respondent (s) : None appears

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

22.04.2024

This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'the Code') challenging the order dated 12.12.2023 in Misc. (J) Case No.07/2023.

2. From a perusal of the materials on record, it reveals that the order dated 12.12.2023 passed in Misc. (J) Case No.07/2023 is an order passed in an application for restoration of the suit which was dismissed for default vide an order dated 07.03.2022 in Title Suit No.29/2019.

3. This Court has duly perused the order dated 07.03.2022 wherein it is seen that the suit was dismissed when the suit was at the stage of hearing wherein the plaintiffs had failed to appear whereas the defendants

had appeared. Accordingly, the said order would come within the ambit of the Order IX Rule 8 of the Code. Consequently, the application which ought to have been filed should have been an application under Order IX Rule 9 of the Code. However, inadvertently the application was filed under Order IX Rule 4 of the Code.

4. Be that as it may, it is well settled principle of law that wrong quoting of a Section is not material for deciding the said application. Accordingly, the said application which was filed under Order IX Rule 4 of the Code has to be construed to be an application under Order IX Rule 9 of the Code. The consequential effect of dismissal of the said application under Order IX Rule 9, is an order which is appealable under Section 104 read with Order XLIII Rule 1 (C) of the Code.

5. Taking into account that the said order being appealable, and that too, before the Court of the learned District Judge at Darrang, the instant proceedings under Section 115 of the Code cannot be entertained.

6. Accordingly, the instant petition therefore stands dismissed.

7. Be that as it may, the dismissal of the instant application shall not preclude the petitioner herein to prefer an Appeal in terms with Section 104 read with Order XLIII Rule 1 (C) of the Code against the order dated 12.12.2023 passed in Misc. (J) Case No.07/2023.

JUDGE