

GAHC010258872022



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

Case No. : CRP/140/2022

MD. CHAND MAHMUD
S/O. LT. AKTAR ALI MUNSHI, VILL. DHINGARATI, P.O. LAHARIGHAT, DIST.
MORIGAON, ASSAM.

VERSUS

HASMAT ALI AND 3 ORS.
S/O. LT. SAHER ALI, VILL. BALIDUNGA PAM, P.O. AND P.S. BHURAGAON,
DIST. MORIGAON, ASSAM, PRESENTLY R/O. BENGENA ATI, P.O. BENGENA
ATI P.S. NAGAON SADAR, DIST. NAGAON, ASSAM.

2:HIBJUR RAHMAN
S/O. LT. ABDUL HEKIM

3:AKLIMA BEGUM
W/O. HIBJUR RAHMAN
BOTH 2 AND 3 ARE R/O. VILL. DHINGARATI
P.O. LAHARIGHAT
DIST. MORIGAON
ASSAM.

4:JABED ALI
S/O. MD. OHED ALI
VILL. HATILARUA PATHAR
P.S. BHURAGAON
DIST. MORIGAON
ASSAM
PRESENTLY R/O. VILL. BORBORI LAHARIGHAT BAZAR
P.S. LAHARIGHAT
DIST. MORIGAON
ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : MR. B RAHMAN

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

03.04.2024

The learned counsel appearing on behalf of the petitioner submitted that the dismissal of the suit vide the impugned order dated 07.11.2022 amounts to a decree.

2. Taking into account the above, the petitioner on a mistaken advice had filed the application under Article 227 of the Constitution. He, therefore, submitted that he may be permitted to withdraw the instant application with liberty to file an appeal against the impugned order dated 07.11.2022, whereby the said suit was dismissed. He further submitted that as the petitioner on a mistaken advise have been *bona fide* litigating before this Court in a proceeding which lacks jurisdiction, the period during which the instant application has been pending be excluded while computing the period of limitation while filing the appeal.

3. The learned counsel for the petitioner also submitted that he may be permitted to take the certified copy of the impugned order dated 07.11.2022 from the Registry of this Court which has been enclosed to the instant proceeding so that he may file an appeal.

4. This Court has also heard Mr. AK Purkayastha, the learned counsel appearing on behalf of the respondents.
5. Taking into account that the dismissal of the suit for whatever reasons amounts to a decree, it is the opinion of this Court that the learned counsel appearing on behalf of the petitioner has rightly made the submission that he may be permitted to withdraw the instant proceeding.
6. Accordingly, the instant proceeding stands closed on withdrawal.
7. This Court further is of the opinion that the petitioner pursuant to the passing of the impugned order dated 07.11.2022 has approached this Court on 13.12.2022 and, thereupon, the proceedings have been pending.
8. Under such circumstances, if the petitioner avails his remedies for filing an appeal against the impugned order dated 07.11.2022, the period from 13.12.2022 till date be excluded while computing the period of limitation.
9. This Court also observes and directs that in the circumstance the petitioner files an application before the Registry of this Court for returning of the certified copy of the impugned order dated 07.11.2022, the Registry of this Court shall within 5(five) days from the date of application provide the said certified copy which is a part of the instant proceedings.
10. With the above, this revision petition stands disposed of.

JUDGE

Comparing Assistant