

GAHC010109142019



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

Case No. : CRP(IO)/409/2018

M/S. AMGOORIE INDIA LTD.
A COMPANY DULY INCORPORATED UNDER COMPANIES ACT 1956 HAVING
ITS OFFICE AT KOMBER TEA WAREHOUSE
JAWAHARNAGAR
N.H. 37
GUWAHATI
ASSAM AND HAVING ITS TEA ESTATE I.E. BORBAM TEA GARDEN
P.O. AMGURI
HALWATING
IN THE DIST. OF SIVASAGAR
ASSAM

VERSUS

ASIA MUDGI AND 3 ORS.
W/O LATE MANIK MUDGI
R/O BORBAM T.E.
P.O. AMGURI
P.S. AMGURI
DIST. SIVASAGAR
ASSAM

2:SRI GANGADHAR MUDGI
S/O LATE MANIK MUDGI
R/O BORBAM T.E.
P.O. AMGURI
P.S. AMGURI
DIST. SIVASAGAR
ASSAM

3:MISS. GAYATRI MUDGI
D/O LATE MANIK MUDGI
R/O BORBAM T.E.
P.O. AMGURI

P.S. AMGURI
DIST. SIVASAGAR
ASSAM
4:MRS. SUMAN MUDGI
D/O LATE MANIK MUDGI
W/O RAJESH SIK
R/O POHUCHUNGI GAON
P.O. MACKEYPUR
P.S. NAZIRA
DIST. SIVASAGAR
ASSAM.

Advocate for : MR G N SAHEWALLA
Advocate for : MR. A R SHOME (r-2
4) appearing for ASIA MUDGI AND 3 ORS.

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

29.05.2024

This is an application under Article 227 of the Constitution challenging the order dated 29.09.2018 whereby the application filed under Order XXIII Rule 1 of the Code of Civil Procedure, 1908 (for short, 'the Code') for withdrawal of the suit with liberty to re-file was rejected.

2. This Court duly perused the said order dated 29.09.2018 as well as also the application which was so filed. From a conjoint reading of both the application as well as the impugned order, it reveals that the ground stated therein was that a photocopy of the Power of Attorney was exhibited and not the original Power of Attorney for which the plaintiff wanted to withdraw the suit that too when the suit has reached the argument stage.

3. In the opinion of this Court, the same neither constitutes a sufficient

cause nor does it amount to a formal defect within the ambit of Order XXIII Rule 1 of the Code. The learned Trial Court has duly considered the said aspect of the matter in passing the impugned order, and as such, this Court finds no jurisdictional error in passing of the said order for which the instant petition stands dismissed.

4. This Court further vacates the order dated 12.06.2019 and taking into account that parties are duly represented, they are directed to appear before the learned Trial Court on 19.06.2024.

5. The learned Trial Court thereupon shall proceed with the adjudication of the said suit in accordance with law.

JUDGE

Comparing Assistant