

Party Name : JAGAT MOHAN JAMATIA & ORS Vs BIRSINGH JAMATIA & ORS

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THE HONBLE MR. JUSTICE S.C.DAS

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Heard learned counsel, Mr. G.S. Bhattacharji for the petitioners and learned counsel, Mr. T. Dutta Majumder for the respondent.

This is a petition filed under Order 41 Rule 11(2) of CPC praying for readmission of RSA No. 17 of 2011 which has been dismissed for default on 17.06.2015.

A technical question is raised by learned counsel, Mr. Dutta Majumder, that the petition itself is not maintainable since it is not filed by the appellants. The petition is also not verified by the petitioners and it is filed with the affidavit of the learned counsel.

Mr. Bhattacharji, learned counsel for the petitioners submits that the appeal has been dismissed for his default since he could not remain present before the Court when the appeal was taken up for hearing.

Here the appellant means the lawyer of the appellant also and, therefore, he has filed the petition.

Law is very clear that such an application seeking relief should be filed by the party concerned and it cannot be presented by the learned counsel without being verified by the petitioners.

The petition for readmission, therefore, in the form as it is filed now, is not permissible and, hence, as prayed for, the petitioners are allowed to withdraw the petition with liberty to file a fresh petition according to the law.

The C. M. Application accordingly stands disposed of as withdrawn.