

19.07.2021
Item No. 9
Ct. No. 04
NS

F.M.A. 186 of 2017
with
I.A. no. CAN 1 of 2016 (Old CAN 11040 of 2016)

Bhabataran Ghosh
Vs.
Sasanka Kumar Dey

The first miscellaneous appeal has been listed under heading “For Dismissal” pursuant to order dated 12th July, 2021, text of which is reproduced below:-

“The first miscellaneous appeal tender is of year 2016. It is reported to be in order and listed to be moved for admission. Listing is in physical form. Mr. Dutta, learned advocate appears on behalf of appellant and prays for adjournment.

We have looked at impugned order no. 4 dated 28th September, 2016. By it, the compromise petition was rejected.

Section 104 in Code of Civil Procedure provides orders, from which appeal lies. The substantive provision is followed by the procedure provided in order 43 rule 1. Said rule does not include or provide for appeal against an order passed under order 23. As such, it appears the appeal is not maintainable.

List next Monday i.e. 19th July, 2021, under heading ‘For Dismissal’.”

FMA 186 of 2017 along with I.A. no. CAN 1 of 2016 (Old CAN 11040 of 2016), if pending, are dismissed.

(Arindam Sinha, J.)

(Biswajit Basu, J.)