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28.06.2021
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**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. No. 3642 of 2019

(Via video conference)

**Smt. Santona Mukherjee
(nee Mohanto)**

-Vs.-

**M/s. Podder Associates
Construction Pvt. Ltd.**

Mr. Somnath Bose,
Mr. Ajoy Sankar Sanyal,
Ms. Shreyasi Sanyal
...for the petitioner

Mr. Probal Kumar Mukherjee,
Mr. Ujjal Ray
...for the opposite party

Affidavit-of-service filed in court today be kept on record. Both sides are represented through counsel.

By the impugned order, an application for condonation of delay in filing the petitioner's application under Order IX Rule 9 of the Code of Civil Procedure was rejected. Such restoration application arose in connection with a probate proceeding, which has the trappings of a suit and the effect of the final order passed therein is that of a deemed decree.

As per the subsisting judicial opinion, the said order of rejection of the condonation application has the effect of rendering the restoration application redundant and, hence, it is deemed to be rejection of the restoration application itself, which is appellable. Hence, since the order passed under Order IX Rule 9 of the Code of Civil Procedure is appellable, an appeal will also lie against the present impugned order.

However, the mistake on the part of the petitioner appears to be bona fide.

Accordingly, C.O. No. 3642 of 2019 is dismissed as not maintainable with liberty to the petitioner to move the appropriate forum with a properly constituted appeal, upon giving notice to the opposite party at the earliest.

Leave is granted to the learned advocate-on-record for the petitioner to take back the certified copy of the impugned order upon furnishing an appropriately attested photocopy thereof with the records.

It is made clear that this Court has not gone into the merits of the matter.

There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)