

09.10.2023
Item No. 44
Ct. No. 7
PG

C.O. 3123 of 2023
Ratna Saha
Vs.
Jagat Krishna Debnagar @ Mantu Mandal &
Ors.

Mr. Sudipta Kr. Das
Mr. Subir Banerjee.....for the petitioner

The learned advocate for the petitioner submits that though the application was captioned as one under Order IX Rule 4 of the Code of Civil Procedure but the same was in effect an application under Order IX Rule 9 of the Code.

By the order impugned, the application for restoration of the suit filed under Order IX Rule 9 (wrongly captioned as one under Order IX Rule 4) stood rejected.

It is settled principle of law that the substance and not the caption of the application is to be looked into. In view thereof, the order impugned being an appealable order, the learned advocate for the petitioner prays for leave to withdraw this application under Article 227 of the Constitution of India with liberty to approach the appropriate forum.

In view thereof, C.O. 3123 of 2023 stands dismissed with liberty to the petitioner to take appropriate steps in accordance with law.

The petitioner will be at liberty to take back the certified copy of the order impugned upon replacing the same with the photocopy thereof.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties expeditiously upon usual formalities.

(Hiranmay Bhattacharyya, J.)