

87 **11.12.
2023**

Ct. No. 04

ab

SA 88 of 2023

**Abdur Rakib @ Abdur Rakib Seikh
Vs.
Mahammad Sebir.**

**Mr. Chirantan Sarkar.
Mr. Niraj Kumar Singh.**

... for the appellant.

The learned Advocate appearing for the appellant submits that due to inadvertence the instant appeal has been filed before this Court when the remedy can be pursued before the first Appellate Court. He, therefore, prays for withdrawal of the instant appeal with liberty to approach the appropriate forum for the selfsame relief.

We find that the appeal was dismissed for default by the first Appellate Court and such order of dismissal for default is assailed in the instant appeal.

Considering the provisions contained under Order XLI Rule 19 of the Code of Civil Procedure, we feel that an opportunity should be given to the appellant to pursue his remedy before the appropriate forum.

In view of the above, the instant second appeal is dismissed as 'withdrawn'.

However, dismissal of the appeal shall not prevent the appellant to pursue the remedy before the first Appellate Court in accordance with law.

The Assistant Court Officer is directed to return the certified copy annexed with the Memorandum of Appeal to the learned Advocate-on-Record of the appellant upon replacement with photocopy thereof.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

