

Misc. Case no. 4781 of 2026 (C.N.R. No. WBCC01-007279-2026)
(arising out of T.S. 1090 of 2020)

Present :- Sri Saket Kumar Jha J.O. Code - WB01239
Judge, Bench - VII, City Civil Court, Calcutta

Order no. 42
01.08.2026

Haziras have been filed on behalf of the petitioner, O.P. no. 3 HDFC bank Ltd. and O.P. no. 4 Reserve Bank of India and their Ld. Counsels are present. As this Misc. Case has been fixed for ex-parte hearing against the the O.P. no. 4, therefore, their hazira is of no relevance. Affidavit-of service has been filed on behalf of the plaintiff regarding today's date fixed for hearing of this Misc. Case having been communicated to the opposite parties and five original postal receipts along with print out of postal tracking reports have also been filed. Written objection has been filed by the O.P. no. 3.

This Misc. Case has been filed by the petitioner under Order IX Rule 4 read with section 151 of the CPC praying for restoring the T.S. no. 1090 of 2020 to its original file and number as vide order dated 27.03.2026 the said T.S. no. 1090 of 2020 had been fixed on 23.09.2026 for showing cause by the plaintiff, however, in the CIS and in the cause list the next date was entered as 27.04.2026 but in the order that was uploaded on the CIS the next date was reflected as 23.09.2026 and the plaintiff was under a bonafide impression that the next date fixed is on 23.09.2026 and therefore no steps were taken by the petitioner on the said date and the suit was dismissed for default. Accordingly, a prayer has been made to restore the said title suit to its original file and number as there is no deliberate laches on the part of the plaintiff/petitioner. Ld. Counsel of O.P. no. 3 has raised objection and submitted that the suit was rightly dismissed for default as the petitioner had failed to take any steps on the date fixed and moreover this case has been filed under Order IX Rule 4 of the CPC and not under Order IX Rule 9 of the CPC. Therefore, the said T.S. no. 1090 of 2020 should not be restored to its original file and number.

Considering the facts and circumstances and on going through the case record as well as CIS, court diary and cause list, it appears that vide order dated 18.02.2026, the next date in T.S. No. 1090 of 2020 was fixed on 26.03.2026 but the said date was holiday and therefore, the record was not taken up on 26.03.2026 and it was taken up on 27.03.2026. In the order dated 27.03.2026 the next date mentioned was 23.09.2026 and the said order was also uploaded in the CIS, however, it

appears that due to clerical/typographical mistake, the next date had been mentioned as 27.04.2026 in the CIS and the cause list and the T.S. no. 1090 of 2020 was taken up on 27.04.2026 and as there was no steps on the part of the plaintiff, therefore, it was dismissed for default. Accordingly, in my opinion, the plaintiff was under a bonafide impression that the next date fixed in this case was on 23.09.2026 and therefore the plaintiff could not take any steps on 27.04.2026 due to which it was dismissed for default. As apparently there was a clerical mistake on the part of the court's staff, therefore, the plaintiff should not be made to suffer for it and thus the prayer of the petitioner deserves to be allowed. The mere fact that this case has been filed under Order IX rule 4 of the CPC and not under Order IX Rule 9 of the CPC would not debar the petitioner from getting the appropriate relief as wrong mentioning of provision of law is of no consequence and in any case courts are to prioritise the actual intent, facts, and relief sought in an application over a mistaken section or provision of law.

Hence, it is

O r d e r e d

that this Misc. Case no. 4781 of 2026 is allowed on contest and consequently, T.S. no. 1090 of 2020 is restored to its original file and number.

D/c by me :

Judge, Bench - VII
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