



Misc (J) Case No. 1110/2022
Title Suit No. 07/2020

09.04.2024

IN THE COURT OF CIVIL JUDGE (SR.DIV.) NO-1, KAMRUP(M), GUWAHATI

Present: Shri Nur Jamal Haque, LLM, AJS
Civil Judge (Sr.Div.) No-1,
Kamrup(M), Guwahati

1. Both sides are represented.
2. Heard both sides and perused the Petition filed under Order 9 Rule 10 R/W Section 151 of CPC for considering the petitioner's prayer to restore the Title Suit. The petitioner/plaintiff, in his Petition No. 7641, prayed to restore the T.S. No. 07/2020, which was dismissed for default on 07/12/2022.
3. The petitioner's Case appears to be in a narrow campus in that on 17/09/2022, the advocate for the Plaintiff was absent before this Court due to the sudden stroke of her mother, and as such, she could not appear before this Court on that day. It is stated that on 07/12/2022, the advocate for the Plaintiff remained absent before this Court due to the wrong posting of the advocate's diary, and for her non-



Misc (J) Case No. 1110/2022
Title Suit No. 07/2020

09.04.2024

appearance, this Court dismissed the Case on default. The Petitioner stated that if the Petition is not allowed, the Plaintiff will be highly prejudiced. It is, therefore, prayed to admit this present Petition and restore the T.S. No. 07/2020.

4. Per contra, the O.P., by filing written objection, stated that the Plaintiff's engaged Counsel, though claimed in her Petition in paragraph no. 2 that her mother suffered a stroke on 17.09.2022, but any authentic Medical Certificate does not support her Petition to support her claim. Hence, the Cause Shown for Non-Appearance on 17.09.2022 does not deserve favorable consideration in the eye of the Law. That on the following date fixed, i.e., 07.12.2022, the Cause Shown for Non-Appearance by the engaged Advocate also cannot be relied upon in as much as such mistake of wrong posting of a date in the Advocate's diary cannot be a ground for restoration of the said Title Suit in as much as the Plaintiff's Advocate is herself blameworthy



Misc (J) Case No. 1110/2022
Title Suit No. 07/2020

09.04.2024

for such irresponsible mistake. The plea of wrong posting cannot be taken as ground in the present context as the dates of various categories of Cases are easily verifiable from 'E-Court Services' through one's electronic device (computer, mobile phone, etc.) and from the Court's Diary. Hence, the plea taken for the absence of the Plaintiff on 07.12.2022 before this Court in connection with the said Case is liable to be rejected.

5. Based on the arguments presented by both parties in the aforementioned case, it is evident that the petitioner sought the reinstatement of T.S. No. 7/2020 which was previously dismissed by default on 7/12 / 22. The petitioner's stance was that the dismissal resulted from their legal counsel's absence in court on that date, due to an error in the scheduling of the court appearance in the advocate's diary. This inadvertent mistake led to the court ruling in favor of default dismissal.



Misc (J) Case No. 1110/2022
Title Suit No. 07/2020

09.04.2024

6. The petitioner's plea for restoration underscores the importance of procedural accuracy and the impact of clerical errors on legal proceedings. The absence of the learned Counsel on the designated court date due to a date miscommunication raises concerns regarding fair access to justice and adherence to due process.
7. In light of these circumstances, it is crucial for all parties involved in legal matters to uphold meticulous planning and communication to ensure the smooth functioning of the justice system and to safeguard the rights of all individuals seeking legal redress.
8. On the contrary, the opposing party (O.P) or defendant vehemently objected, arguing that the reason provided for their non-appearance, namely the mother of the learned counsel suffering a heart stroke, lacked supporting documentation. The O.P further asserted that a mistake by the learned counsel in scheduling



Misc (J) Case No. 1110/2022
Title Suit No. 07/2020

09.04.2024

the hearing on the diary cannot serve as a valid basis for seeking a restoration.

9. This legal dispute likely revolves around procedural matters in a court case, where the O.P is challenging the reasons put forth by the opposing party for their absence during a crucial hearing. The petitioner has submitted a photograph of the Court diary for examination, revealing an erroneous entry of T.S. No. 7/20 on 17/12/22 instead of 7/12/22. The petitioner's claims are accompanied by an affidavit, asserting that the suit was dismissed on the correct date of 7/12/22. The grounds presented in the Petition seem to be valid based on the document provided.

10. Moreover, it is a well-established principle that errors made by learned Counsel can serve as reasonable grounds for granting relief to the affected party. In this case, the mistaken posting of date in diary appears to have had a significant impact on the legal proceedings. Given the circumstances and the



Misc (J) Case No. 1110/2022
Title Suit No. 07/2020

09.04.2024

supporting documentation, it is prudent to consider the petitioner's plea for redress. The importance of upholding justice and ensuring fair treatment in legal matters cannot be understated, especially when genuine errors have been made that impact the outcome of a case.

11. Based on the thorough analysis and considerations provided in the preceding discussions, this Court acknowledges the merit of the petitioner's prayer and deems it deserving of due consideration. As a result, the petitioner's prayer is granted, subject to a cost of Rs. 5,000/- as prescribed by this Court.

12. In light of the above decision, it is hereby declared that the petitioner's prayer has been accepted, leading to the restoration of T.S. No. 07/2020 to its rightful status. This reinstatement is contingent upon the petitioner fulfilling the obligation of payment of the prescribed cost to the defendant within the stipulated timeframe.



Misc (J) Case No. 1110/2022
Title Suit No. 07/2020

09.04.2024

13. Misc. Case is disposed of on contest.

**Civil Judge (Sr. Div.) No.1,
Kamrup (M), Guwahati.**