

West Bengal Form No. 3702

HEADING OF JUDGMENT IN ORIGINAL SUIT/APPEAL

DISTRICT : HOWRAH

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
4th COURT AT HOWRAH,



PRESENT : SRI SANDIP KARMAKAR
[J.O. Code – WB00927]
Additional District Judge,
4th Court, Howrah.

DATED : Monday, 22nd day of June, 2026

Misc Appeal No.41 of 2024
[CNR No. – WBHW01- 001227-2024]

From the decree/order of: Ld. Civil Judge (Junior Division),
1st Court, Howrah.

and made in : Misc Case No.58 of 2017

(1) Sri Bijay Kumar Mundhra
.....Appellant/Petitioner

Versus

(1) Dipak Sah
.....Respondent/Opposite Party

This appeal coming on or having been heard on 10-06-2026 in the presence of:

Partha Kumar GhoshAdvocate (s) for the appellant

Santanu GhosalAdvocate (s) for the Respondent

And having stood for consideration to this day, the court delivered the following judgment:

JUDGMENT

1. This Miscellaneous Appeal has been preferred by the Appellant/ Petitioner/ plaintiff challenging the order dated 12.02.2024 passed by the Ld. Civil Judge (Junior Division), 1st Court, Howrah in Misc. Case No. 58 of 2017. The Ld. Trial Court by passing the impugned order rejected the application filed by the appellant under Order IX Rule 9 of the Code of Civil

Procedure, 1908 seeking restoration of Title Suit No. 145 of 2008, which was dismissed for default vide order dated 09.03.2017.

Brief factual matrix of the case

2. The Appellant instituted Title Suit No. 145 of 2008 against the Respondent for eviction. The suit was posted for hearing. On 09.03.2017, when the matter was called, the Appellant sought an adjournment on the ground of ill-health. The Ld. Trial Court, finding no justifiable cause, dismissed the suit for default. The Appellant being aggrieved by that order filed the Misc. Case bearing No. 58 of 2017 under Order IX Rule 9 of CPC on 07.04.2017, i.e. within the period of limitation. The Respondent filed a written objection, contesting the same. In that Misc. case, the Appellant examined himself as P.W. 1. The Ld. Trial Court, after considering the evidence and the crucial admission made by the Appellant in cross-examination, rejected the restoration petition. Hence, the present appeal.

Submissions on behalf of the Appellant

3. The Ld. Advocate for the Appellant argued that the impugned order is bad in law and has been passed without proper appreciation of the facts. He submitted that the Appellant had complied with all earlier orders, including payment of cost of Rs. 1,000/- imposed by the court. The failure to file the examination-in-chief on 09.03.2017 was due to sudden illness, and a medical certificate was also filed along with the restoration petition. It was further argued that the Ld. Trial Court ought to have adopted a liberal approach, as held by the Hon'ble Calcutta High Court reported in *AIR 1989 Calcutta 91*, instead of rejecting the application on technical grounds. The Appellant, being an aged person of 75 years, should not be made to suffer for a single lapse.

Submissions on behalf of the Respondent

4. Per contra, the Ld. Advocate for the Respondent supported the impugned order. He drew the attention of this Court to the cross-examination of P.W. 1 i.e. the Appellant himself recorded on 26.07.2023. In his cross-

examination, the Appellant voluntarily admitted “During pendency of the suit no talk of compromise took place”. This directly contradicted his own case made in the restoration petition, wherein he claimed that several adjournments were sought for compromise talks. The Respondent further argued that the Appellant failed to produce any contemporaneous medical document proving his alleged illness on 09.03.2017. The alleged medical certificate was neither proved nor exhibited. In the absence of any sufficient cause, the restoration application was rightly dismissed.

Decision and findings of the Court

5. This Court has carefully perused the Trial Court records, including the restoration petition, the written objection, the deposition of P.W. 1 (Bijay Kumar Mundhra), and the impugned order. This Court has also considered the grounds raised in the present Memo of Appeal.

6. The core issue is whether the Appellant was able to show “sufficient cause” for his non-appearance / inability to proceed on 09.03.2017, as required under Order IX Rule 9 of the Code.

7. The Appellant took two specific grounds in his restoration petition:

- (i) There were ongoing compromise talks between the parties, and
- (ii) that he was ill on 09.03.2017.

8. However, in his cross-examination before the Ld. Trial Court, the Appellant deposed that during pendency of the suit no talk of compromise took place. The clear admission stands that there was no talk of compromise during pendency of the suit. This admission is fatal to the case of the Appellant. It demonstrates that the ground of “compromise talks” was a fabricated excuse to seek adjournments.

9. Regarding the alleged illness, the Appellant claimed to have filed a medical certificate along with the restoration petition. However, during his examination-in-chief, he did not tender that document in accordance with the

Indian Evidence Act corresponding to Bharatiya Sakshya Adhiniyam. The document was never proved. No doctor was examined. No contemporaneous prescription or medical record was produced. An unsubstantiated assertion of illness, made years after the event, does not constitute “sufficient cause”.

10. The Ld. Trial Court was therefore perfectly justified in concluding that the Appellant had failed to prove any sufficient cause. The observation of the Hon’ble High Court Calcutta in *AIR 1989 Calcutta 91* regarding a liberal approach applies only when some credible cause is shown. It does not mean that a party can make false statements and still seek restoration as a matter of right.

11. The grounds raised in the Memo of Appeal are general and was presented in routine manner. The Appellant repeatedly states that the impugned order is “bad in law” or “against the weight of evidence,” but fails to pinpoint any specific error of law or fact committed by the Trial Court. Mere repetition of grounds does not make an appeal sustainable.

12. In view of the above noted facts and observations, this court is of the view that the Ld. Trial Court has passed a well-reasoned order. It has correctly appreciated the legal requirements of Order IX Rule 9 CPC and has rightly concluded that the Appellant failed to prove sufficient cause, either for the ground of compromise or for the ground of illness. The admission made by the Appellant in cross-examination is a clear indicator of the lack of bona fides. No interference is called for in this appeal. The appeal is devoid of any merit.

13. Hence, it is

ORDERED

that the Miscellaneous Appeal, being 41 of 2024 is hereby dismissed on contest and without any order as to costs.

The impugned order dated 12.02.2024 passed by the Ld. Civil Judge (Junior Division), 1st Court, Howrah in Misc. Case No. 58 of 2017 is hereby affirmed.

The Trial court record, along with a certified copy of this order, be sent down to that Court forthwith for information and compliance.

Note in the CIS and in the relevant Registers.

Bench clerk is to do the needful.

Dictated and corrected by me;

Additional District Judge,
4th Court, Howrah

(Sandip Karmakar)
Additional District Judge,
4th Court, Howrah.