

KABC170021202024



**IN THE COURT OF LXXXV ADDL. CITY CIVIL &
SESSIONS JUDGE, AT BENGALURU (CCH-86)
(Commercial Court)**

THIS THE 22nd DAY OF NOVEMBER 2024

**PRESENT:
SRI.ARJUN. S. MALLUR. B.A.L.L.B.,
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com. Misc. No. 62/2024

**PETITIONER/
PLAINTIFF:**

Canara Bank,
Padmanabnagar Branch,
Branch At No.24, 5th Cross,
80 Feet Road, R.K Layout,
Padmanabhanagar,
Bangalore -560070.

Rep By Its Branch Manager,
Srinath Reddy S/O P Ananth Reddy,
Aged about 36 years.

(By Sri. Chethan Kumar K, Advocate.)

: Versus:

**RESPONDENT/
DEFENDENT:**

M/S Sho Tech Visuals,
No.56, 4th Cross,
2nd Main Manjunath Nagar,
Uttarahalli Main Road,
Bangalore - 560061
Rep By Its Proprietor
Mrs Shobha B
(By Sri. S. Rajashekar, Advocate)

ORDER ON MAIN PETITION

This miscellaneous petition is filed under Order IX Rule 9 of CPC for setting aside the order of dismissal passed in Commercial O.S.No.1441/2022 dated 04.07.2024 and restore the suit to its original file.

2. It is contended by the petitioner that it had filed the suit for recovery of the loan of Rs.9,90,186/- from the respondent with interest at 18% per annum and penal interest of 2%. The defendant appeared in the suit and filed the written statement and after framing of issues the case was listed for evidence. The Manager of the plaintiff bank filed affidavit evidence and also got marked documents at Ex.P.1 to P.11. Thereafter case came to be adjourned for cross examination on several dates. P.W.1 came to be present on 02.02.2024,

19.02.2024 and 28.02.2024 for cross examination of P.W.1 but cross examination did not took place. Thereafter, on 23.04.2024, 11.06.2024 and 22.06.2024 when the case was listed for cross examination of P.W.1, the witness could not be present as he was required to attend meeting and for personal reasons. On 04.07.2024 the P.W.1 was required to attend a full day review meeting and the counsel for the plaintiff was also not keeping well and therefore there was no appearance before the Court. The Court considering the absence of the plaintiff and its counsel recording that P.W.1 has not tendered for cross examination, consequently dismissed the suit for non prosecution. It is submitted that the absence of P.W.1 on 04.07.2024 was on account he being deputed to attend a review meeting and his counsel was not keeping well and therefore there was bonafide reasons of absence and the same was unintentional. It is submitted that plaintiff has got every chance to succeed in the suit and if the suit is not restored the petitioner would suffer untold hardship and on these grounds sought for setting aside order of dismissal and restoration of the suit.

3. The respondent has file statement of objections denying the petition averments in toto. Inter-alia contending that in spite of providing sufficient opportunity P.W.1 did not tender himself for cross examination which rightly ended in dismissal of the suit and that absolutely no bonafide reasons are made out for restoration of the suit and sought for dismissal of the petition with cost.

4. Heard the Learned Counsel appearing for the petitioner and respondent. Perused the materials on record.

5. The points that arise for my consideration are as under:-

1) Whether the petitioner has made out justifiable grounds for setting aside the order of dismissal dated 04.07.2024 and restore the suit to the original file as prayed?

2) what order?

6. My answer in the above points are as under: -

Point No.1:- In the **Affirmative**.

Point No.2:- As per final order
for the following.

R E A S O N S

7. **Point No.1 :-** It is the contention of the petitioner is that on 04.07.2024 when the case of scheduled for cross examination of P.W.1, P.W.1 was required to attend a day long review meeting and the counsel for the plaintiff was also not keeping well which resulted in dismissal of the suit. Per contra the respondent would contend that in spite of being provided sufficient opportunity P.W.1 has not tendered himself for cross examination and therefore the Court was justified in dismissing the suit for non prosecution.

8. Along with the petition, petitioner produced certified copy of entire order sheet of O.S. No.1441/2022. On perusal of the same upon appearance of the defendant the case was listed before the lok-adalath for facilitating settlement and on the lok-adalath held on 17.06.2023 it has been recorded that the defendant has not complied

to the terms and conditions of OTS Scheme. Thereafter issues were framed on 07.07.2023 and the case was listed for plaintiff evidence. On 13.09.2023 when the case was listed for plaintiff evidence as the last chance. The respondent counsel prayed time to keep the defendant present and file a joint memo for settlement. Thereafter, on 29.11.2023 there was a report of payment of Rs.1,50,000/- by the defendant and the case was again listed for plaintiff evidence on 08.01.2024. On 08.01.2024 the calendar of event came to be scheduled and accordingly on 18.01.2024 the petitioner examined its witness P.W.1 and got marked documents at Ex.P.1 to P.11.

9. Subsequently the case was listed for cross examination of P.W.1 to 23.01.2024. On 23.01.2024 P.W.1 remained absent. On 02.02.2024 and 19.02.2024 the Court was on leave. On 28.02.2024, 22.03.2024 P.W.1 was present but cross examination has not taken place. On 23.04.2024, 11.06.2024 and 22.06.2024 P.W.1 continuously remained absent. On 22.06.2024 the reasons for absence was reported to be death in the family of P.W.1. Thereafter on 04.07.2024 again P.W.1

remained absent and the case was called twice and on all the occasions P.W.1 was absent and there was no representation which ultimately resulted in passing the order of dismissal.

10. On considering the proceedings of the order sheet it is clear that initially the evidence came to be prolonged on the ground that the defendant was intending to settle the claim. Thereafter for three occasions when P.W.1 was present the cross examination has not taken place. Subsequently again on four occasions P.W.1 remained absent on 22.06.2024 the reason for absence is attributed to death in the family of P.W.1. On 04.07.2024 it is reported that the witness was required to attend a day long review meeting. To substantiate the same to the counsel for the petitioner has filed memo with copies of the emails which discloses P.W.1 being deputed to attend a review meeting. The reasons shown for non appearance on the date of hearing has not been seriously denied and disputed by the respondent. Therefore under these circumstances to facilitate effective adjudication of the matter in issue and to

avoid multiplicity of proceedings and also in the interest of justice it would be just and proper to restore the suit and provide one last opportunity for P.W.1 to be tendered for cross examination but by imposing suitable costs. Accordingly I answer **Point No.1 in the Affirmative.**

11. POINT NO.2:- For the aforesaid reasons, I proceed to pass the following.

ORDER

The petition filed by the petitioner U/o.IX Rule 9 of CPC is **is allowed with cost of Rs.5,000/-** payable to the respondent.

The order of dismissal in Commercial O.S.No.1441/2022 dated 04.07.2022 is set aside and suit in Commercial O.S.No. 1441/2022 is restored to its original file.

Both the plaintiff and defendant shall appear before the Court in Commercial O.S.No.1441/2022 on the date fixed for hearing without expecting any further notice.

On the date of hearing P.W.1 shall be kept present without fail and if kept present

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defendant shall proceed to cross examine P.W.1
without availing any adornment for any reason
subject to payment of cost by the plaintiff.

***Office is directed to put up the entire
records with all documents in Commercial
O.S.No.1441/2022 before the Court on
06.12.2024 without fail.***

[Dictated to the Stenographer Grade-III, transcribed by her,
corrected and signed by me then pronounced in the Open Court,
dated **this the 22nd day of November 2024**]

(ARJUN. S. MALLUR)
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.