

Misc 44/2014 (Misc Preemption 48/12)

Order No. 31
Dated 12.05.2016

Today is fixed for argument.

Both parties are present by filing lawyer's hazira.

Heard both sides.

Considered.

The record shall be taken up in second half for passing of order.

Later,

Case record is taken up for passing order.

The present Misc Case has been filed by one Monotosh Karmakar for restoration of the Misc Preemption Case No. 48/12 which was dismissed for default on 30.08.2014. The petitioner has stated that on 30.08.2014, his Ld. Advocate, namely, Bikas Mondal was ill. Due to the lawyer's illness, the Written Examination of chief could not be prepared and a petition for adjournment was filed. The Court was pleased to reject the said petition and the Misc Preemption case being No. 48/12 was dismissed for default on the same day. The petitioner has further stated in his petition that there was no willful negligence or laches on his part. Because his lawyer was ill on the said day, a judgment was prayed for by him. He, therefore, prayed for the restoration of the Misc Preemption Case on the ground that he is willing to proceed with the same.

The Opposite Party filed a Written Objection against the said petition wherein he disputed the fact of lawyer's illness. He further stated that the petitioner is only trying to harass the Opposite Party. Because he had prayed for constant adjournments in the main suit, the Court was pleased to dismiss the same. He, therefore, prayed for the rejection of the petition under Order 9 Rule 9 preferred by the petitioner Monotosh Karmakar.

To support his case, Monotosh Karmakar himself deposed as PW 1. No document was exhibited by him. During his examination, he stated before this Court that it was due to his lawyer's illness, that the main suit was dismissed for default. No other witness came to depose before this Court to corroborate the petitioner's case.

Samir Dey, on the other hand, deposed as O.P.W 1.

Perused the case record as well as the materials available on the same.

It seems that the petitioner has taken the ground of lawyer's illness in this Misc Case. He has emphasized that there was no laches on his part. However, he failed to adduce any evidence to support this fact. A Medical Certificate was filed by him to show that his Ld. Advocate, Sri Bikas Mondal was suffering from diarrhea. The said document was not exhibited. In other words, the ground that was taken by the

petitioner has not been proved. The doctor who issued the certificate did not come and depose before this Court. Ld. Advocate Bikas Mondal

also did not testify to support the contention of his illness.

Moreover, upon perusal of the Order sheet, and, particularly, the order dated 30.08.2014, it is found that Mr. Bikas Mondal was present in Court on the said day on which the suit was dismissed. This fact has been recorded by my Ld. Predecessor in Office in her order being Order No. 18 dated 30.08.2014. A portion of the order is reproduced below in this context.

“Mr. Mondal has appeared before this Court and he is found to be physically fit for conducting hearing”.

It is evident that the ground that was taken for adjournment on the said day was refused on account of the fact that the concerned counsel was physically fit and had attended Court on that particular day. It can be, therefore, concluded that the Ld. Advocate Mr. Bikas Mondal was not suffering from diarrhea on 30.08.2014 and the Medical Certificate which was filed but not exhibited cannot be given any credibility.

To put it differently, the ground which was taken for the purpose of the restoration of Misc Preemption Case 48/12 has not been proved to the satisfaction of this Court. In fact, there is ample evidence to suggest otherwise. Accordingly, I do not find any reason to restore the main suit.

Hence it is,

ORDERED

that the Misc Case 44/14 under Order 9 Rule 9 filed by the petitioner is considered and rejected on contest.

Drop the case from pendency list.

Sd/- Fatima Firdaus
Civil Judge (Jr. Divn.)
Nabadwip, Nadia.