

Misc. Case No. 65 of 2018
CNR No. WBPS01-000304-2018
(Under Order-21, Rule-97 r/w 151 of CPC and Rule-208 of CRO).

Order No. 70
Dated 06.03.2026

Today is fixed for hearing of the petition filed by the opposite party on 04.09.2024.

Parties have filed haziras through their Ld. Advocate.

Heard the Ld. Advocates.

Perused. Considered.

It appears that the Ej 6762 of 2014 had been decreed ex parte and thereafter the defendant had filed an application under Order 9 Rule 13 of the CPC registered as the Misc Case No.155 of 2018 which was dismissed for default. Thereafter the defendant filed an application under order 9 Rule 9 of the CPC which was registered as Misc Case No. 74 of 2022 and the same was allowed subject to payment of cost and accordingly Misc Case 155 of 2018 was restored to its original file. The said misc case was allowed subject to payment of cost of Rs.10,000/- and now the Ld. Advocate of the Opposite Party submits that the instant case is not maintainable having been set aside the ex parte decree.

The Ld. Advocate for the defendant submitted that they have even complied the condition of payment of Rs.10,000/- as directed by the Court by sending the demand draft to the petitioner through registered post envelope which he has received. In support of his contention he submitted the application form and the bank statement. On the other hand though initially denied to have received any such envelope containing demand draft, the Ld. Advocate for the Petitioner submitted that they received the envelope but nothing was inside it.

Having considered the above and the fact that the application under order 9 Rule 13 of the CPC has already been allowed and the suit has also been restored to its original file and the opposite party has also made payment of the cost as imposed, by issuing demand draft in the name of the petitioner, I do not find any reason to keep the proceeding of the case pending.

In view of the above, prayer for the opposite party is allowed.

The instant case shall be and is dismissed as non maintainable.

Note in the relevant register and upload the copy of the order in the CIS system.

Dictated and corrected by me:


Judge


Smt. Gladys Bomjan
J.O. Code : 01039
Judge, 3rd Bench,
Presidency Small Cause Court,
Calcutta.