

Order dated: 12-11-2018

Petitioner/plaintiff side is duly represented. O.P./defendant side is absent without any step.

Today is fixed for necessary order on petition no- 404/18 filed by the petitioner/plaintiff under Order 9 Rule 9(1) R/W section 151 of CPC whereby the petitioner has prayed for setting aside the dismissal order dated 30/7/2018 and for extending an opportunity to the plaintiff side to proceed with the case.

Perused the case record.

Case of the petitioner that reflects in the petition of the petitioner is as follows. That, on 29-6-2018 this court heard the either side Id.counsels on a petition filed by the defendant/O.P side regarding maintainability of the suit in view of section 154(1) (n) of the Assam Land Revenue Regulation Act.1986. The Id. Counsel for the plaintiff noted the next date as on 14/8/2018. That, on 14/8/2018 the Id. Counsel submitted his attendance in the suit and he was informed that the suit is dismissed for default on 30-7-2018. On verification of the case record, it was found that on 13/7/2018 the case was fixed for order on the petition of maintainability of the suit and the next date fixed was on 30/7/2018. Due to absence of the plaintiff side on the aforesaid dates, the suit was dismissed for default. The absences were not intentional and negligent. It was caused due to mis-posting the date in the diary as on 14/8/2018. Hence, the petitioner has prayed for condoning the default in appearance of petitioner and allowed him to proceed with the case setting aside the dismissal order dated 30/7/2018 for the ends of justice.

O.P./defendant side filed written objection stating inter alia that the petition has no cause of action; the petition is not maintainable etc. It is further stated that the petitioner didn't appear before the court on dates fixed wilfully and negligently. Hence the defendant side has prayed for dismissal of the petition otherwise they will suffer irreparable loss and injury.

As per the version of the petitioner side, it is seen that the reasons shown by the petitioner side Id. Counsel for his absence in the court on dates fixed is mis-posting of dates in the diary as on 14/8/2018.

In order to prove the claims, the petitioner side hasn't adduced any form of evidence either documentary or oral. Although the petitioner has submitted copy of pages of diary dated 29/6/2018 and 14/8/2018 but the pages are not admissible in evidence being xerox copies. Even if it is assumed that the documents are admissible in evidence but the same cannot be of any help as because from the copies of diary it cannot be said that the alleged diary belongs to the Id. Counsel for the petitioner side. Moreover, the suit was dismissed for default of the plaintiff for being absent in the court for two consecutive fixed dates that is on 13/7/2018 and on 30/7/2018. The petitioner side Id. Counsel couldn't show any sufficient cause on his part for absence on the relevant dates. The petitioner has failed to substantiate his claims by adducing cogent and reliable evidence. Mere statements don't take the place of proof.

Hence, in view of above discussions and observations, the petition no-404/18 stands rejected.

Accordingly, this MJ case is disposed of.


Munsiff
Baksa