
(2010) 03 KAR CK 0206
In the Karnataka High Court
Case No : Misc. First Appeal No. 8496 of 2009

Canara Bank

APPELLANT

Vs

Numatric Engineering And Supplies and Others

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9

Citation : (2010) 4 BC 359 : (2010) 3 KarLJ 329

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : H.S. Sreenivasamurthy, for the Appellant; None., for the Respondent

Judgement

V. Jagannathan, J.—Heard learned Counsel for the Appellant. Submission made by the Appellant's Counsel is that the Respondents have remained ex parte before the Trial Court both in the suit and also in the miscellaneous application that was filed by the Appellant. Therefore, notice to Respondents is not necessary.

2. In view of the above submission made, notice to Respondents is dispensed and delay in filing the appeal is condoned as sufficient cause is shown.

3. As far as the merits of the appeal is concerned, submission made by the Appellant's Counsel is that the suit was dismissed for non-prosecution and the petition filed under Order 9 Rule 9 of the Code of Civil Procedure, 1908 was also dismissed by the Court below only on the ground that the Appellant has not examined the Counsel who took a wrong date instead of the correct date of hearing. Referring to this observation of the Trial Court, submission made is that the officer of the Bank was examined and she has deposed in her evidence that the matter was listed on 11.11.2006 and then it was posted to 13.11.2006 and again it was posted to 17.11.2006, but the Counsel who attended the case on behalf of the Appellant-Bank took the date of hearing as 17.1.2007 instead of 17.11.2006 and this was the cause for suit of the Plaintiff being dismissed for non-prosecution.

4. Having regard to the contents of the affidavit of the officer of the Appellant-

Bank and also taking note of the fact that the Respondents remained ex parte before the Trial Court and also when the petition was filed by the Appellant seeking setting aside of the dismissal of the suit for non-prosecution, suit itself having been filed by the Bank for recovery of money from the Defendants, I am of the view that, interest of justice would require restoration of the suit and hence I pass the following order.

The appeal is allowed. The impugned order of the Court below is set aside and the suit is restored to file. The Trial Court shall dispose of the suit in accordance with law within six months from the date of this order's receipt. Appellant to appear before the Trial Court on 15.4.2010.