
(2003) 08 GAU CK 0036
In the Gauhati High Court
Case No : C.R.P. No. 79 of 1999

UCO Bank

APPELLANT

Vs

Monoranjan Paul

RESPONDENT

Date of Decision : 18-08-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 3, Order 9 Rule 4

Citation : (2004) 2 BC 148 : (2003) 3 GLR 603

Hon'ble Judges : P.P. Naolekar, C.J

Bench : Single Bench

Advocate : B.R. Dey, K.K. Nandi and H. Talukdar, for the Appellant; None, for the Respondent

Judgement

P.P. Naolekar, C.J.—The plaintiff petitioner UCO Bank has filed the suit for recovery of an amount of Rs. 42,791.41P along with interest against the defendant-respondent Shri Monoranjan Paul. The suit was proceeded against the defendant ex parte and was fixed for hearing on 8.12.98. On that date the plaintiff's counsel appeared and asked for time, but the suit was dismissed by the trial Court exercising powers under Order 9 Rule 3 of the Code of Civil Procedure. Later on an application was filed for setting aside the order of dismissal, which would be purported to be under Order 9 Rule 4 CPC. The trial Court dismissed the application on the ground that the adjournment was sought for on that date on the ground of transfer of the Bank Manager, but the parties have not produced any transfer order along with the application nor the application is being supported by an affidavit of any Bank Officer.

2. Learned counsel Ms. Deboleena Choudhury, appearing for the petitioner has taken me through the application filed for restoration, which is sworn by the advocate. Apart from this, it has been specifically mentioned in the application that the Manager of the plaintiff bank was transferred to Jorhat and due to shortage of supervisory staff, the Manager has not attended the Court on the date fixed, i.e., 8.12.98. The affidavit sworn by the counsel would be an affidavit

for and on behalf of his client and thus not filing an affidavit by the Bank Manager cannot be a ground for rejection of an application and when the facts stated in the application have been supported with an affidavit sworn by the counsel. The application clearly mentioned that the Manager of the Bank could not attend the Court on account of the fact that he has been transferred to Jorhat. The aforesaid facts clearly reveals that the grounds on which the application has been rejected by the trial Court does not borne out from the facts of the case. The application for setting aside the order of dismissal is sworn by the advocate and it clearly mentioned the fact that the Manager has been transferred and therefore he could not attend the Court.

3. It is settled principle of law that as far as possible, parties should be given opportunity to contest matter on merits unless there is flagrant disregard to the proceedings taken up by the Court or there is deliberate in action on the part of the party in not attending the Court. In the present case no such ground is made out as the plaintiff's counsel has moved the application after the dismissal of the suit. In the facts and circumstances of the case the order passed by the learned trial Court is not in accordance with law and is hereby set aside.

4. The Money Suit No. 66 of 1999 is restored to its original number and stage and the trial Court shall proceed with the case after issuing due notice to the defendant.

Records of the case be sent back to the trial Court positively within 10 days.