

CRP 90/2017
BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI

Heard Dr. B.N. Gogoi, learned counsel for the petitioner.

By this application under Article 227 of the Constitution of India, the petitioner has challenged the order dated 21.12.2013 passed by the learned Munsiff No. 2, Sivasagar in Misc. (J) Case No. 65/2013 arising out of Title Suit No. 26/2007 (TS No. 30/2005) dismissing the petition filed by him for restoration of the suit as the plaintiff/petitioner was absent without any steps.

The suit of the plaintiff was dismissed apparently for default.

The petitioner filed a petition on 9.5.2015 under Order 9 Rule (5)/Rule (9) and under Section 151 CPC praying for restoration of the title suit. The petition was registered as Misc. (J) Case No. 65/2013. By the order dated 21.12.2013, Misc.

(J) Case No. 65/2013 was dismissed holding that the petitioner failed to show sufficient cause for setting aside the order of dismissal of the suit and for restoration of the suit to file.

It is against this order that the present revision petition is filed.

From a perusal of the order, it appears that when the suit of the plaintiff was dismissed, the suit was pending for cross-examination of PW 1. The learned Court below rightly held that in the circumstances, Order 9 Rule 5 CPC does not come into play and it will be Order 9 Rule 9 CPC which will be applicable.

Under Order 43 Rule 1(c) CPC, an order under Rule 9 of Order 9 CPC rejecting the petition for setting aside the order of dismissal of the suit is appealable and therefore, without expressing any opinion on the merits of the case, this petition is not entertained and is dismissed.

The petitioner may, however, if so advised, avail the remedy as is available in law.