

Present:

**Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam**

First Miscellaneous Appeal No. 92 of 2014
with
Civil Rule No. 80(FM) of 2014

In the Matter of:

Innovative Holdings Limited, represented
by its Managing Director
.....Plaintiff-appellant.

-Versus-

Abu Sayem and others
....Defendant-respondents.

No one appears

..... For the plaintiff-appellant.
No one appears
.....For defendant-respondent.

Judgment on 17.03.2025.

Sheikh Abdul Awal, J:

This First Miscellaneous Appeal is directed against the order dated 13.11.2013 passed by the learned Joint District Judge, 2nd Court, Narayanganj in Title Suit No. 363 of 2012 rejecting the application under Order 9, Rule 9 of the Code of Civil Procedure for restoration.

No one appears to press the Appeal on repeated calls.

In this case, the record of the case has not been called for.

In view of the fact that this petty old appeal arising out of an order, we are inclined to dispose of it on merit.

On scrutiny of the record, it appears that the plaintiff Appellant filed Title Suit No. 363 of 2012 in the Court of the learned Joint District Judge, 2nd Court, Narayanganj for declaration of title as described in the schedule of the plaint. Ultimately the suit was dismissed for default on 16.07.2013. Thereafter, the plaintiff-appellant on 11.09.2013 filed an application under Order 9, Rule 9 of the Code of Civil Procedure for restoration of the suit after recalling the order dated 16.07.2013. The plaintiff filed the application for restoration of the suit on 11.09.2013, that is, more than 2 (two) months from date of dismissal of the suit. The trial Court after hearing the application by order No. 23 dated 16.01.2013 dismissed the suit for default on the finding that “বাদীপক্ষ অত্র দরখাস্ত দায়ের করিয়াছেন গত ১১/০৯/২০১৩ ইং তারিখে। অর্থাৎ বাদীপক্ষ খারিজাদের প্রায় ০২ (দুই) মাস পর অত্র দরখাস্ত দাখিল করিয়াছে যাহা আইন নির্ধারিত সময় অতিবাহিত হইবার পর। বাদীপক্ষ আইন নির্ধারিত সময়ের পর অত্র দরখাস্ত দাখিল করিলেও উহার সহিত তামাদি খন্ডনের কোন দরখাস্ত দাখিল করেন নাই। ফলে বাদীপক্ষের অত্র দরখাস্তটি বিধি মোতাবেক দায়ের না হওয়ায় দরখাস্তটি বিবেচনারযোগ্য নহে বিধায় অত্র দরখাস্তটি না-মঞ্জুর করা হইল।” This finding certainly indicates that the learned Joint District Judge on assigning sound reason rejected the prayer for restoration of the suit.

This matter is pending before this Court over a period of 10 years but no one took any steps to get the matter heard. Therefore, in the attending facts and circumstance, it is clear that the plaintiff has no interest in the matter.

The learned Joint District Judge considered all aspects of the matter and thereafter, recorded the order of rejection. The reasoning given by the learned Joint District Judge appears to us

to be proper and sound and we, do not find any reason to differ from it. No interference, is therefore, called for.

In the result, this First Miscellaneous appeal is dismissed without any order as to costs.

Since the appeal is dismissed, the connected Rule being Civil Rule No. 80(FM) of 2014 is discharged. The order of injunction granted earlier by this Court stands vacated.

Let a copy of this judgment be communicated to the Court Concerned at once.

Md. Mansur Alam, J:

I agree.