



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Miscellaneous Appeal No. 4222/2026
CNR: RJHC020845542026 | URN: CMA / 7013U / 2026



Canara Bank, A Banking Company Duly Constituted Under Bank-
ing Companies (Acquition And Transfer Of Undertakings) Act,
1970) Having Its Head Office At Bengaluru- 56002 (Karnataka)
India And One Of Its Branch Being Situated At Branch Mahatama
Gandhi University, Sitapura, Jaipur (Raj.) Through Its Authorised
Officer/ Senior Manager.

-----Appellant

Versus

- 1 Y S Paper Cone, Through Its Proprietor Sh. Abdul Hasan,
Address Plot No. 16, Kagziyan Colony, Jaipur (Raj)
302029
- 2 Abdul Hasan S/o Sh. Mohammad Yasin, In Capacity Of
Proprietor Y S Paper Cone, Address Plot No. 96, Pathano
Ka Chowk, Kagziyan Mohalla, Jama Masjid, Sanganer,
Jaipur- 302029 And Khasra No. 2754, Bajni Talai, Jain
Hostel Ke Piche, Ganesh Vihar Colony, Sanganer, Jaipur
(Raj.)

-----Respondents

For Appellant(s)	:	Mr. Hemant Taylor Mr. Sudhir Kumar
For Respondent(s)	:	None Present

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

Order

23/09/2026

1. The appellant herein, *inter alia*, seeks quashing of the impugned
order dated 21.07.2026 passed by the learned Commercial Court No.1,
Jaipur Metropolitan-II, Jaipur ("learned Commercial Court"), whereby
the application filed under Order IX Rule 9 read with Section 151 of the
Code of Civil Procedure, 1908 ("CPC") seeking restoration of



Commercial Suit No.214/2026 was dismissed. Consequentially, the appellant seeks restoration of the said commercial suit.

2. Brief backdrop of the case is that the appellant-bank instituted a commercial suit for recovery before the learned Commercial Court. The plaint was presented on 01.05.2026 and was kept for reporting on 02.06.2026. The suit was also listed before the learned Court on 02.06.2026 and came to be dismissed on the ground of non-compliance with the office objections and non-appearance of the plaintiff.

2.1 Thereafter, the appellant filed an application under Order IX Rule 9 read with Section 151 CPC on 29.06.2026 seeking restoration of the suit. *Vide* order dated 21.07.2026, the learned Commercial Court dismissed the restoration application, observing that the application had been filed without any documents in support of the explanation furnished therein.

2.2 Thus aggrieved, the present miscellaneous appeal has been preferred.

3. Learned counsel for the appellant contends that the appellant was not afforded an effective opportunity to cure the office objections. It is submitted that the dismissal of the suit on its first date, on account of non-compliance with procedural objections and non-appearance has resulted in denial of substantial justice.

3.1. Learned counsel for the appellant also contends that the learned Commercial Court failed to properly appreciate the *bona fide* circumstances explaining the appellant's non-appearance.

3.2. Learned counsels for the appellant further submit that the appellant is a banking institution and its Manager was engaged in official banking work and, therefore, could not appear before the Court.





The appellant consequently contended that there was a sufficient and *bona fide* reason for its non-appearance and sought restoration of the suit in the interest of justice.

4. In the aforesaid backdrop, we have heard learned counsels and perused the record.

5. Formal issuance of notice to the respondents is dispensed with, as no prejudice would be caused to them, since we do not intend to deal with the merits of the suit filed by the appellant.

6. Before proceeding further, it would be apposite to see the impugned order dated 21.07.2026 in its entirety. English translation thereof is set out hereinbelow for ready reference:-

“The learned counsel for the applicant/plaintiff, Shri Sudhir Balotia, is present. The office report has been perused.

An application dated 30.06.2026 under Order IX Rule 9 of the Code of Civil Procedure, 1908 has been preferred on behalf of the learned counsel for the applicant/plaintiff, seeking setting aside of the order dated 02.06.2026 whereby the plaint presented by the plaintiff was dismissed by this Court for non-appearance/non-prosecution and for restoration of the suit.

During the course of arguments, learned counsel for the applicant/plaintiff, reiterating the facts stated in the application, submitted that the plaintiff-bank had instituted the original suit for recovery against the defendants. On 02.06.2026, the counsel for the plaintiff-bank appeared before the Court and marked his presence and thereafter proceeded to the Sanganer Court, Jaipur, as he had other matters listed there on the said date. While returning therefrom to the Commercial Court, his motorcycle slipped on the way, as a result whereof he sustained injuries and, therefore, could not appear before the Court in time. Thereafter, despite being injured, he appeared before the Court at 12:47 p.m. on 02.06.2026; however, by that time, the suit had already been dismissed for non-appearance/non-prosecution. It was further submitted that the plaintiff is a banking institution and the Manager of the Bank could not appear before the Court on account of being engaged in banking work. It was also submitted that the matter was at the stage of office report and summons had not been served upon the opposite parties. Therefore, restoration of the suit would not adversely affect any legal right of the opposite parties, whereas non-restoration of the suit would cause irreparable loss to the plaintiff-bank. Accordingly, it was prayed that the application be allowed, the order dated 02.06.2026 be set aside and the original suit be restored and taken on its original number, in the interest of justice.

Heard. The record has been perused.

From perusal of the record, it is clear that on 02.06.2026, neither the applicant/plaintiff nor any counsel on his behalf was present before the





Court till the relevant time. After waiting for the appearance on behalf of the applicant/plaintiff, the Court, finding that no appearance had been marked on his behalf till 12:20 p.m., dismissed the suit for non-appearance/non-prosecution. The applicant/plaintiff has now, by way of the application seeking setting aside of the said order and restoration of the suit, primarily assigned the reasons that his counsel was engaged in other matters before the Sanganer Court and that, while returning therefrom, his motorcycle slipped, resulting in injuries to him.

The applicant/plaintiff has stated that on 02.06.2026, other matters of his counsel were also listed before the Sanganer Court, Jaipur, and for that reason he had proceeded from this Court to the Sanganer Court. However, no copy of the case diary of the counsel or any other document has been placed on record in support of the said assertion, which could establish or corroborate that the counsel's other matters were in fact listed before the Sanganer Court on 02.06.2026 and that his presence therein was required. Thus, the averment made in this regard in the application is not supported by any independent or documentary evidence.

Likewise, the applicant/plaintiff has assigned, as the second reason for the counsel's absence at the relevant time, that while returning from the Sanganer Court, his motorcycle slipped on the way, resulting in injuries to him. However, no medical document, treatment slip, medical certificate or any other independent documentary evidence regarding the alleged accident and injuries has been placed on record. If the counsel had in fact sustained injuries in such an accident, as a result whereof he was unable to appear before the Court in time, it was expected that the said fact would be supported by the available medical or other contemporaneous documents. In the absence thereof, merely stating in the application that the motorcycle had slipped and that the counsel had sustained injuries cannot be considered sufficient to establish a sufficient and credible cause for the absence.

Further, an important aspect of the present case is that the applicant/plaintiff himself has categorically stated in the application that despite having allegedly sustained injuries, his counsel appeared before the Court on the same day, i.e. 02.06.2026, at 12:47 p.m., whereas, as per the record, the suit had already been dismissed for non-appearance/non-prosecution at 12:20 p.m. on the same day. Thus, according to the applicant's own case, his counsel appeared before the Court approximately 27 minutes after the dismissal of the suit and acquired knowledge thereof on the same day.

In such circumstances, if the counsel for the applicant/plaintiff had appeared before the Court at 12:47 p.m. on 02.06.2026 and had also acquired knowledge at that very time that the suit had been dismissed for non-appearance/non-prosecution, it was expected that appropriate proceedings for restoration of the suit would have been initiated immediately or at the earliest possible opportunity. However, the applicant/plaintiff has not explained as to why, despite acquiring knowledge of the dismissal on 02.06.2026 itself, an application for restoration under Order IX Rule 9 CPC was not filed immediately. No satisfactory reason or explanation in this regard has been stated in the application. Such conduct does not reflect the requisite diligence and care expected in the prosecution of the suit.

The applicant/plaintiff has also contended that it is a banking institution and that its Manager could not appear before the Court as he was engaged in banking work. However, merely because the plaintiff is a banking institution and its officers remain occupied with their official duties, the same cannot, by itself, constitute a sufficient cause for absence before the Court. Once an institutional plaintiff institutes a suit



before the Court, it is equally its responsibility to ensure regular and effective prosecution of the proceedings through its authorised representative or counsel. Mere routine official engagements cannot, by themselves, justify absence from judicial proceedings.

As regards the contention of the applicant/plaintiff that the matter was at the stage of office report and that summons had not been served upon the opposite parties, the said circumstances also do not absolve the applicant/plaintiff of its obligation to regularly prosecute the suit. The fact that the matter was at an initial stage or that summons had not been served upon the opposite parties does not, by itself, dispense with the requirement of appearing before the Court on the date fixed. It is the responsibility of the party instituting the suit to ensure, either personally or through its authorised representative/counsel, its appearance before the Court on the dates fixed and to undertake the necessary proceedings for proper prosecution of the suit.

Upon due consideration of the entire record, the facts stated in the application and the material available on record, this Court is of the opinion that the applicant/plaintiff has failed to establish any credible and documentarily supported sufficient cause for its absence. No copy of the case diary or other documentary evidence has been produced in support of the assertion that the counsel was engaged in other matters before the Sanganer Court, nor is there any medical document, treatment slip or other independent evidence on record regarding the alleged motorcycle accident and injuries. Further, as per the applicant's own case, the counsel had appeared before the Court at 12:47 p.m. on the same day and had acquired knowledge of the dismissal of the suit, yet no satisfactory explanation has been furnished for not taking immediate legal steps for restoration. In such circumstances, the reasons assigned by the applicant cannot be considered sufficient and credible for the purposes of Order IX Rule 9 CPC.

Accordingly, on consideration of all the facts, the documents available on record and the application submitted, this Court reaches the conclusion that the applicant/plaintiff has failed to establish sufficient and credible cause for restoration of the original suit, which was dismissed for non-appearance/non-prosecution on 02.06.2026. Consequently, the application preferred on behalf of the applicant/plaintiff under Order IX Rule 9 read with Section 151 CPC, being not liable to be allowed, is hereby rejected/dismissed.

The record be consigned to the record room/statistics as per rules and, after completion of all formalities, be consigned to the record room."

7. Though a rather long order passed by learned Commercial Court, but it transpires that in reality, the restoration application filed by it (Bank) was dismissed summarily on ground of non-appearance of the appellant, coupled with non-compliance of the removal of objections which were pointed out by the filing office of the Court.

8. The reasons stated for non-appearance of the counsel for the appellant are that, on 02.06.2026, he had appeared before the learned Commercial Court and marked his presence, but thereafter proceeded





to the Sanganer Court, Jaipur, as he had other matters listed there on the same day. While returning from the Sanganer Court to the Commercial Court, his motorcycle slipped, resulting in injuries to him. Despite the injuries, he reached the Commercial Court at about 12:47 p.m.; however, by that time, the suit had already been dismissed at 12:20 p.m. for non-appearance/non-prosecution.

9. Having gone through the contents of the appeal, which is duly supported by an affidavit of the competent bank official, as well as the contents of the application under Order IX Rule 9 of the CPC, we are of the view that the learned Commercial Court, took an over-pedantic view, that too, in the most mechanical manner, without proper application of mind, in dismissing the application, thereby denying a fair opportunity to the appellant bank to pursue its case on merits and causing serious prejudice to it.

10. No doubt, what seems to have weighed on the mind of the learned Commercial Court was, perhaps, a misconceived notion that the appellant bank is not interested in pursuing its matter in the absence of either the representative of the bank and/or its counsel, coupled with the non-removal of the objections.

11. But what has also been given a complete short shrift is the fact that the suit was put up before the court by its office without any prior notice to the appellant. It was so done without granting ample opportunity for removal of defects. As is borne out from the record, the matter was kept for filing a report on compliance of objections on 02.06.2026, and instead, it was put up before the court on the same very day, i.e., 02.06.2026.

12. One fails to understand the undue haste and alacrity with which the office of the Commercial Court as well the Court itself acted. Such





swiftness, coupled with the fact that the learned Commercial Court also did not grant any opportunity to the appellant by issuing any notice for non-compliance of the objections, which, in any case, appear to us to be technical in nature cannot be countenanced by us.

13. As an upshot, we are of the view that the application filed by the appellant under Order IX Rule 9 of the CPC deserves to be allowed, and it is accordingly so ordered. The suit stands restored to its original number and status.

14. The appeal is allowed accordingly.

(ASHUTOSH KUMAR),J

(ARUN MONGA),J

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