

Court No. 6
(265719)

12.06.2025
(AD 22)
(S. Banerjee)

CO 1940 of 2025

Alak Das
Vs.
Kumari Sharmistha Ray & Anr.

Mr. Sukanta Chakraborty
Mr. Abdul Hamid
Mr. Abdul Halim
Mr. Sahil Hamid

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against the order being no. 48 dated April 5, 2025 passed by the learned Civil Judge (Jr. Division) 1st Court at Barasat in Title Suit No. 366 of 2012. By the order impugned the concerned officer of the court was directed to inform the plaintiff about the tracing of the record and intimating the next date through Nazareth Department, Barasat so that the plaintiff may have knowledge about the current status of the case record. By the said order, September 15, 2025 has been fixed for further orders or report of intimation send to the plaintiff.

Mr. Chakraborty, learned advocate appearing for the petitioner submits that in spite of the fact that the plaintiff is not taking any step, the learned trial

judge has not dismissed the suit. In support of such contention he places reliance upon the provisions of Order 9 Rule 8 of the Civil Procedure Code.

Order 9 Rule 8 of the Civil Procedure Code states that where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Mr. Chakraborty submits that the defendant has not admitted any portion of the claim of the plaintiff.

Therefore, if the plaintiff does not appear and the defendant appears when the suit is called on for hearing, the provisions of Order 9 Rule 8 of the Civil Procedure Code stands attracted.

However, considering the fact that the records were not traceable for a long period of time and the same, as it appears from the order impugned, has now been traced out, this court is of the considered view that the learned trial judge was right in

communicating the current status of the case record to the plaintiff.

However, considering the fact that September 15, 2025 has been fixed for further orders, this court is of the considered view that the learned trial judge shall proceed with the suit in accordance with law on September 15, 2025.

It is, however, made clear that in the event the plaintiff does not appear on the next date fixed in the suit for hearing, the learned trial judge shall proceed in accordance with Order 9 Rule 8 of the Civil Procedure Code.

With the above observations CO 1940 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)