

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.23 of 2023

1. Smt. Deb Manjuri Jamatia, wife of late Raghu Mani Jamatia, resident of Village – Gamaku (Hari Datta Tilla), P.O-Gamaku, P.S. Birganj, District-Gomati Tripura.

2. Sri Debaswa Mani Jamatia, S/o late Raghu Mani Jamatia, resident of Village – Gamaku (Hari Datta Tilla), P.O-Gamaku, P.S. Birganj, District-Gomati Tripura.

3. Sri Satyabrata Jamatia, S/o late Raghu Mani Jamatia, resident of Village – Gamaku (Hari Datta Tilla), P.O-Gamaku, P.S. Birganj, District-Gomati Tripura.

4. Smt. Sima Debi Jamatia, W/o Sri Ujjal Debbarma and D/o of late Raghu Jamatia, resident of Village – Gamaku (Hari Datta Tilla), P.O-Gamaku, P.S. Birganj, District-Gomati Tripura.

5. Smt. Amulya Devi Jamatia, W/o Sri Sanjoy Jamatia and D/o late Raghu Mani Jamatia, resident of Village – Gamaku (Hari Datta Tilla), P.O-Gamaku, P.S. Birganj, District-Gomati Tripura.

.....Defendant/Petitioner(s)

Versus

Smt. Prem Sakhi Jamatia, W/o Sri Bichitra Kumar Jamatia, resident of No.2 Colony, Malbasa, P.O-Malbasa, P.S.-Birganj, Sub-Division-Amarpur, District-Gomati, Tripura.

.....Plaintiff/Respondent(s).

For Petitioner(s) : Mr. D. K . Daschoudhury, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

12/07/2023

Plaintiff/respondent has not entered appearance despite service of notice.

2. The plaintiff/respondent filed suit No. T.S. 24 of 2021 for declaration of right, title & interest, confirmation of possession and perpetual

injunction against the defendant. After service of summons, defendants appeared and prayed for time to file written statement. They could not file their written statement within the 90 days period due to the ill health of the defendant No.1/ petitioner No. 1 herein, who was lying in bed and could not come to sign the WS within the due date. On 15th February, 2022 itself, the learned trial Court debarred defendants from filing written statement without granting any further indulgence. Request was made again on 22.03.2022, on behalf of the defendant and 4 others to file documents, which was allowed by way of last indulgence. Further, on 26.04.2022, time was prayed for by the plaintiff for filing of the documents on the next date. On the same date i.e. 26.04.2022, the application under Order IX Rule 9 of CPC read with Section 151 of CPC was pressed for recall of the order by which the defendants were precluded from filing written statement.

3. The learned trial Court vide impugned order dated 26.04.2022 observed that though a health ground has been taken by the defendant No.1 that she was bed ridden due to which she could not file WS within the statutory period of 90 days but no supporting medical papers were annexed thereto. Therefore, the prayer was rejected and the plaintiff was allowed time to file documents. Defendant No.1 was not allowed time to file documents though vide earlier order dated 22.03.2022 the learned trial Court itself had allowed time to the defendants to file documents on the next date even though they have been earlier debarred vide order dated 15.02.2022 from filing written statement upon expiry of 90 days period.

4. Learned counsel for the petitioners submits that the parties are tribals, belonged to Scheduled Tribes community, hailed from remote village where medical facilities are not easily available, especially for old woman.

Therefore, non submission of medical certificate in support of old aged prolonged medical illness of the defendant No.1/petitioner No.1 herein should not have weighed upon the learned trial Court to refuse to recall the order by which the defendants were precluded from filing written statement.

5. It is submitted that grave prejudice would be caused if defendants/ petitioners herein are not allowed to file written statement and the case would go uncontested. As such, impugned order may be interfered with by remanding the matter to the learned trial Court for reconsideration.

6. There is no opposition to the prayer, as the sole plaintiff/respondent herein has chosen not to appear and contest the instant petition.

7. It appears from perusal of the order dated 15th February, 2022 that after expiry of the statutory period of 90 days the learned trial Court debarred them from filing written statement. As has been held in the case of ***Salem Advocate Bar Association, Tamil Nadu V/S Union of India*** reported in ***AIR 2005 SC 3353 (see para 20 & 21)*** the period prescribed under Order 8 rule 1 and proviso thereto read with Order 8 rule 10 is not mandatory but directory. The rule in question being one of procedure is made to advance justice and not to defeat it.

8. The learned trial Court even on the subsequent date oblivious of the debarment of the defendants from filing written statement allowed them to file documents. It appears that the case was adjourned for framing of issues. Later on 26.04.2022, the plaintiffs, themselves, sought adjournment for filing documents whereas the defendants pressed the application under

Order IX Rule 9 of the CPC for filing WS. It, therefore, appears that the case has not progressed to a stage where the plaintiff would be put to irrevocable position if the defendants are allowed opportunity to file WS and the suit is tried on contest since it relates to declaration of right, title & interest, confirmation of possession and perpetual injunction against the defendant.

9. It further appears that the plea taken by the defendant No.1 that she is an old lady, belonging to ST community, living in remote village where medical facilities are not easily available, are to be lightly shrugged aside given the practical conditions in which people live in the interior parts of the State.

10. Learned trial Court could have taken a broader view of the matter. In such circumstances, when there is no opposition from the plaintiffs/defendants, this Court is inclined to remand the matter for reconsideration on this issue to the learned trial Court in the interest of justice. Needless to say in case the learned trial Court is inclined to accede to the prayer, it may in its discretion impose suitable costs for filing the WS.

11. Accordingly, the instant petition is allowed in the manner and to the extent as stated hereinabove. Pending application(s) if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ