

GAHC010014242023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/32/2023

MD ABAR ALI
S/O- LATE KITAP ALI, R/O- BHODEYAGURI, P.O- K BHOTGAON, P.S AND
DIST- KOKRAJHAR, BTR, ASSAM

VERSUS

MUSSTT FAJILA AHMED
W/O- ANOWAR HUSSAIN, VILL- BAKUABHANGI, P.O- FUTKIBARI, P.S-
BILASIPARA, DIST- DHUBRI, ASSAM, PIN- 783345

Advocate for the Petitioner : MR. B J MUKHERJEE

Advocate for the Respondent : MR. M KHAN

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

12.06.2023

Heard the learned counsel Mr. B.J. Mukherjee appearing for the petitioner. Also heard Mr. M. Khan, learned counsel representing the

respondent.

2. This is an application under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure challenging the order dated 22.11.2022 passed by the learned Munsiff No.1, Kokrajhar in T.S. 12/2022.

3. The factual matrix giving rise to this application lies within a very short compass.

4. The petitioner being defendant in the suit below, had taken several adjournments for filing the written statement. On each occasion, he would cite many reasons like- his medical illness, his lawyer's inability to prepare the written statement, etc. At one point of time, the court allowed him time to file the written statement subject to payment of a cost of ₹1000/-. Finally, the court refused to grant more time to file written statement by the petitioner.

5. Objecting to the prayer, Mr. Khan, the learned counsel for the respondent submits that the petitioner has misused the provision of Order 8 of the Code of Civil Procedure. In order to buttress his point, Mr. Khan has relied upon a judgment of Supreme Court that was delivered in *Desh Raj v. Balkishan*, (2020) 2 SCC 708. In paragraph 15 of the judgment, the Supreme Court has held as under:

“15. However, it would be gainsaid that although the unamended Order 8 Rule 1 CPC is directory, it cannot be interpreted to bestow a free hand to on any litigant or lawyer to file written statement at their own sweet will and/or to prolong the lis. The legislative objective behind prescription of timelines under CPC must be given due weightage so that the disputes are resolved in a time-bound manner.

Inherent discretion of courts, like the ability to condone delays under Order 8 Rule 1 is a fairly defined concept and its contours have been shaped through judicial decisions over the ages. Illustratively, extreme hardship or delays occurring due to factors beyond control of parties despite proactive diligence, may be just and equitable instances for condonation of delay."

6. I have considered the submissions made by the learned counsels of both sides.

7. I have decided to agree with Mr. Khan that the petitioner has misused the directory provision of Order 8 of the CPC. Even then, for the ends of justice, I have decided that the petitioner should be given an opportunity to file their written statement. Therefore, the impugned order dated 22.11.2022 is set aside.

8. The petitioner is allowed one last opportunity to file written statement subject to payment of a cost of ₹5,000.00. The cost shall be paid to the respondent/plaintiff. The petitioner is directed to file the written statement on 23rd June, 2023 without fail.

9. With the aforesaid direction, the revision petition stands disposed of.

JUDGE

Comparing Assistant