GAHC010049372022

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

Case No. : CRP/25/2022

ABANI KUMAR DAS
(PROPRIETOR OF MAA BRICKS INDUSTRY, HAVING ITS OFFICE AT JALUKBARI, GUWAHATI-781018), SON OF LATE RATNESHWAR DAS, RESIDENT OF PADUMBARI, GUWAHATI-781014, DIST.- KAMRUP(M), ASSAM

VERSUS

MD. ISMAIL ALI AND 4 ORS.
S/O- LATE ISMAIL ALI, R/O- VILL.- SAMUAPARA, MOUZA- SIPHAJHAR, DIST. DARRANG, ASSAM

2:MD. IBRAHIM ALI
S/O- LATE ISMAIL ALI
R/O- VILL.- SAMUAPARA
MOUZA- SIPHAJHAR
DIST. DARRANG
ASSAM

4:MUST. SURIA BEGUM
D/O- LATE ISMAIL ALI
R/O- VILL.- SAMUAPARA
MOUZA- SIPHAJHAR
DIST. DARRANG
ASSAM

5:MUST. MERI BEGUM
D/O- LATE ISMAIL ALI
R/O- VILL.- SAMUAPARA
MOUZA- SIPHAJHAR
DIST. DARRANG
ASSAM

6:MUSTT. ERINA BEGUM
D/O- LATE ISMAIL ALI
R/O- VILL.- SAMUAPARA
MOUZA- SIPHAJHAR
DIST. DARRANG
ASSA

Advocate for the Petitioner : MR. N DHAR

Advocate for the Respondent : MR. S CHAUHAN (r

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

O R D E R

31. 03. 2023

Heard Mr. BK Sen, learned counsel for the petitioner. Also heard Mr. S Chauhan, learned counsel for the respondents.

2. The present application is filed assailing the legality and validity of the order dated 10.12.2021 passed by the learned Civil Judge, Darrang, Mangaldai in Misc (J) Case No. 54/2019 in Execution Case No. 04/2019, whereby the prayer of the petitioner for adducing further evidence of PWs was rejected on the ground that the petitioner has already take three adjournments for the same purpose.

3. Mr. Sen, learned counsel for the petitioner submits that the learned trial court by passing the aforesaid order has failed to exercise the jurisdiction resulting in miscarriage of justice. Accordingly, he prays that if a date is fixed for filing of evidence of PWs, the petitioner shall file the same on that date without taking further adjournment.

4. Mr. Chauhan, learned counsel for the respondents submits that he will

have no objection if the affidavit is filed on the date to be fixed by this court without granting any further adjournment. However, at the same time, Mr. Chauhan submits that the respondents have obtained decree after a long run trial and till date they have not been able to get the decree executed and therefore, a direction may be issued to the learned court to decide the execution proceeding within a period of six months as mandated in the decision of the Hon'ble Apex Court in ***Rahul S Shah Vs Jinendra Kumar Gandha*** reported in ***(2021) 6 SCC 418***.

5. Considered the rival submissions of the parties. Though in exercise of power under Article 227 of Constitution of India, this court cannot find fault in the order dated 10.12.2021, however, this court is of the view that interest of the justice would be met and failure of justice can be prevented, if the petitioner is given a chance to file his evidence on affidavit. At the same time, the interest of the decree holder is also to be protected.

6. Accordingly, the present revision petition stands allowed with the following conditions:

   I. The petitioner shall file his evidence on affidavit on or before 30.04.2023. If not filed within the stipulated period no further time be granted for the purpose.

   II. Such affidavit shall be accepted by the court only on deposit of Rs. 15,000/- as cost within the aforesaid time limit.

   III. The aforesaid cost be remitted to the decree holder.

   IV. The learned court below shall make an endeavour to dispose of the proceeding within a period of six months as mandated by the

Hon'ble Apex Court in ***Rahul S Shah (supra)*** and as mandated in the amended Rules of High Court.

7. With the aforesaid term, this revision petition stands disposed of.

JUDGE

Comparing Assistant