

GAHC010072592023



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

Case No. : CRP(IO)/95/2023

SHUKLESWAR BARMAN
S/O- LATE KHUDURU BARMAN,
R/O- VILLAGE BHELAKOBA,
P.S- BAGRIBARI, DIST- KOKRAJHAR, ASSAM, PIN-783349

VERSUS

PARIMAL BARMAN AND 2 ORS.
S/O- LATE KHUDURU BARMAN,
R/O- VILLAGE BHELAKOBA,
P.S- BAGRIBARI, DIST- KOKRAJHAR, ASSAM, PIN-783349

2:THE STATE OF ASSAM
REP. BY THE DEPUTY COMMISSIONER
KOKRAJHAR
ASSAM

3:THE ASSISTANT SETTLEMENT OFFICER / CIRCLE OFFICER
KOKRAJHAR REVENUE CIRCLE
KOKRAJHAR

P.O
P.S AND DIST- KOKRAJHAR
ASSA

Advocate for the Petitioner : MR. SAIENDRA DEKA

Advocate for the Respondent : MS. P DAS (R-1)

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

19.05.2023

1. Heard Mr. S. Deka, learned counsel for the petitioner. Also heard Mr. G. Baishya, learned counsel for the respondent No. 1 and Mr. T. R. Gogoi, learned counsel for the respondent Nos. 2 and 3.
2. The present application is filed assailing an order dated 12.07.2022 passed by the learned Civil Judge, Kokrajhar in Petition No. 632/2022 arising out of the Title Suit No. 02/2022, whereby the prayer of the petitioner for acceptance of written statement has been rejected.
3. The respondent No. 1 as plaintiff instituted a suit being Title Suit No. 73/2021 before the learned Munsiff, Kokrajhar arraying the petitioner herein as defendant No. 1 and the proforma respondent Nos. 2 and 3 as defendant Nos. 2 and 3 inter alia praying for declaration of right, title and interest, recovery of possession by evicting the petitioner/defendant No. 1 from the suit land, correction of record and for permanent injunction.
4. The plaintiff and the defendant No. 1 are brothers. It is the case of the petitioner/defendant No. 1 that notice was served on 11.12.2021 and the defendant No. 1 appeared before the learned Court below through his engaged counsel and though the documents were handed over to his engaged counsel and requested him to do the needful, the learned engaged counsel did not file such written statement and when the defendant on 14.07.2022, asked the learned counsel, it was informed that

the learned Court below under its order dated 12.07.2022, closed the right of the defendant No. 1 to file written statement.

5. Accordingly brief was taken back and a new counsel was engaged and on 11.08.2022, the newly engaged counsel submitted written statement before the learned Court below along with a petition being Petition No. 1656 with a prayer to accept the written statement by vacating the earlier order dated 12.07.2022.
6. Thereafter, the learned Court below under the impugned order dated 21.02.2023 rejected such prayer to accept the written statement. Accordingly, the present petition is filed.
7. Mr. Deka, learned counsel for the petitioner submits that the defendant has a valuable right to defend the suit inasmuch as even after delay, he has filed the written statement and acceptance of such written statement shall not prejudice the plaintiff. It is also contended that there was no fault on the part of the petitioner in causing the delay inasmuch as written statement was filed immediately after passing of the order dated 12.07.2022.
8. Per contra, Mr. Baishya, learned counsel for the respondent No. 1 seriously objecting acceptance of written statement contends that the conduct of the plaintiff is not good inasmuch as the plaintiff has not come with a clean hand before this Court. The plaintiff cannot avoid the mandate of Order 8 Rule 1 of the CPC, 1908 by blaming the learned engaged counsel inasmuch as such conduct clearly shows that the petitioner was negligent.

9. This Court has given anxious consideration to the submissions made by the learned counsel for the parties.
10. It is by now well settled that the provision of Order 8 Rule 1 of the CPC, 1908, fixing time limit for filing written statement is not mandatory. Such judicial pronouncement was made by the Hon'ble Apex Court in the case of ***Kailash –Vs- Nanhku & Ors*** reported in ***2005 4 SCC 480***.
11. It is seen that the prayer of the petitioner to accept the written statement has been rejected on the ground that the period of 90 days has already been elapsed. Though the learned trial Court below came to a conclusion that time limit mandated under Order 8 Rule 1 of the CPC, 1908 is directory and not mandatory, however, relying on certain decision of the Hon'ble Apex Court, the Court came to a conclusion that except on exceptional circumstances, time cannot extend the period after expiry of 90 days.
12. The learned trial Court below also concluded the reasons of delay shown by the defendant to be not valid or satisfactory, however, the Court failed to take into consideration a very vital fact of the matter that the written statement was already filed and was on record.
13. It is true that sufficient grounds are required to be shown to file written statement beyond 90 days. Sufficiency of grounds shall depend upon case to case in its background facts. In the case in hand, the petitioner filed the written statement within a short period by engaging a new counsel.
14. This Court is also of the considered opinion that if the written statement already filed and is on record, is accepted, no serious prejudice

shall be caused to the plaintiff in the given facts of the case inasmuch as the suit is on the initial state.

15. Accordingly it is provided that the impugned order dated 12.07.2022 passed by the learned Civil Judge, Kokrajhar in Petition No. 632/2022 arising out of the Title Suit No. 02/2022 is set aside.
16. The learned trial Court below shall accept the written statement already filed by the defendant No. 1/ petitioner and proceed with the suit in accordance with law.
17. In the aforesaid term, this revision petition is disposed of.

JUDGE

Comparing Assistant