

GAHC010108142021



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

Case No. : WP(C)/3669/2021

MOMI PAUL
D/O LATE SURENDRA CHANDRA PAUL, W/O BISWAJIT DEB, R/O VILL.
AND P.O. DASGRAM, P.S. AND DIST. KARIMGANJ, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, DEPTT. OF SOCIAL WELFARE, DISPUR, GUWAHATI 6

2:THE DIRECTOR

SOCIAL WELFARE
ASSAM
UJANBAZAR
GUWAHATI 1

3:THE DEPUTY COMMISSIONER

KARIMGANJ
DIST. KARIMGANJ
ASSAM.

4:THE DIST. SOCIAL WELFARE OFFICER

KARIMGANJ
P.O. AND DIST. KARIMGANJ
ASSAM.

5:THE CHILD DEVELOPMENT PROJECT OFFICER

NORTH KARIMGANJ I.C.D.S

PROJECT
GIRISHGANJ
P.O. NAYAGRAM
DIST. KARIMGANJ
ASSAM.

6:SMTI RIMI MALAKAR

W/O SRI MANNA MALAKAR
VILL. HIJIM
P.O. DASGRAM
DIST. KARIMGANJ
ASSAM
PIN 78872

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

26-09-2023

Heard Mr. F.U. Barbhuiya, learned counsel for the petitioner. Also heard Mr. CKS Baruah, learned Government Advocate, appearing for the respondent nos. 1 to 5 and Ms. R. Choudhury, learned counsel for the respondent no.6.

2. This writ petition is filed by the petitioner praying for a writ of certiorari for setting aside the appointment of the private respondent no.6 as Anganwadi Worker at 98 number Anganwadi Centre attached to 42 number Dasgram Model L.P. School, Ward No.6. It is submitted that without following the proper procedure the respondent no.6 was appointed as Anganwadi Worker at 98

number Anganwadi Centre attached to 42 number Dasgram Model L.P. School, Ward No.6. Being aggrieved the petitioner filed a Title Suit being T.S. no.127/2011 before the Munsiff No.1, Karimganj and the Munsiff Court by Judgment dated 23.12.2013 and decree dated 06.01.2014 decreed the suit in favour of the petitioner and the appointment of the respondent no.6 was set aside. However, the petitioner in spite of being the decree holder did not proceed for execution of the suit. In the decree the Trial Court held as under:

“It is ordered that the suit is partly decreed on contest without cost.

Selection and appointment of defendant No.6 for the post of Anganwadi

Worker in Anganwadi Centre No.98 is illegal and liable to be cancelled.”

In spite of the judgment and decree being passed in his favour the petitioner did not proceed to take steps for execution of the decree. Meanwhile, a Title Appeal was filed by the respondent no.6 being Title Appeal No.12/2022 before the Court of Civil Judge, Karimganj. This Title Appeal was ultimately dismissed on 01.02.2021 due to the dismissal of Misc.(J) Case No.36/2020 which was filed with a prayer for condonation of the delay in filing Appeal No.12/2022 and consequently, the Title Appeal was also dismissed. Being aggrieved, the private respondent has filed a second appeal before this Court and which is stated to be presently pending and the same is admitted and is pending disposal as is submitted by the learned counsel for the parties.

This writ petition is filed on the premise that there is no alternative remedy available under the CPC for execution of the decree as passed by the learned Court of Munsiff.

Learned counsel for the petitioner has referred to the provisions of CPC in support of his claim. Learned counsel for the respondent no.6, however, disputes the claim of the petitioner and submits that no direction can be issued as prayed for, inasmuch as there is already an order of the Civil Court passed in T.S. no.127/2011 before the Munsiff No.1, Karimganj by judgment dated 23.12.2013 and decree dated 06.01.2014 and a second appeal has arisen out of the same matter is presently pending before the appropriate Bench of this Court.

This Court has heard the learned counsel for the parties and carefully, perused the pleadings on record.

It is seen that the T.S. no.127/2011 before the Court of Munsiff No.1, Karimganj has been preferred by the petitioner challenging the appointment of the private respondent no.6. The suit was decreed in favour of the petitioner and against the said judgment and decree a title appeal being Title Appeal No.12/2022 was preferred by the private respondent no.6, which was rejected as the petition seeking condonation of delay being Misc.(J) Case No.36/2020 was dismissed by the said Court. Against the said order, the matter is pending before this Court in

a second appeal. It is submitted by the learned counsel for the respondent that the second appeal has already been admitted for hearing. The learned counsel for the petitioner that there is no remedy available under the Code of Civil Procedure (CPC) cannot be accepted, inasmuch as by judgment dated 23.12.2013 and decree dated 06.01.2014 the suit was decreed. However, the petitioner for reasons best known to him abstained from execution of the said decree. The Code of Civil Procedure (CPC) is a complete Code in itself and it has provisions for grant of effective and specific reliefs to the litigants. No steps have been taken by the petitioner for execution of the said suit. No order of the learned Trial Court has been placed before the Court to show that the application for execution was rejected or orders were refused to be passed. The issues raised in this writ petition involve questions of facts which were determined on the basis of the evidence adduced by the Civil Court. Ordinarily when there is an alternative remedy available under the CPC, the writ Court does not like to exercise its jurisdiction entertaining the writ petition. In exceptional cases where it has been shown that no such efficacious remedy exists, there may be a case where the Writ Court may exercise its jurisdiction even in respect of the matters raising disputes and question of facts. Such is not the situation in the present case. Learned counsel for the petitioner has not been able to satisfy this Court in respect of the step which he has failed to take

for execution of the decree which was granted in favour of the petitioner by the learned Trial Court. In *Ghan Shyam Das Gupta and Ors. vs. Anant Kumar Sinha & Ors* reported in (1991) 4 SCC 379 the Apex Court has held as under:

“8. The principle as to when the High Court should exercise its special jurisdiction under [Article 226](#) and when to refuse to do so on the ground of availability of an alternative remedy has been settled by a long line of cases. The remedy provided under [Article 226](#) is not intended to supersede the modes of obtaining relief before a civil court or to deny defences legitimately open in such actions. As was observed in [State of Andhra Pradesh v. Chitra Venkata Rao](#) [1976] 1 SCR 521 the jurisdiction to issue a writ of certiorari is supervisory in nature and is not meant for correcting errors like an appellate court. [In Thansingh Nathmal and Ors. v.A. Mazid](#): [1964] 6 SCR 654 a case dealing with liability to pay sales tax, the appellants without following the statutory remedy under the [Sales Tax Act](#), moved the High Court under [Article 226](#) on the ground that the Act was ultra vires. The challenge was rejected. Another contention, namely, that the finding of the Commissioner that the goods were actually within the State at the time of the contract was based on no evidence and was purely speculative, was also raised. This ground also failed before the High Court and the writ petition was dismissed. Approving the decision, this Court observed that if the appellants had pursued the statutory remedy under the Act and the question had been referred to the High Court, the Court could have appropriately advised the Commissioner, but not having done so the High Court could not be asked to assume the role of an appellate court over the decision of the Commissioner either on a question of fact or even of law. Again when a learned Single Judge of the High Court and on

appeal a Division Bench proceeded to examine the correctness of an order in relation to grant of a permit to ply a vehicle under the Motor Vehicles Act, it was observed by this Court in [M. Naina Mohammed v. K.A. Natarajan & Ors.](#), [1976] 1 SCR 102, that the power under [Article 226](#) is supervisory in nature and the Judges at both the tiers had unwittingly slipped into the subtle but, fatal, error of exercising a kind of appellate review. So far the question of executability of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all its aspects. The numerous rules of order XXI of the Code take care of different situations, providing effective remedies not only to judgment-debtors and decree-holders but also to claimant objectors as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the civil court. The remedy under the Civil Procedure Code is of superior judicial quality than what is generally available under other statutes, and the Judge being entrusted exclusively with administration of justice, is expected to do better. It will be, therefore, difficult to find a case where interference in writ jurisdiction for granting relief to a judgment-debtor or a claimant objector can be justified. The rules 97 to 106 of order XXI envisage questions as in the present appeal to be determined on the basis of evidence to be led by the parties and after the 1976 Amendment, the decision has been made appealable like a decree. The High Court, in the present case, therefore, ought not to have embarked upon a decision of the writ petition on merits, and should have refused to exercise its special jurisdiction on the ground of alternative remedy before the civil court.”

On perusal of the pleadings and records and taking note of the law laid down by

the Apex Court in *Ghan Shyam Das Guupta (supra)*, this Court is of the view that when efficacious alternative remedy is available and the litigant before the Court has not proceeded to avail such remedy without justifying the reasons, therefore, the writ court would be justified in turning down the plea of the litigant.

In view of the discussions made above, the writ petition stands dismissed.

No order as to cost.

JUDGE

Comparing Assistant