

GAHC010137332023



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

Case No. : CRP(IO)/195/2023

SMTI SANGITA SINGH AND ANR
W/O SRI AJAY BAHADUR SINGH, PROP. OF M/S ANNANYA HARDWARE,
JAMINI APARTMENT, LAKHIMI NAGAR TINIALI, HATIGAON ROAD,
DISPUR AND R/O UPASANA PALACE, 2ND FLOOR, R.P. ROAD, DISPUR,
GUWAHATI-781006

2: AJAY BAHADUR SINGH
M/S SANITARY HARDWARE STORE
R.P. ROAD
GANESHGURI
GUWAHATI-78100

VERSUS

PAWAN MORE
S/O LATE B.L. MORE, PROP OF M/S SHREE SHYAM CONSTRUCTION AND
SUPPLIERS, SITUATED AT NA-PUKHURI, WARD NO. 3, TINSUKIA, ASSAM
AND HAVING BUSINESS AT SHIVAM TOWER, BLOCK-B, GROUND FLOOR,
NEAR UCO BANK, MAKUM ROAD, TINSUKIA TOWN, PIN-786125, ASSAM

Advocate for the Petitioner : MR G KAKOTI

Advocate for the Respondent :

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

30.06.2023.

Heard Mr. G. Kakoti, learned counsel for the petitioners.

This Civil Revision Petition under Article 227 of the Constitution of India, is directed against the order dated 22.05.2023, passed by the learned Civil Judge, Tinsukia in Money Suit No.38/2022.

It is to be mentioned here that vide the aforementioned order, the learned Civil Judge, Tinsukia has debarred the petitioners from filing written statement on the ground that 90 days have already elapsed. However, the learned Court below has allowed the defendant No.1 and the pro-forma defendant No.2, to participate in the cross-examination of PW.2, if so advised.

Mr. Kakoti, learned counsel for the petitioners submits that the petitioners could not file the written statement within the stipulated period, as she has engaged one Advocate at Tinsukia but the said engaged Advocate has not taken step properly and also not filed any petition on 22.05.2023, seeking time to file written statement. Mr. Kakoti further submits that the suit is preferred for realization of a sum of Rs.95,19,967.73 paise, and if the petitioners are not allowed to file the written statement, then prejudice will be caused to them and therefore, it is contended to allow this petition.

Having heard the submission of learned counsel for the petitioner, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 22.05.2023, passed in Money Suit No.38/2022.

It appears from the impugned order dated 22.05.2023, that the summons was issued to the petitioner and it was served on her on 04.11.2022 and thereafter on 22.05.2023, 90 days have already elapsed. It also appears that on that day, the learned counsel for the petitioner has not filed any petition before the

learned Court below, for extending the period for filing written statement, instead he filed only *hajira* before the learned Court below.

It is to be noted here that Hon'ble Supreme Court in in catena of decisions held that the provision of Order 8, Rule 1 of the CPC is procedural and directory in nature and the same does not deal with the power of the Court or provide consequence of non-existence and in appropriate cases, it can be extended also. Reference in this context may be made to a decision of the Hon'ble Supreme Court in **Shaikh Salim Haji Abdul Kharimsab vs. Mr. Kumar & Ors**, reported in **AIR 2006 SC 396** and also in **Salem Advocates Bar Association vs. Union of India**, reported in **AIR 2005 SC 3533**.

Having considered the submission of learned counsel for the petitioners and also the grounds so assigned for failing to file written statement before the learned Court below and also considering the proposition of law laid down in the aforesaid two cases by the Hon'ble Supreme Court, this Court is inclined to dispose of this petition at the motion stage itself, by allowing the same.

Accordingly, the petition stands allowed. The impugned order dated 22.05.2023, passed by the learned Civil Judge, Tinsukia in Money Suit No.38/2022, stands set aside.

The petitioners shall file the written statement before the learned Court below within 15 (fifteen) days from today.

In terms of above, the Revision Petition stands disposed of.

JUDGE

Comparing Assistant