

GAHC010188692020



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

Case No. : CRP(IO)/2/2021

GOBINDA CH DAS
S/O LATE PRANPATI DAS, R/O VILL AND P.O.-DADARA, P.S.-HAJO, DIST-
KAMRUP, ASSAM-781104

VERSUS

SMTI. IRA DAS AND 30 ORS
W/O LATE SAMBHU RAM DAS, D/O LATE RAGHU THAKURIA @ RAGHU
KOCH, R/O VILL-DADARA, P.O.-DADARA, P.S.-HAJO, DIST-KAMRUP,
ASSAM, PIN-781104

2:SMTI. BHARATI LAHKAR
W/O LATE ANANTA LAHKAR
D/O LATE RAGU THAKURIA @ RAGHU KOCH
R/O VILL-KULHATI
DAMDAMA
P.O.-KULHATI
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

3:SMTI. HEMOKANTI DAS
W/O SRI BHUPEN DAS
D/O LATE RAGHU THAKURIA @ RAGHU KOCH
R/O VILL-NORTH GUWAHATI
MADHYAMKHANDA
P.O. AND P.S.-NORTH GUWAHATI
DIST-KAMRUP
ASSAM
PIN-781030

4:SMTI. JAYA THAKURIA
D/O LATE RAGHU THAKURIA
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

5:SMTI. ASHADHYA THAKURIA
W/O LATE RAGHU THAKURIA
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

6:SMTI. MILAN DAS
W/O SRI RAMESH DAS
R/O VILL-NORTH GUWAHATI
SHILSAKO
ABHAYPUR
P.S.-NORTH GUWAHATI
DIST-KAMRUP
ASSAM
PIN-781030

7:SMTI BHABANI DAS
W/O LATE NAREN DAS
R/O VILL-GONDHMOW
P.S.-SUALKUCHI
DIST-KAMRUP
ASSAM
PIN-781103

8:SARAT THAKURIA
S/O LATE LELEKU THAKURIA
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

9:MD. ABED CHOUDHURY
S/O LATE BABJAN CHOUDHURY
R/O VILL-DADARA

P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

10:MD. ABDUL CHOUDHURY
S/O LATE BABJAN CHOUDHURY
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

11:MD. MOHIBUL CHOUDHURY
S/O LATE BABJAN CHOUDHURY
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

12:MD. MOON CHOUDHURY
S/O LATE BABJAN CHOUDHURY
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

13:SMTI. CHARUBALA DAS
W/O SRI HAREN KUMAR DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

14:PABITRA KUMAR DAS
S/O LATE NIBHARSHA DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP

ASSAM
PIN-781104

15:SMTI. BICHITRA DAS
W/O LATE PRANPATI DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

16:MUNINDRA DAS
S/O LATE PRANPATI DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

17:PRADIP DAS
S/O LATE PRANPATI DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

18:SMTI PINKY DAS
D/O LATE PRANPATI DAS
C/O SMTI. BICHITRA DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

19:SMTI HEMLATA DAS
C/O SMTI SUBHA DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

20:SMTI. SUBHA DAS
D/O LATE BHAKTI DAS
D/O LATE BHAKTI DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

21:SMTI RENUKA DAS
C/O SMTI SUBHA DAS
D/O LATE BHAKTI DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

22:SMTI CHANDRAPRABHA DAS
D/O LATE BHAKTI DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

23:JAYANTA BARUAH
S/O LATE JOGEN DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

24:BHABESH BARUAH
S/O LATE JOGEN DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

25:MAHENDRA BARUAH
S/O LATE JOGEN DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

26:SMTI. BEAUTY BARUAH
W/O LATE JOGEN DAS
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

27:GOPAL DAS
S/O LATE KAMALA MEDHI
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

28:LOHIT DAS
S/O LATE KAMALA MEDHI
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

29:LILADHAR MEDHI
S/O LATE KAMALA MEDHI
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

30:BINOD MEDHI
S/O LATE KAMALA MEDHI
R/O VILL-DADARA

P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-781104

31:SOMIN MEDHI
S/O LATE KAMALA MEDHI
R/O VILL-DADARA
P.O.-DADARA
P.S.-HAJO
DIST-KAMRUP
ASSAM
PIN-78110

Advocate for the Petitioner : MR H MAURYA

Advocate for the Respondent : MR G BHARADWAJ (R13, R14)

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 19.01.2023

—
Heard Mr. H. Maurya, the learned counsel appearing on behalf of the petitioner and Mr. Sheeladitya, the learned counsel appearing on behalf of the respondent Nos. 1, 2 & 3.

At the outset, it is relevant to take note of that the petitioner herein is the defendant No. 5 in the said suit.

The petitioner has invoked the superintending powers of this Court under Article 227 of the Constitution challenging the order dated 26/09/2018 as well as the order dated 07/01/2020. In terms with the order dated 26/09/2018, the learned Trial Court on the ground that the statutory period for filing the written statement was over, rejected the Petition No. 1678/2018 thereby debarring the various defendants including the defendant No. 5 to file their written statement. It further appears that

the defendant No. 5/the petitioner thereupon filed an application before the Trial Court for recalling of the said order dated 26/09/2018. However, the said petition was rejected vide the order dated 07/01/2020 on the ground that there was no reasonable ground for allowing the prayer of the defendant No. 5 for acceptance of the written statement after the lapse of the statutory period of 90 days.

The learned counsel appearing on behalf of the petitioner by drawing the attention of this Court to the various orders passed by the Trial Court had submitted that it was only on 21/09/2018 the documents filed in support of the plaint were served upon the petitioner/the defendant No. 5 and as such the period of 90 days could not have been over on 26/09/2018 and this aspect of the matter was brought to the attention of the Trial Court, which was not taken into consideration in passing the order dated 07/01/2020. The learned counsel further submitted that along with the application for recalling the order dated 26/09/2018 the defendant No. 5/the petitioner had also submitted the written statement which was not accepted by the Court below and as such he has approached this Court under Article 227 of the Constitution.

On the other hand, Mr. Sheeladitya, the learned counsel appearing on behalf of the respondent Nos. 1, 2 & 3 submitted that in the process of not filing the written statement and subsequent applications being filed and the pendency of the instant proceedings, the very legislative mandate of Order VIII Rule 1 of the Code of Civil Procedure, 1908, which stipulates that the written statement ought to be filed within a period of 90 days have been frustrated. He submitted that any further delay in the proceedings on account of that is only harming the plaintiffs, as it is the plaintiffs, who are suffering on account of the delay in respect to the pendency of the instant proceedings.

This Court upon hearing the learned counsels for the parties and upon perusal of the materials on record including the orders impugned is of the opinion that the order dated 26/09/2018 by which the defendant No. 5/the petitioner was debarred

from filing the written statement was erroneous inasmuch as it was only on 21/09/2018 the defendant No. 5/the petitioner was served the copies of the documents which were filed in support of the plaint. In that view of the matter, this Court interferes with the order dated 26/09/2018.

Taking into consideration that the order dated 07/01/2020 is a fall out of the order dated 26/09/2018 which this Court have already held to be erroneous, this Court further interferes with the order dated 07/01/2020. It is also relevant to take note of that the written statement had already been filed before the Trial Court, but on account of the order dated 07/01/2020, the same has not been accepted. In that view of the matter, this Court therefore, directs the Trial Court to accept the written statement filed by the defendant No. 5 and proceed with the trial in accordance with law.

In view of the order passed herein, the order dated 11/01/2021 whereby further proceedings of Title Suit No. 18/2018 has been stayed, is hereby vacated and the parties are directed to appear before the Trial Court on 16th of February, 2023.

The registry is directed to inform the Trial Court about the instant order by way of a special messenger.

The petition accordingly stands disposed off.

JUDGE

Comparing Assistant