

GAHC010194012022



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

Case No. : CRP(IO)/225/2022

UDDHAB DAS @ UDDAB DAS
S/O- LATE THANU RAM DAS,
R/O- MALIGAON, BORIPARA,
P.S AND P.O- JALIKBARI, GUWAHATI-781012,
DIST- KAMRUP (M), ASSAM

VERSUS

M/S MAYFAIR DEVELOPERS AND BUILDERS AND ANR
A PARTNERSHIP FIRM , HAVING ATS OFFICE SITUATED AT SRIKRISHNA
MARKET, PANDU PORT ROAD, ANANDA NAGAR, BYE LANE NO-3, P.O-
PANDU, P.S- JALUKBARI, GUWAHATI-12, DIST- KAMRUP (M), ASSAM

2:FATIK BHATTACHARJEE
S/O- LATE KHAGENDRA KUMAR BHATTACHARJEE

MANAGING PARTNER OF M/S MAY FAIR DEVELOPERS AND BUILDERS
A RESIDENT OF
SRIKRISHNA MARKET
PANDU PORT ROAD
ANANDA NAGAR
BYE LANE NO-3
P.O- PANDU
P.S- JALUKBARI
GUWAHATI-12
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR G KHANDELIA

Advocate for the Respondent : MR. N SHARMA (r-1,2)

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

23.05.2023

Heard Mr. G. Khandelia, learned counsel for the petitioner as well as Mr. N. Sharma, learned counsel for the respondents.

This is an application under Article 227 of the Constitution of India challenging the orders dated 03.08.2022 passed by the learned Civil Judge No. 2, Kamrup (M), Guwahati in TS Case No. 383/2019.

The factual matrix leading to filing of this application lies within a short campus. It is a dispute between a land owner/petitioner and the builder. There was a contract between the two that the builder will construct a building on the said land and on completion, certain numbers of flats shall be given to the land owner. There was a clause stipulating that in case of any dispute, it will be decided by an Arbitrator.

After completion of the building, it is alleged by the land owner that the flats were not given to him and the builder sold some of those flats to other persons. Therefore, the land owner filed the suit for specific performance of contract. During pendency of the suit, a new set of lawyers stepped in on behalf of the land owner and they came to know that the dag nos. and patta nos. of the land were wrongly mentioned in the plaint. Therefore, the land owner filed a petition before the trial court praying for withdrawal of the suit and also prayed for permission to file it afresh.

Prior to that, the builder had filed a petition before the trial court under section 8 of the Arbitration and Conciliation Act, 1996 for sending the matter for arbitration. The trial court invited a reply from the land owner. The land owner took several adjournments but did not file any objection. Rather, the land owner filed the petition for withdrawal of the suit and for liberty to file afresh.

The trial court dismissed the application of the petitioner. The relevant part of the order is quoted as under:

“There is no dispute between the parties that there was an arbitration agreement between the parties and the defendants on the date of their first appearance has prayed for referring the matter for arbitration, however hearing on the said petition could not be taken up as plaintiff had time and again availed adjournment to file objection against the said petition and finally has turned up with the petition for withdrawal of the suit with liberty to file afresh. Thus, from the

conduct of the plaintiff, it reveals that he has been intentionally avoiding the hearing over the petition filed by the defendants for arbitration. “

It appears from the said order that the prayer for giving liberty to file the suit afresh after withdrawal of the same was not decided on merit. The said prayer was rejected as because the court was not happy with the conduct of the petitioner.

While exercising judicial power, a court of law is to apply judicial mind. The court did not do so. Therefore, the impugned order is bad in law and is set aside accordingly.

The matter is remanded to the trial court to decide the prayer under Section 8 of the Arbitration and Conciliation Act, 1996 and to simultaneously decide the prayer for giving liberty to file the suit afresh after withdrawal of the same.

The revision petition stands disposed of.

JUDGE

Comparing Assistant