

GAHC010079112023



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

Case No. : I.A.(Civil)/1966/2021

RITA CHETIA AND ANR
W/O LATE NABA KUMAR CHETIA
R/O FLAT NO. A-2 IN 2ND FLOOR OF AASHIANA APARTMENT AT CHINAKI
PATH M.T. ROAD
GUWAHATI 781024
KAMRUP (M)
ASSAM.

2: PARAMITA BARUAH

D/O LATE JAGAT PRASAD BARUAH
R/O FLAT NO. D-2 IN 2ND FLOOR OF AASHIANA APARTMENT
AT CHINAKI PATH
M.T. ROAD
GUWAHATI 781024
KAMRUP (M)
ASSAM.
VERSUS

ARUN CH CHOUDHURY AND 3 ORS
S/O SRI GIRIN CH. CHOUDHURY
R/O FLAT NO. A-4 IN 4TH FLOOR OF AASHIANA APARTMENT AT CHINAKI
PATH M.T. ROAD
GUWAHATI 781024
KAMRUP (M)
ASSAM.

2:PRIYALAXMI CHOUDHURY
W/O SRI ARUN CH. CHOUDHURY
R/O FLAT NO. A-4 IN 4TH FLOOR OF AASHIANA APARTMENT AT CHINAKI
PATH M.T. ROAD

GUWAHATI 781024
KAMRUP (M)
ASSAM.
3:M/S ADHARSILA

A PARTNERSHIP FIRM HAVING ITS REGISTERED OFFICE AT R.G. BARUAH
ROAD

NABINNAGAR
L.K.R. BARUAH PATH
GUWAHATI 781024
KAMRUP

ASSAM REPRESENTED BY ITS MANAGING PARTNER VIZ SRI GAUTAM
BARUAH.

4:ON THE DEATH OF SRI GAUTAM BARUAH HIS LEGAL HEIRS
KAMRUP

5:MAMONI BARUA

W/O LATE JAGAT PRASAD BARUA

R/O H. NO. 9
R.K. BARUAH ROAD
NABIN NAGAR
L.K.R. BARUAH PATH

GUWAHATI 24
KAMRUP

ASSAM.

6:ABHIJIT BARUA

S/O LATE JAGAT PRASAD BARUA

R/O H. NO. 9
R.K. BARUAH ROAD
NABIN NAGAR
L.K.R. BARUAH PATH

GUWAHATI 24
KAMRUP

ASSAM.

Advocate for : MR. S BANIK

Advocate for : MR. N BORAH appearing for ARUN CH CHOUDHURY AND 3 ORS

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

25.04.2023

Heard Mr. S. Banik, learned counsel for the applicant.

2. The present application was filed seeking leave to challenge the orders dated 18.08.2021 and 02.09.2021, passed by the learned Additional Sessions Judge No. 3 (FTC), Kamrup (M), Guwahati in Money Execution Case No. 147/2014.

3. The aforesaid orders have also been challenged in CRP(I/O)/105/2023 and same has been dismissed by this Court. In CRP(I/O)/105/2023, objections were raised on the ground that by virtue of principle of merger, the award passed by the learned Arbitral Tribunal dated 15.06.2011 and affirmed by the learned appellate Court in order dated 18.03.2014 merged with the order dated 06.09.2019 passed by this Court in Arb. Appeal No.23/2015, wherein a compromise settlement was made between the claimant and the respondents and was approved by this Court. However, such contention has been rejected by this Court in the aforesaid order passed in CRP(I/O)/105/2023.

4. The present applicant has assailed the aforesaid orders on a different ground that in view of the Assam Apartments (Construction and Transfer of Ownership) Act, 2006 and in terms of Clause 9 (ii) of the agreement between the builder and the land owner, the claimants being the purchaser of other Flats in the Ashiana Apartment are having right over the Terrace as a common area, though the said terrace was part of the Arbitral award and such award relating to the Terrace has become inexecutable by operation of law.

5. It is an admitted position that the present petitioner is seeking to raise such issue by way of a connected revision petition without raising such grievance before the Executing Court.

6. In exercise of revisional power, this Court cannot turn itself into a Court to find out the facts and disputes raised by a stranger to the award in question. In that view of the matter, in considered opinion of this Court, the present petitioner cannot be said to be aggrieved party so far same relates to the order dated 18.08.2021 and 02.09.2021, passed by the learned Additional Sessions Judge No. 3 (FTC), Kamrup (M), Guwahati in Money Execution Case No. 147/2014.

7. However, they are having rights to agitate their grievances, if any of their rights are being violated by virtue of any award passed between the builder and land owner. They are not remediless before the executing Court but such dispute cannot be a subject matter under a revision petition in the guise of challenging orders dated 18.08.2021 and 02.09.2021.

8. Therefore, in that view of the matter, this Court finds that no leave is required to be given to the present applicant to assail the order dated 18.08.2021 and 02.09.2021 (supra). Accordingly, I.A. stands dismissed.

JUDGE

Comparing Assistant