

GAHC010213792023



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

Case No. : CRP/150/2023

SMTI. IBEMHAL SINGHA
W/O LATE KUNJAMONI SINGHA, C/O AKRAM ALI, VILL AND P.O.-
BANSKANDI, P.S.-LAKHIPUR, DIST-CACHAR, ASSAM

VERSUS

IRABAT SINGHA AND 12 ORS.
S/O LATE IBOTON SINGHA, R/O VILL AND P.O.-BANSKANDI, P.S.-
LAKHIPUR, DIST-CACHAR, ASSAM

2:BHAGIRATHA SINGHA
S/O LATE IBOTON SINGHA
R/O VILL AND P.O.-BANSKANDI
P.S.-LAKHIPUR
DIST-CACHAR
ASSAM

3:SURENDRA KUMAR SINGHA
S/O LATE IBOTON SINGHA
R/O VILL AND P.O.-BANSKANDI
P.S.-LAKHIPUR
DIST-CACHAR
ASSAM

4:NARENDRA SINGHA
S/O LATE IBOTON SINGHA
R/O VILL AND P.O.-BANSKANDI
P.S.-LAKHIPUR
DIST-CACHAR
ASSAM

5:SMTI NIRUPA SINGHA

D/O LATE IBOTON SINGHA
R/O VILL AND P.O.-BANSKANDI
P.S.-LAKHIPUR
DIST-CACHAR
ASSAM

6:SMTI NIRALA SINGHA
D/O LATE IBOTON SINGHA
R/O VILL AND P.O.-BANSKANDI
P.S.-LAKHIPUR
DIST-CACHAR
ASSAM

7:SMTI PREMODA SINGHA
D/O LATE BRAJENDRA SINGHA
R/O VILL AND P.O.-BANSKANDI
P.S.-LAKHIPUR
DIST-CACHAR
ASSAM

8:SMTI BOBITA SINGHA
D/O LATE BRAJENDRA SINGHA
R/O VILL AND P.O.-BANSKANDI
P.S.-LAKHIPUR
DIST-CACHAR
ASSAM

9:PREMJIT SINGHA
S/O LATE BRAJENDRA SINGHA
R/O VILL AND P.O.-BANSKANDI
P.S.-LAKHIPUR
DIST-CACHAR
ASSAM

10:SMTI BINA SINGHA
D/O LATE BHAGYABATI SINGHA
R/O VILL AND P.O.-BANSKANDI
P.S.-LAKHIPUR
DIST-CACHAR
ASSAM

11:BINAY SINGHA
S/O LATE BHAGYABATI SINGHA
R/O VILL AND P.O.-BANSKANDI
P.S.-LAKHIPUR
DIST-CACHAR
ASSAM

12:RONO SINGHA
S/O LATE BHAGYABATI SINGHA
R/O VILL AND P.O.-BANSKANDI
P.S.-LAKHIPUR
DIST-CACHAR
ASSAM

13:SANATOMBA SINGHA
S/O LATE BHAGYABATI SINGHA
R/O VILL AND P.O.-BANSKANDI
P.S.-LAKHIPUR
DIST-CACHAR
ASSA

Advocate for the Petitioner : MR. D MOZUMDER

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 25.09.2023

Heard Mr. D. Mazumdar, learned senior counsel, assisted by Mr. G.R. Dutta, learned counsel for the petitioner.

2. The learned senior counsel for the petitioner has submitted that his predecessor was arrayed as defendant no.1 in a suit for declaration and permanent injunction which was registered as TS 52/2012. In the said proceeding, by an order dated 04.10.2012 passed in the proceeding of Misc. Case No. 8/2012, the Title Suit no. 52/2012, in the meantime, was dismissed by judgment and decree dated 30.11.2013 passed by the court of learned Munsiff No.2, Cachar, Silchar. Aggrieved by the dismissal by judgment and order dated 30.11.2013, the suit being TS 60/2013 was filed by the respondent-plaintiff. The said appeal was allowed by order dated 09.12.2016 passed by the learned Civil Judge No.1, Cachar, Silchar by decreeing the suit.

3. The proceeding of Misc. Case No. 7/2013 filed under Order XXXIX Rule 2 A CPC was dismissed by order dated 10.03.2016 against which the respondent-plaintiff had filed Misc. Appeal No. 7/2016. It appears that although the said appeal was allowed by the learned Civil Judge No.1, Cachar, Silchar but apparently no relief was granted in the appellate order. The learned senior counsel for the petitioner has also submitted that the said order was passed *ex parte* without issuing notice to the predecessor-in-interest of the petitioner.

4. In the meantime, the proceeding of Misc. Violation Case No. 7/2013 was restored to file and notice dated 28.04.2017 was issued to the petitioner to appear before the learned Munsiff No. 2, Cachar, Silchar on 03.06.2017. The predecessor-in-interest of petitioner then filed being Misc. Case No. 73/2017 under Order IX Rule 13 CPC read with Section 151 CPC for setting aside the *ex parte* order dated 09.12.2016 passed in Misc. Appeal No.7/2016. In the said context, the learned senior counsel for the petitioner has submitted that although the appeal was allowed, but no effective direction was issued by the appellate court i.e. the learned Civil Judge No.1, Cachar, Silchar. Nonetheless, the predecessor-in-interest of the petitioner who was the defendant no.1 in the suit had filed Misc. Case No. 73/2017 under Order IX Rule 13 CPC read with Section 151 CPC for setting aside the *ex parte* order dated 09.12.2016 passed by the learned Civil Judge No. 1, Cachar at Silchar in Misc. Appeal No.7/2013. Along with the said application, Misc. Case No. 74/2017 was also filed under Section 5 of the Limitation Act for condonation of delay.

5. In the meanwhile, the proceeding of Misc. Case No. 74/2017 under Section 5 of the Limitation Act was dismissed by order dated 24.07.2023 and consequently, the proceeding of Misc. Case No. 73/2017 was held to have been rendered infructuous and dismissed. The said two orders dated 24.07.2023

passed by the learned Civil Judge No. 1, Cachar, Silchar in Misc. Case No.73/2017 and Misc. Case No.74/2017 has been assailed in this revision under Section 115 CPC.

6. In connection with the proceedings of Misc. Case No. 74/2017, the learned senior counsel for the petitioner has referred to the impugned order dated 24.07.2023 and has referred to para 4 of page 6 of the said order and it is submitted that the learned Civil Judge No.1, Cachar, Silchar has recorded as follows:

“In the Misc. Appeal No.7/2016, the petitioner side had filed petition under Order 41 Rule 14(4) CPC praying for exemption of service of summons upon the respondents. The prayer was allowed by my learned predecessor and Misc. Appeal was allowed on 09.12.2016 on contest.”

7. In the said context, it is submitted that as per instruction received by him, no notice regarding the proceeding of Misc. Appeal No. 7/2016 was served on the petitioner and by referring to the provisions of Explanation (c) of Rule 4 of Order III CPC, it is submitted that although the counsel on record in the suit is deemed to have continued in the appellate proceeding by the said provision, but no notice was served on the counsel for the petitioner and/ or predecessor of the petitioner. It is also submitted that despite the proceeding being *ex parte* against the present petitioner, in the impugned order dated 24.07.2023, it has been mentioned that the said appeal was disposed of on contest. A mention of the above is made in the order dated 09.12.2016, passed in the proceedings of Misc. Appeal No. 7/2016.

8. In course of his submissions, the learned senior counsel for the petitioner has submitted that in the proceedings of Misc. Appeal No. 7/2016, no notice was served to the petitioner and proceedings of the said appeal was

taken up *ex parte*. Therefore, it has been submitted that the application under Order IX Rule 13 CPC read with Section 151 CPC was otherwise not maintainable as the said application was envisaged only for the purpose of setting aside an *ex parte* decree in the suit. Nonetheless, it is submitted that there are certain observation which could be read adverse to the interest of the petitioner and therefore, the said order was challenged. It is also submitted that the stand of the petitioner is that she intends to assail the order dated 09.12.2016 by which Misc. Appeal No. 7/2016 was decided *ex parte*.

9. After some deliberation, the learned senior counsel for the petitioner has submitted that as the proceedings of Order IX Rule 13 CPC was without jurisdiction, the impugned order dated 24.07.2023 would also be *non est* in the eye of law and accordingly, it is submitted that the petitioner may be permitted to withdraw this revision petition with liberty to approach the Court again, if so advised to assail the order dated 24.07.2023.

10. Apparently, it appears that an application under Order IX Rule 13 read with Section 151 CPC is not the appropriate remedy to set aside the appellate order passed in exercise of jurisdiction under Order XLIII Rule 1(r) CPC even if such order was *ex parte*. Therefore, the Court is inclined to allow the prayer made by the learned senior counsel for the petitioner and this present revision stands closed on withdrawal with liberty to the petitioner to approach the Court of learned Civil Judge No.1, Cachar, Silchar in an appropriate jurisdiction, if the petitioner, who is the substituted legal representatives of the original defendant no.1 is aggrieved by the order dated 09.12.2016 passed in the proceedings of Misc. Appeal No. 7/2016. Further liberty is granted to the petitioner to assail the two orders dated 24.07.2023 passed by the learned Civil Judge No.1, Cachar, Silchar in Misc. Case No. 73/2017 and Misc. Case No.74/2017, in an appropriate

manner, if so advised.

11. This revision stands disposed of with aforesaid observations.

JUDGE

Comparing Assistant