

GAHC010218282023



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

Case No. : CRP(IO)/320/2023

ABBASH ALI AND ANR
S/O LATE TUFANU SHEIKH, R/O VILL - POPRAGAON NO. 1, P.S. AND DIST-
BONGAIGAON, ASSAM, PIN CODE - 783380

2: MD. SUROJ ALI
S/O MD. ABBASH ALI
R/O VILL - POPRAGAON NO. 1
P.S. AND DIST-BONGAIGAON
ASSAM
PIN CODE - 78338

VERSUS

MD. JINNAT ALI AND ANR
R/O VILL - POPRAGAON NO. 1, P.S. AND DIST-BONGAIGAON, P.O.-
CHAPRAKATA, ASSAM, PIN CODE - 783380

2:MD. SALAMUDDIN @ ABDUS SALAM
R/O VILL - POPRAGAON NO. 1
P.S. AND DIST-BONGAIGAON
P.O.-CHAPRAKATA
ASSAM
PIN CODE - 78338

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 27.09.2023

Heard Mrs. R. Choudhury, learned counsel for the petitioners.

2. By filing this revision under Article 227 of the Constitution of India, read with section 151 CPC, the petitioners have challenged the impugned order dated 16.06.2023, passed by the learned Munsiff, Bongaigaon in T.S. No. 119/2021. By the said order, an adjournment cost of Rs.10,000/- was imposed on the petitioners for filing defendant witnesses. The petitioners have also challenged the order dated 15.07.2023, by which on failure of the petitioners to deposit the arrear cost of Rs.11,000/- and for non filing of the evidence on affidavit by the defendants witnesses, the prayer for adjournment made vide petition no. 1877/2023 was rejected and in view of the order dated 16.06.2023, the defendant evidence stage was closed and the suit was fixed for argument on 16.08.2023.

3. The learned counsel for the petitioners has submitted that the petitioner no.1 is 80 years of age and he was suffering from various ailments and was bed-ridden and could not move and the petitioner no.2 was suffering from fever and jaundice and therefore, they could not appear in the Court for adducing evidence. It was submitted that one last opportunity be granted to the petitioners to file their evidence on affidavit, otherwise their right in respect of the suit land would be lost. It is also submitted that the petitioners are willing and ready to deposit the cost earlier imposed by the learned trial Court. Accordingly, the learned counsel for the petitioners has prayed for issuance of notice in this revision and to stay the proceedings of the suit and on hearing the respondents, grant one opportunity to the petitioners to submit evidence-on-affidavit on behalf of DWs.

4. On perusal of the record, it appears that the learned trial Court had fixed the suit on 16.12.2022 for submission of copy of order of this Court in CRP(I/O) 38/2022 and for defendant evidence. The order of the Court was produced on 16.12.2022 and the suit was fixed on 19.01.2023 for DWs. The

matter was next listed on 19.01.2023 and on the prayer made by the petitioners' side, the matter was adjourned and the case was fixed for DWs on 17.02.2023. On the prayer for adjournment made on 17.02.2023, one last chance was granted to the petitioners for filing DWs on 17.03.2023. Again on 17.03.2023, prayer for adjournment was made by the petitioners and the prayer was allowed at cost of Rs.300/- and the case was fixed on 19.04.2023 for DWs and cost. The petitioners had again prayed for an adjournment on 19.04.2023, which was allowed at further cost of Rs.300/- and the suit was fixed on 19.05.2023 for DWs and payment of cost. On 19.05.2023, the petitioners again prayed for adjournment, and as per the Court order, no one was present to move the said petition. Nonetheless, in the interest of justice, one final opportunity was granted to the petitioners to file their evidence subject to cost of Rs.1,000/- to be deposited at the fund of DLSA, Bongaigaon and it was made clear that on failure, necessary orders shall be passed by the Court. On the date fixed, i.e. 16.06.2023, the petitioners side deposited a cost of Rs.600/- as per order dated 17.03.2023 and 19.04.2023, but no record was produced to show that the cost of Rs.1,000/- was deposited before the DLSA, Bongaigaon. However, on the prayer made by the petitioners, the matter was again adjourned by directing the petitioners to deposit a further cost of Rs.10,000/- at the fund of the DLSA, Bongaigaon and to file defence evidence on 15.07.2023. On 15.07.2023, again prayer for adjournment was made to file defendant evidence, which was rejected. The said two orders dated 16.06.2023 and 15.07.2023 are assailed in this revision petition.

5. The narration of adjournments mentioned hereinbefore discloses that the petitioners side, i.e. the defendant's side have been granted adjournment more than what is prescribed under proviso of Order XVII, Rule 1 CPC. Despite cost being imposed and last chance given by successive order, as submitted by

the learned counsel for the petitioners, only a cost of Rs.600/- was paid, which means that cost of Rs.1,000/- and 10,000/- i.e. Rs.11,000/- has not been deposited, and the petitioners did not file their evidence on affidavit.

6. Under such circumstances, as the cost imposed by the learned trial Court was not paid till date, and as the petitioners have been granted adjournment more than what is permissible under Order XVII, Rule 1 CPC, the Court is of the considered opinion that orders impugned in this revision petition does not suffer from any jurisdictional error and therefore, not liable to be interfered with.

7. Accordingly, the Court is disinclined to admit the challenge made to the impugned orders dated 16.06.2023 and 15.07.2023, passed by the learned Munsiff at Bongaigaon and accordingly, this revision petition stands dismissed at the motion stage without issuance of notice on the respondents.

JUDGE

Comparing Assistant