

GAHC010220522019



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

Case No. : CRP(IO)/298/2019

TULAB RABHA AND ANR.
S/O. LT. PAMEI RABHA, R/O- KAHILIPARA ROAD, JATIA, P.S.- DISPUR,
GUWAHATI-6, DIST. KAMRUP(M)

2: SULAB RABHA
S/O. LT. PAMEI RABHA
R/O- KAHILIPARA ROAD
JATIA
P.S.- DISPUR
GUWAHATI-6
DIST. KAMRUP(M)

VERSUS

ANUPAM BORA
S/O- LT. NARENDRA NATH BORA, R/O- HOUSE NO. 36, ZOO-NARENGI
ROAD, P.S.- DISPUR, GUWAHATI-6, DIST- KAMRUP(M).

Advocate for the Petitioner : MR B C TALUKDAR
Advocate for the Respondent : MR. D BARUAH

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

02.06.2023

Heard the learned counsel Mr. B.C. Talukdar appearing for the petitioners. Also heard Mr. D. Baruah, learned counsel appearing for the

respondent.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 13.08.2019 passed by the learned Civil Judge No.1, Guwahati in T.S. 41 of 2011.

3. The petitioners are the defendants in the suit before the trial court. After the case was posted for cross-examination of the plaintiffs' witnesses, the present petitioners being defendants, filed a petition under Order 6 Rule 17 of the CPC. The trial court held that the petitioners failed to show as to how the proposed amendment was left out to be made earlier nor the petitioners could show any reason that the proposed amendment became necessary because of certain developments.

4. I have considered the submissions made by the learned counsels of both sides.

5. At this stage, a brief visit to order 6 Rule 17 would be fruitful. Order 6 Rule 17 of the Code of the Civil Procedure reads as under:

“17. Amendment of pleadings. – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

6. In the case in hand, the trial court has held that the petitioners failed

to satisfy the court that in spite of due diligence, the petitioners could not have raised the matter before commencement of trial.

7. Here, in this case, the said satisfaction of the trial court is important. We are dealing with a petition under Article 227 of the Constitution of India. The power under Article 227 of the Constitution is not an appellate power rather it is a supervisory power. Under Article 227 of the Constitution of India the High Court is to see as to whether the court below has acted within the limits of law.

8. I find that the court below has acted within the limit prescribed by law. The petitioners failed to satisfy the court that in spite of due diligence, he could not have raised the matter before commencement of the trial. I am of the opinion that the learned trial court has correctly refused the amendment of the written statement.

9. For the aforesaid reasons, the present revision petition is found to be devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant