

GAHC010222852022



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

Case No. : CRP(IO)/259/2022

MD. ALTAF HUSSAIN
S/O- LATE ATOWAR RAHMAN, VILL. AND P.O. AG-GUMI, P.S. CHHAYGAON,
DIST. KAMRUP, ASSAM

VERSUS

MD. SAMAR ALI
S/O- LATE SAFI ALI, VILL.- DHEKENABARI, P.O. AND P.S. CHAYGAON,
DIST. KAMRUP, ASSAM, PIN- 781124.

Advocate for the Petitioner : MR J H SAIKIA

Advocate for the Respondent : MR. D K SHARMA

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

25. 01. 2023

Heard Mr. JH Saikia, learned counsel for the petitioner. None appears for the respondent though the name of Mr. DK Sharma, learned counsel for the respondent is shown in the cause list.

2. The present application under Article 227 of the Constitution of India

is filed assailing an order dated 14.09.2022 passed by the learned Munsiff, Kamrup, Amingaon in TS No. 97/2016, by which the prayer for cross-examination of PWs was rejected.

3. The learned trial court below by order dated 20.01.2020 closed the evidence of plaintiff's witnesses as the defendant failed to cross-examine plaintiff's witnesses inasmuch as it was the finding of the learned court below, on the basis of a Commissioner's report that though the date for cross-examination of PWs has been fixed and PWs appeared before the learned Commissioner to face cross-examination, however, no cross-examination has been done.
4. By the said order dated 20.01.2020, the learned court below fixed 16.03.2020 for evidence of DWs. Subsequently, a petition was filed by the learned counsel for the petitioner on 04.01.2022 for recalling of the witnesses for cross-examination. In the meantime, on 16.03.2020, the defendant side filed a petition for adjournment of the case for filing evidence.
5. By a petition bearing No. 21 dated 04.01.2022, plaintiff petitioner contended that the engaged Advocate could not regularly attend the proceeding as his son and wife were suffering serious ailment for last two years and both son and wife of the engaged Advocate were being treated outside the State of Assam.
6. It is the further pleaded in the said petition that the defendant could not contact his engaged Advocate due to the reason of his phone number was deactivated. Accordingly, it was prayed that they may be granted a chance to cross-examine the plaintiff's witnesses.

7. Perused the material available on record and the order dated 14.09.2022. The learned court below has rejected the application on the ground that the defendant had failed to show proper cause of his failure to cross-examine the PWs previously.
8. This court is of the considered opinion that the plaintiff has properly explained the basic reason of failure to cross-examine the PWs is the ailment of his son and wife of the engaged counsel and lack of contact between the defendant and his counsel. The record reveals that on earlier occasions adjournments were sought to cross-examine and were duly granted. Therefore, same cannot be ground for rejection of the application No. 21 dated 04.01.2022 subsequently.
9. This court is also considered opinion that if a chance to cross-examine as well as to adduce defence witness and granted to the defendant, the same will also help the learned trial court to come into a just decision and therefore this court is of the considered opinion that to avoid failure of justice, a chance be given to the defendant to cross-examine the witnesses of the plaintiff.
10. Accordingly, the present revision petition is allowed directing the parties to appear before the learned trial court on 22.02.2023, on which date the learned trial court shall recall the witnesses for cross-examination by the defendant. If the witnesses are present on the date to be fixed by the learned court below, no adjournment shall be granted to the defendant and if necessary the defendant may engage new counsel. Thereafter, the petitioner be allowed to lead defence witness.

11. With the said observation, this petition stands disposed of.

JUDGE

Comparing Assistant