

GAHC010240352022



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

Case No. : CRP(IO)/286/2022

SMT. ANITA MUSHAHARI AND ORS
D/O MAKARI MUSHAHARI, R/O VILL- SILAKATAMUR, P.O.-CHANGSARI,
P.S.-KAMALPUR, DIST- KAMRUP, ASSAM

2: KISAN BORO
S/O LATE BIPUL BORO
R/O VILL-TEPESIA
P.S.-SONAPUR
DIST-KAMRUP (M)
ASSAM

3: AJAY BORO
S/O LATE BIPUL BORO
R/O VILL-TEPESIA
P.S.-SONAPUR
DIST-KAMRUP (M)
ASSAM

4: SANJU BORO
S/O LATE BIPUL BORO
R/O VILL-TEPESIA
P.S.-SONAPUR
DIST-KAMRUP (M)
ASSA

VERSUS

SMTI SAROJINI TUMUNG INJAL AND ANR
W/O SRI TUNU INJAL, R/O HOUSE NO. 10, JAPORIGOG, GUWHATI-781005,
DIST- KAMRUP (M), ASSAM

2:DR. JYOTI DAS
D/O SRI BANI PRAKASH DAS
R/O HOUSE NO. 24

RUPNAGAR NEAR SAI BABA TEMPLE
P.O.-INDRAPUR
P.S.-BHANGAGARH
GUWAHATI-781032
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR B KHAKHLARY

Advocate for the Respondent : MR. R ALI

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 10.4.2023

Heard Mr. B. Phukan, learned counsel for the petitioners and Mr. M. Kalita, learned counsel for the respondent.

The present petition is filed assailing the order dated 3.11.2022 passed in Title Suit No. 10/2022 where by the prayer of the defendant seeking adjournment for filing written statement was rejected. Perusal of the order dated 3.11.2022 reflects that the ground of rejection is that the defendant received summons 93 days prior to seeking adjournment and did not file the written statement accordingly the period of 90 days is already over.

The learned counsel for the petitioner submits that the written statement is ready and can be filed on any date. He further submits that if the petitioners are not allowed to file written statement the same will cause irreparable loss and injury inasmuch as the same will not prejudice the plaintiffs as the suit is at very early stage and it is in the stage of filing written statement and no evidence has been laid by the plaintiff.

Per contra, Mr Kalita learned counsel for the respondents submits that the defendant while seeking an adjournment relied on certain medical documents which are bogus and is having no nexus for seeking such adjournment. Further he submits that the period for filing written statement is mandated to be 90 days from the receipt of summons under the Code of Civil Procedure and therefore the learned trial court has not committed any jurisdictional error in not dismissing such application on the ground that the defendant sought adjournment on 93rd day after receipt of summon.

Heard learned counsel for the parties. The Hon'ble Apex Court in the case of ***Kailash Vs Nankhu*** reported in ***2005(4) SCC 480*** held that the purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 of CPC, 1908 is to expedite and not to scuttle the hearing. It was further held that it does not impose an embargo on the power of the Court to extend time and such provision being in the domain of the Procedural Law, it has to be held directory and not mandatory.

Admittedly, in the case in hand, the defendant appeared and sought time on 93 days. They are ready with the written statement by now.

In the aforesaid backdrop, if the written statement is allowed to be filed, the same will not prejudice any way the plaintiff and if such written statement is not allowed to be filed, the same will result in failure of justice.

Thus in the considered opinion of this court the learned Trial Court has failed to exercise its jurisdiction and passed the order in ignorance of settled proposition of law resulting in miscarriage of justice.

In that view of the matter the present revision petition stands allowed by setting aside the order dated 3.11.2022 and allowing the defendant No.1,

(2),2(B) & 2 (C) respectively to file their written statement on or before **25.4.2023** subject to payment of cost of Rs.5,000/- payable to the plaintiff. It is made clear that if no written statement is filed on or before the aforesaid date, the suit shall proceed in terms of order dated 3.11.2020.

With the aforesaid observation, this revision petition stands disposed of.

JUDGE

Comparing Assistant