

GAHC010247112023



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

Case No. : CRP(IO)/381/2023

SMT. ANITA DEY CHOUDHURY AND ANR
W/O LATE SADHAN DEY CHOUDHURY, R/O KALI MOHAN ROAD,
TARAPUR, SILCHAR, P.O.-TARAPUR, P.S.-SILCHAR, PIN-788003, DIST-
CACHAR, ASSAM

2: RASU DEY CHOUDHURY
R/O KALI MOHAN ROAD
TARAPUR
SILCHAR
P.O.-TARAPUR
P.S.-SILCHAR
PIN-788003
DIST-CACHAR
ASSA

VERSUS

SMT. GOURI MISRA
D/O LATE SWAMI DAYAL MISRA, A R/O KALIBARI ROAD, TARABARI,
SILCHAR TOWN, P.O.-TARAPUR, P.S.-SILCHAR, PIN-788003, DIST-CACHAR,
ASSAM

Advocate for the Petitioner : MR. S D PURKAYASTHA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 11.12.2023

Heard Mr. S.D. Purkayastha, learned counsel for the petitioners.

2. By filing this application under Article 227 of the Constitution of India, the petitioners, who are the defendant nos. 1 and 2 in Title Suit No. 123/2015, which is an ejectment suit, have assailed the impugned order dated 02.08.2023, passed by the learned Civil Judge (Junior Division) No. 4, Cachar, Silchar (earlier called Court of Munsif, Cachar, Silchar). By the said order, the said learned Court had rejected the prayer made by the petitioners for giving them another opportunity to adduce evidence.

3. The learned counsel for the petitioners, by referring to the case of (i) *State Bank of India v. Chandra Govindji (Km)*, (2000) 8 SCC 532, (ii) *Salem Advocate Bar Association, T.N. v. Union of India*, (2005) 6 SCC 344, and (iii) *Shiv Cotex v. Trigun Auto Plast Pvt. Ltd. & Ors.*, (2011) 9 SCC 678, has submitted that in this case the petitioner no. 1, who is aged about 70 years (also stated to be 68 years) and was looking after the case had fallen ill at Shillong while coming to Guwahati for her medical check up and therefore, under compelling circumstances, the prayer for adjournment had become necessary. It was submitted that however, the learned Trial Court had mechanically rejected the prayer for adjournment, by taking into consideration the past adjournments availed by the petitioners, which according to the learned counsel for the petitioners, could not have been considered at all. Accordingly, it was submitted that one last opportunity should be given to the petitioners to adduce evidence in the ejectment suit against them, failing which

they would suffer irreparable prejudice.

4. It appears from the record that the case was fixed for defendant's evidence on 18.01.2023. At the instance of the petitioners, the suit was adjourned on 18.01.2023, 14.02.2023, 15.03.2023, 12.04.2023 and 15.05.2023. Adjournment was allowed on 15.05.2023 by imposing a cost of Rs.500/- (Rupees Five hundred only) and the next date of the case was fixed on 07.06.2023. The petitioners claim that they did not appear on 07.06.2023, as their advocate's clerk did not record it in his diary. Accordingly, the evidence of the petitioner's side was closed by order dated 07.06.2023. The suit was fixed for argument on 03.07.2023. On 03.07.2023, the petitioners had filed a petition explaining the reason for non-appearance on 07.06.2023 and the learned Trial Court, by order dated 18.07.2023, allowed the said petition and fixed the suit on 02.08.2023 for filing of defendant's evidence.

5. On 02.08.2023, the petitioners filed petition no. 7/174 dated 02.08.2023 to the effect that the petitioner- defendant no. 1, who was on way to Guwahati for her medical check-up fell ill in Shillong, for which she could not appear before the said learned Court. The said petition was rejected. The learned counsel for the petitioners has submitted that the medical record of the petitioner no. 1 was not considered by the learned Trial Court.

6. From a perusal of the orders of the learned Trial Court, which are annexed to this application, it is observed that the petitioners had not deposited adjournment cost of Rs.500/- which was imposed by order dated 15.05.2023.

7. The medical documents which are annexed to this application as Annexure-VI at pp.40 to 43 are dated 14.12.2022, and relates to investigation in

respect of the eyes of the petitioner no. 1, which was conducted at Silchar in the District of Cachar (Assam). The medical prescription at pp.44 (part of Annexure-VI) is dated 19.12.2022, which was issued by a doctor at Silchar. From pp.45 to 52 are medical investigation reports dated 19.12.2022, by a diagnostic laboratory located at Silchar. At pp. 53 and 54 (part of Annexure-VI) are medical investigation reports dated 27.12.2022, by a diagnostic laboratory located at Silchar. At pp. 55 to 58 (part of Annexure-VI) are medical investigation reports dated 12.02.2023, by a diagnostic laboratory located at Silchar. At pp. 59 and 60 (part of Annexure-VI) are medical investigation reports dated 30.06.2023, by a diagnostic laboratory stated to be located at Shillong, but the address cannot be read as it is illegible. Nonetheless, we accept the statement made by the learned counsel for the petitioners that the said reports are of Shillong in the State of Meghalaya. At pp. 61 to 64 (part of Annexure-VI) are cover page, money receipt and medical investigation reports dated 26.09.2023, by an eye hospital located at Guwahati.

8. Therefore, from the above, the learned counsel for the petitioners has not been able to satisfy the Court that on or about 02.08.2023, the petitioner no. 1 suddenly fell ill at Shillong, which had restricted her travel to Silchar to file evidence-on-affidavit by her as defendant no. 1. There is no explanation forthcoming why the petitioner no. 2 had refrained from filing her evidence-on-affidavit.

9. The case of *State Bank of India (supra)*, related to pre-amended CPC. The post 1999 amendments to the provision of Order XVII, Rule 1 CPC was not the subject matter of consideration in the said case. The Supreme Court of India, in the case of *Salem Advocate Bar Association (supra)* and *Shiv Cotex (supra)*, had not laid down that even when unconvincing plea of illness is taken

which cannot be supported by the annexed medical documents, the Courts should grant adjournment by assuming that the concerned party who had moved the prayer for adjournment was ill. Therefore, the said case would also not help the petitioners in any way. It can be demonstrated from the medical documents annexed to this application at Annexure-VI (collectively), that none of the medical documents from pages 40 to 64 are near the date of 02.08.2023, the date fixed for filing evidence-on-affidavit by the petitioners/ defendants.

10. Therefore, the Court does not find any jurisdictional error being committed by the learned Trial Court in passing the impugned order dated 02.08.2023, thereby rejecting the petition no. 7/174 for adjournment filed by the petitioners.

11. The Court is of the considered opinion that this Court, in exercise of power and jurisdiction under Article 227 of the Constitution of India does not have the power to substitute its opinion on the otherwise lawful order passed by the learned Trial Court, and when no perversity could be shown.

12. Therefore, this application fails and the same is dismissed at the *motion* stage without issuance of notice on the respondents.

13. The Registry shall transmit a copy of this order to the Court of the learned Civil Judge (Junior Division) No. 4, Cachar, Silchar to make it a part of record of Title Suit No. 123/2015.

14. Under the circumstances, there shall be no order as to cost.

JUDGE

Comparing Assistant