

GAHC010253512022



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

Case No. : CRP(IO)/314/2022

MAHBUBUR RAHMAN
S/O. LT. MUSSABIR ALI, R/O. OIL, (SETTLEMENT DUES), PLOT NO.2044,
DULIAJAN, DIST. DIBRUGARH, ASSAM, PIN-786602.

VERSUS

SAHEB SINGH AND SONS PROPERTIES
A HINDU UNDIVIDED FAMILY OWNING POPERTIES, INCLUDING THE
SCHEDULED PREMISES FOR THE USE AND BENEFIT OF ITS
COPARCENERS, INCLUDING AND REP. BY ITS KARTA VIZ, SRI RAKESH
KUMAR SINGH, S/O. LT. SAHEB SINGH, HAVING ITS PRINCIPAL PLACE OF
BUSINESS AT DULIAJAN-786602, P.O. AND P.S. DULIAJAN, DIST.
DIBRUGARH, ASSAM.

Advocate for the Petitioner : MR. S DUTTA

Advocate for the Respondent : MR G N SAHEWALLA

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

19.06.2023

Heard Mr. S. Dutta, the learned senior counsel assisted by Mr. K.
Upamanyu, the learned counsel for the petitioner and Mr. G. N. Sahewalla,

the learned senior counsel assisted by Ms. S. Todi, the learned counsel for the respondent.

2. The instant application has been filed under Article 227 of the Constitution challenging the order dated 07.11.2022 passed in Title Suit No.55/2021 whereby the learned Trial Court permitted the plaintiff to file a rejoinder against the written statement so filed by the defendant.

2. Prior to taking into account the impugned order, this Court finds it relevant to take note of the petition dated 23.12.2021 filed by the plaintiff seeking leave to file a rejoinder. It appears from paragraph No.3 of the said petition dated 23.12.2021 that the plaintiff stated that while preparing for filing of the draft issues it was noticed that the defendant in his written statement which runs in 23 pages filed along with 164 numbers of documents had raised many issues which required to be answered so that the controversy between the parties may be limited to some extent, and as such, sought the leave of the Court to file the rejoinder. The defendant filed an objection to the said application.

3. The learned Trial Court vide the order dated 07.11.2022 was of the opinion that if the defendant would bring new facts in his written statement, the plaintiff must get a chance to file a rejoinder challenging the truth and binding nature of the allegations/averments made in the written statement. The learned Trial Court was further of the opinion that if the plaintiff is allowed to file the rejoinder, the defendant would not be prejudiced and he will not be at any loss, instead the plaintiff should get a chance to explain the additional facts known to him only through written statement.

4. Upon perusal of the materials on record, more particularly, the application so filed seeking leave, there is no mention on what aspect the plaintiff sought to file a rejoinder. It is further relevant to take note of that Order VI Rule 1 of the Code of Civil Procedure, 1908 defines 'pleadings' to mean plaint or written statement. It is also no longer res integra that non-controverting the statement made in the written statement would not be construed to be an admission of facts alleged in the written statement. Further to that, this Court is also of the opinion that in the facts of the instant case, more particularly, upon perusal of the application, the learned Trial Court had exceeded its jurisdiction in granting the leave to file the rejoinder.

5. Accordingly, the order dated 07.11.2022 passed in Title Suit No.55/2021 is set aside. It is further directed that if any rejoinder is filed pursuant to the order dated 07.11.2022 passed in Title Suit No.55/2021, the same shall not form a part of the record.

6. It is, however, observed that the instant order so passed shall not preclude the plaintiff to file appropriate application seeking amendment of the plaint, if otherwise permissible under the law.

7. Accordingly, the instant petition stands allowed. No costs.

JUDGE

Comparing Assistant