

GAHC010257112022



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

Case No. : CRP(IO)/309/2022

CHANDA RABIDAS @ CHANDABOTY RABIDAS
W/O. LT. DIPAK RABIDAS, R/O. T.S. LANE, SHANTIPARA, P.O., P.S. AND
DIST. DIBRUGARH, ASSAM.

VERSUS

BANIYA BASFORE
W/O. SRI GANESH BASFORE, R/O. PACHIM CHOWKIDINGHEE, P.O., P.S.
AND DIST. DIBRUGARH, ASSAM.

Advocate for the Petitioner : MR. A K GUPTA

Advocate for the Respondent : MS. R CHOUDHURY (r-1)

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 22-05-2023

1. Heard Ms. M Nirola, learned counsel for the petitioner. Also heard Mrs. R Choudhury, learned counsel for the respondent No.1.
2. The present application is filed assailing an order dated 16.07.2022 passed by the learned Munsiff, No.1, Dibrugarh in Title

Suit No.151/2021, rejecting the petition No.2586/2022.

3. The said petition was filed by the present respondent who is the defendant in Title Suit No.151/2021, with a prayer to file written statement beyond the prescribed period as provided under Order VIII Rule 1.

4. The respondent as plaintiff filed Title Suit No.151/2021 in the Court of Munsiff No.1, Dibrugarh praying for specific performance of an agreement for sale. On receipt of summons from the Court, though the respondent entered appearance but took time for filing written statement. Thereafter, the respondent/defendant filed an application under Order VII Rule 11(a) & (d) read with section 151 CPC, 1908 praying for rejection of the plaint. The learned court below by its order dated 25.11.2021 kept the further proceeding of the Title Suit in abeyance till the disposal of the aforesaid petition.

5. The petition filed under Order VII Rule 11(a) & (d) was rejected by the learned court under its order dated 08.06.2022 and a date being 16.07.2022 was fixed for filing written statement. Thereafter, the defendant again filed an application on 16.07.2022, seeking some more time to file written statement however, the same was rejected under the impugned order.

6. The learned counsel for the petitioner submits that the learned court below ought to have given a chance to the petitioner to file written statement, inasmuch as the suit was kept in abeyance by the court itself. Therefore, she was entitled for at least 90 days from the date of rejection of such application filed under Order VII Rule 11(a) & (d).

7. Per contra, Mrs. R Choudhury, learned counsel for the respondent No.1 submits that even after rejection of the application filed under Order VII Rule 11 (a) & (d), the defendant was granted time for more than a month, however, they failed to file such written statement. Accordingly, she submits that the learned Court below has not committed any error of law.

8. Considering the arguments advanced by the learned counsels for the parties. Without entering into the merits of such contention, this court is of the considered view that in the given background and stage of the suit, the defendant will have a valuable right to defend the suit inasmuch as, it is not a case that after rejection of their application under Order VII Rule 11 (a) & (d), the defendant has delayed and intentionally prolonged the proceeding by multiple adjournment. Further an undertaking has also been given by the petitioner that the defendant will invariably file the written statement if a chance is given to file written statement.

9. Considering the above, this Court is of the view that if the defendant is allowed to file a written statement within a specific time period, ends of justice would be met and the plaintiff shall also not be prejudiced inasmuch as the suit is at the very early stage.

10. Accordingly, the present revision petition is allowed by permitting the defendant to file a written statement on or before 26.06.2023.

11. If such written statement is filed within the aforesaid stipulated date, the learned trial Court shall accept the same and proceed in accordance with law. However, if no such written statement is filed

within the specific date, without further reference to this Court, the impugned order shall revive and the learned trial Court shall proceed in accordance with law.

12. With the aforesaid, the civil revision petition stands disposed of.

JUDGE

Comparing Assistant