

GAHC010264072022



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

Case No. : CRP(IO)/10/2023

SWGWMSAR @ SAMAR MACHARY @ MUCHAHARY
S/O- LATE SURESH CH. MACHAHARY, R/O- KATHALGURI, P.O.
HALOADAL, P.S. AND DIST. KOKRAJHAR, B.T.R., ASSAM AND PRESENTLY
RESIDING AT C/O- SRI KAMALA BRAHMA, VILL.- BORO BHATARMARI,
P.O., P.S. AND DIST. KOKRAJHAR, B.T.R., ASSAM

VERSUS

PRIYA BRAHMA
W/O- SRI SWGWMSAR MACHAHARY, D/O- LATE SANTOSH BRAHMA, R/O-
KATHALGURI, P.O. HALOADAL, P.S. AND DIST. KOKRAJHAR, B.T.R.,
ASSAM AND PRESENTLY RESIDING AT VILL.- KACHPUR, PATGAON, P.S.
SAERFANGURI, DIST. KOKRAJHAR (B.T.R), ASSAM

Advocate for the Petitioner : MR. B J MUKHERJEE

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

04.01.2023

Heard Mr. B. J. Mukherjee, learned counsel for the petitioner.

2. By this petition under Article 227 of the Constitution of India read with

Section 151 of the CPC, the petitioner has prayed for setting aside and quashing of the impugned order, dated 17.11.2022, passed in T.S. (D) No. 26/2022 by the learned District Judge, Kokrajhar, rejecting the Petition No. 1108/2022, which was filed for fixing another date for filing of written statement.

3. The case of the petitioner in brief is that the marriage of the petitioner with the respondent was solemnized on 08.05.2021 as per Bodo Hindu Social customary rites and rituals and after two months of their marriage, the respondent started to misbehave with him and, thereafter, she filed a divorce petition against the petitioner in the Court of learned District Judge, Kokrajhar, which was registered as T.S. (D) No. 26/2022.

4. The present petitioner as respondent appeared before the learned Trial Court and sought for time to file Written Statement (in short, 'WS') in the case. Thereafter, he prayed and was granted some time on 2/3 consecutive dates for filing WS. However, on 17.11.2022, his advocate filed a petition, which was numbered as Petition No. 1108/2022 stating that the brother of the petitioner expired on 03.11.2022 and, as such, he could not contact his advocate for filing WS.

5. The learned District Judge, Kokrajhar, after perusal of Petition No. 1108/2022, rejected the petition vide order, dated 17.11.2022, as the petitioner did not submit any document in testimony of death of his brother and further, observed that the period of 90 days for filing WS had already expired before the death of the respondent's brother and accordingly, ordered that the case shall proceed ex-parte.

6. Having considered the nature of the grievance praying for redressal in

the instant petition, this Court proposes to dispose of the petition without issuing notice to the respondent, who is unlikely to be affected thereby.

7. For convenience, the impugned order is extracted hereunder-

“17.11.2022

Petitioner represented.

Seen the petn No. 1108/22 filed on behalf of the Resp. praying for further time on account of death of his brother on 03.11.22. But no document in this regard has been submitted. That apart, the Resp. entered appearance on 05.07.22 and the period of ninety days for filing ws had long expired, before the death of the respondent's brother and despite several opportunities, Resp. failed to file w.s. Hence, prayer for further time is rejected. Case will proceed ex-parte against the Resp.

Fixing 20.12.2022 for PW.

*Signature illegible
District Judge,
Kokrajhar, Assam”*

8. It may be pointed out that Rule 1 of Order 8 CPC enjoins upon the defendant to file written statement within 1 month of the service of summons. However, the aforesaid provision gives discretion to the Court to permit the defendant to file the written statement on such other dates, as may be specified by the Court. This discretionary power of the Court to extend the time is restricted up to 90 days of the date of service of summons, yet the Court is not divested of the power to fix further time for filing written statement. In exceptionally hard cases, the Court can invoke Section 148 or 151 of the CPC for enlargement of time so as to avoid any miscarriage of justice.

9. A perusal of the impugned order, dated 17.11.2022 passed on petition No. 1108/22 extracted hereinabove, it is revealed that the prayer for enlargement of time to file the written statement was rejected for two reasons,

firstly, the respondent, that is, the defendant/petitioner herein, entered appearance in the suit being T.S. (D) 26/2022, which is related to petition praying for a decree of divorce filed by the respondent against him on 05.07.2022 and therefore, the prescribed period of filing the written statement had long expired and secondly, that no document in regard to the death of his brother on 03.11.2022 was filed.

10. Upon hearing the learned counsel for the petitioner and the contentions made in the petition, this Court is of the considered opinion that as the matter relates to a divorce proceeding filed by the respondent against the present petitioner and as the petitioner has shown sufficient cause as stated in the petition, the learned trial Court ought to have allowed the petitioner to file the written statement to ensure an effective adjudication of the dispute pertaining to domestic domain of the parties and thereby, to prevent possible miscarriage of justice to him.

11. Accordingly, the impugned order, dated 17.11.2022, is hereby set aside with direction to the petitioner/defendant to appear before the learned trial Court on or before 30.01.2023 with his written statement and present the same with a cost of Rs.1,000/- to be paid to the plaintiff/respondent herein.

The petition stands disposed of.

JUDGE

Comparing Assistant