

GAHC010266542022



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

Case No. : CRP(IO)/320/2022

KARABI DAS
WIFE OF SRI UTPAL CHANDRA DAS,
RESIDENT OF HOUSE NO. 5, SANTIPUR COLLEGE ROAD,
HILLSIDE, 2ND FLOOR,
SANTIPUR, GUWAHATI- 781009,
DISTRICT- KAMRUP(M), ASSAM.

VERSUS

DHARITRI MEDHI AND ANR
WIFE OF SRI TAPAN MEDHI,
RESIDENT OF MALIGAON, GATE NO. 3,
QUARTER NO. 205/A,
P.O. AND P.S.- JALUKBARI,
GUWAHATI- 781011.

2:DR. BIJOY KUMAR SHARMA
SON OF SRI NARAYAN PRASAD SHARMA

RESIDENT OF KAILASHPUR

NEAR PRASHIDA MAHA MANDIR

ODALBAKRA
P.S.- DISPUR

P.O.- GUWAHATI- 781034

DISTRICT- KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. O P BHATI

Advocate for the Respondent : MR B KAUSHIK

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

ORDER

12. 05. 2023

Heard Mr. P Sarma, learned counsel for the petitioner. Also heard Mr. B Kaushik, learned counsel for the respondent No.1.

2. The respondent No. 2 being a proforma defendant in the suit, in the considered opinion of this court, is not necessary for determination of the present litigation inasmuch as it is a dispute between the plaintiff and defendant regarding leading of evidence by the defendant and therefore this will not affect or prejudice any right of the respondent No. 2, even if the present petition is allowed.
3. By the present petition, the petitioner has challenged the legality and validity of the order dated 20.09.2022 passed in TS No. 141/2016 by the learned Civil Judge No. 3, Kamrup, Guwahati whereby the prayer of the petitioner, who is the defendant No. 1, for adjournment was rejected on the ground that the defendant No. 1 had already taken many adjournments and suit is pending since 2016.
4. The respondent plaintiff instituted TS No. 141/2016 for declaration, damages and for compensation. During the proceeding of the suit, plaintiff laid its evidence and witnesses were cross-examined by defendant No. 1.

5. The defendant was to file evidence in chief of her witnesses. However, as many adjournments were taken earlier and considering the fact that suit was pending since 2016 the learned court below by its order dated 20.09.2022 impugned in the present revision rejected such a prayer for adjournment to enable the defendant No. 1 to file DWs.
6. The learned counsel for the petitioner submits that she may be granted a last chance to file the evidence of her witness otherwise she will be prejudiced.
7. Mr. Kaushik, learned counsel for the respondent No. 1 submits that suit was pending since 2016 and the defendant has been taking time on different pretext since last eight months to file evidence and therefore, the impugned order has been passed. He further submits that in the aforesaid background the impugned order cannot be said to be illegal.
8. Heard the learned counsel for the parties. This court is in agreement with the argument advanced by Mr. Kaushik. Accordingly, this court cannot find fault with the order passed by the learned trial court in the given fact of the present case. However, considering the undertaking that the defendant shall file their evidences on affidavit if a last chance is given and no further adjournment shall be sought, this court is inclined to grant a last chance to the petitioner to file her DWs to avoid miscarriage of justice. This court is also of the view that right to defend a suit is a valuable right and if such prayer is allowed the plaintiff will not be seriously prejudiced inasmuch as the plaintiff will have right to cross-examine the witnesses. Only

anxiety of the plaintiff is that suit has been prolonged for this kind of adjournment by the defendant.

9. Therefore, this court is of the view that ends of justice would be met if the defendant is given a chance to file the evidence-in-affidavit of her witnesses. At the same time, the plaintiff should also be compensated, in the considered opinion of this court, for this unnecessary litigation before this court.
10. Accordingly, it is provided that subject to payment of Rs. 5,000/- as cost to be paid by the defendant No. 1 and to be deposited before learned trial court below, the learned trial court shall allow the defendant No. 1 to file the evidence on affidavit on or before 24.07.2023. On such affidavit being filed on or before the next date fixed, the learned trial court shall proceed with the case by fixing date for cross-examination as per its own convenience. However, it is made clear that if the aforesaid cost is not deposited on or before the aforesaid date and the evidence of all the witnesses are not filed on or before the date fixed, the impugned order shall revive without any further reference of this court.
11. Revision petition stands disposed of accordingly.

JUDGE

Comparing Assistant