

GAHC010270782022



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

Case No. : CRP(IO)/7/2023

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HOME AND POLITICAL DEPARTMENT, DISPUR,
GUWAHATI-781006

2: THE DIRECTOR GENERAL OF POLICE
ASSAM POLICE HEADQUARTERS
ULUBARI
GUWAHATI-781037

3: THE SUPERINTENDENT OF POLICE
KAMRUP (R)
AMINGAON
ASSAM-78103

VERSUS

AJAY KUMAR SINGH
PROPRIETOR OF M/S UTSHAV COMMERCIAL, REGISTERED OFFICE AT
HOUSE NO. 61, APRO COLONY, ULUBARI, KAMRUP (M), GUWAHATI-781007

Advocate for the Petitioner : SR. GA, ASSAM

Advocate for the Respondent : MR. JYOTIRMOY ROY

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 22.03.2023

Heard Mr. D. Nath, learned Senior Government Advocate, Assam for the petitioners. Also heard Mr. J. Roy, learned counsel for the respondent.

2. The petitioners have filed an application under Section 115 of CPC, 1908 read with Article 227 of Constitution of India challenging the order dated 03.08.2022 passed by the learned Civil Judge, Kamrup, Amingaon in Money Suit No. 01/2021, thereby rejecting the petition filed by the petitioner/defendant No. 3 for granting time to file written statement in the said suit.

3. The brief facts of the case is that the respondent/plaintiff instituted a Money Suit bearing No. 01/2021 before the court of Civil Judge, Kamrup, Amingaon against the present petitioners as defendants for recovery of outstanding dues to the tune of Rs.27,26,955/ along with interest against supply of articles to the opposite parties/defendant No. 3.

4. On receipt of summons, the petitioner/defendant No. 3 entered appearance but could not file written statement due to non availability of relevant documents which were necessary for preparation of written statement and also due to certain unavoidable circumstances. On 18.06.2022, when the case was fixed for filing of written statement,

both parties were found absent and next date was fixed on 03.08.2022 for written statement or necessary order.

5. On 03.08.2022, the petitioner/defendant No. 3 submitted a petition praying for granting him some time to file written statement but the said petition was rejected by the learned trial court holding that summons was duly served on petitioner/defendant No.3 on 10.03.2022 and since 90 days has already been lapsed after service of summons, therefore, prayer for granting further time for filing written statement could not be granted and fixed 13.09.2022 for evidence of plaintiff.

6. On 16.08.2022, the petitioner/defendant No. 3 has filed a petition under Section 151 CPC praying for allowing petitioner/defendant No. 3 to file his written statement by vacating or modifying the order dated 03.08.2022 but no order has been passed on the said petition.

7. It has been submitted by the learned counsel for the petitioners that the respondent/plaintiff has filed a money suit bearing No. 01/2021 for recovery of amount of Rs.27,26,955/- as outstanding dues against work orders issued by the office of the petitioner/defendant No. 3 but it is the case of the petitioner/defendant No. 3 that payment shall be made in respect of genuine work orders amounting to Rs.2,81,950/- only and not Rs.27,26,955/- as claimed since the other work orders are found fake and not issued by the office of the petitioner/defendant No.3. In that view of the mater, if the

petitioner/defendant No. 3 is not allowed to contest the case by filing his written statement, it would amount irreparable loss to the petitioner/defendant No.3. It is further prayed to set aside the order dated 03.08.2022 passed by the learned Civil Judge, Kamrup, Amingaon for the ends of justice.

8. On the other hand, the learned counsel for the respondent/plaintiff has submitted that though the learned trial court has passed the order rightly with a view that as more than 90 days has already been elapsed after service of summons to the petitioner/defendant No.3, the petition for filing of written statement was rejected. However, the prayer of the petitioner may be allowed with a cost of Rs. 10,000/-.

9. I have considered the submissions made by the learned counsel for the parties.

10. It appears that huge amount of money is involved in the alleged Money Suit. It is true that the petitioners being Government officials, sometimes are not in a position to take steps in the case in time though there is procedural lapse on their part. However, considering all entirety, the prayer of the petitioners are allowed with a cost of Rs.7,000/-. Accordingly, the order dated 03.08.2022 passed by the learned Civil Judge, Kamrup, Amingaon, is set aside.

11. It is hereby directed that the petitioner/defendant No. 3 is allowed to file his written statement before the learned Civil Judge,

Kamrup, Amingaon within 10(ten) days from today. If the petitioner/defendant No. 3 has failed to file his written statement within the time frame, the learned trial court is given liberty to proceed with the case as per provision of law.

12. The amount of cost be deposited in the account of Gauhati High Court Legal Services Committee at Principal Seat.

13. In view of the above observation, the petition is disposed of accordingly.

JUDGE

Comparing Assistant