

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.82 of 2024

1. Md. Giyas Uddin;
2. Md. Safique Uddin;
3. Md. Ala Uddin;
4. Md. Tajim Uddin;

All are sons of Late Muhib Ali, R/O. Uttar Fulbari S.B. School, Churaibari, North Tripura, PIN-799262.

.....Petitioner(s);

Versus

1. Smt. Dayarun Bibi, W/O. Late Murfiz Ali;
2. Md. Jiab Uddin, S/O. Late Murfiz Ali ;
3. Smt. Saina Beam, D/O. Late Murfiz Ali;

All are residents of Uttar Fulbari S.B. School, Churaibari, North Tripura, PIN-799262.

.....Respondent(s)

For Petitioner(s) : Ms. R. Purkayastha, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

27/08/2024

Heard Ms. R. Purkayastha, learned counsel for the petitioners.

2. The impugned order dated 04.07.2024 passed by learned Civil Judge (Sr. Divn.), Court No.2, North Tripura, Dharmanagar in Civil Misc.27 of 2024 has rejected the application for leave on behalf of the defendants/petitioners to adduce some electricity bills at the stage of examination of the defendant witnesses on the ground that neither were these electricity bills referred to in the written statement nor the original or copies thereof were filed any time before the original suit reached the stage of defendant witness examination, nor the defendant mentioned the electricity bills in question in the list of documents mentioned in the written statement.

3. Ms. Purkayastha, learned counsel for the petitioners, submits that the suit instituted by the plaintiffs-respondents bearing case No.T.S. (Eviction) 01 of 2022 is for a declaration of their right, title and interest over the suit land measuring 0.70 acre under Mouja and T.K.-Churaibari, Rev. Circle-Kadamtala, Sub-Division- Dharmanagar, North Tripura District and for recovery of possession in respect thereof by evicting the petitioners through process of law. The defendants/petitioners have claimed possession through their predecessors long before the allegations of dispossession have been made by the plaintiffs against them. Though certain averments have been made in para 24 of the written statement to the effect that the defendants were provided electric connections to their respective dwelling huts and have been paying electricity bills against consumption of electricity since long back, but unfortunately those bills could not be filed along with the list of documents as the defendants had lost them. After due diligence those documents have been procured and leave has been sought in terms of Order VIII rule 1A(3) of CPC. Petitioners would be greatly prejudiced if leave is not allowed as these documents to be adduced by defendant witnesses with opportunity to the plaintiffs to cross-examine would go a long way in establishing the factum of possession of the defendants vis-à-vis the plaintiffs. The learned Trial Court however erroneously refused to grant leave and rejected the prayer.

4. I have considered the submission of learned counsel for the defendants/petitioners and taken note of the relevant material facts and the grounds urged in support of such prayer. It is trite law that in absence of

pleading, evidence, if any, cannot be allowed to be produced by the parties. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial, it is imperative that the party should settle the essential material facts so that the other party may not be taken by surprise. Though pleadings should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with a strict interpretation of the law. In the present case specific pleadings to that effect are absent in the written statement referred to by learned counsel for the defendants/petitioners. There is no specific mention of the period during which the electricity connection was alive in favour of the defendants. Electricity bills which are now being sought to be adduced by the defendants allegedly relate to a period prior to filing of the written statement. Therefore, it cannot lie in the mouth of the defendants to say that the electricity bills in their name were not available with them and have been obtained much after filing of written statement by exercising due diligence. Moreover, the defendants failed to even mention the electricity bills in question in the list of documents. Learned Trial Court gave due consideration to these ingredients necessary to exercise the power under Order VIII rule 1A(3) of CPC and found that the necessary grounds are amiss. It is also evident from the narration of facts and perusal of

the impugned order that the leave has been sought after conclusion of the plaintiffs' evidence much after filing of the written statement by the defendants.

5. Since the order does not suffer from any perversity or error of jurisdiction, this Court is not inclined to interfere in the matter. As such, this Court does not find any reason to interfere in the instant matter. Accordingly it is dismissed.

(APARESH KUMAR SINGH), CJ



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MUNNA SAHA

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