

GAHC040004942024



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

Case No. : CRP/12/2024

Kaling Mengu and Anr
Son of Shri Obi Mengu, Rasam Village, PO Balek, PS Pasighat, East Siang District,
Arunachal Pradesh 2: Obang Mengu
Age:
Occupation

VERSUS

Aity Padung and Anr
D/o Shri Dulem Padung, resident of Kali mandir, High Region, PO and PS Pasighat,
East Siang District, Arunachal Pradesh 2: Johnny Kakki
Age: 31
Occupation

Advocate for the Petitioner : Kemo Lollen

Advocate for the Respondent : T T Tara

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 18-06-2024

Heard Mr. K.Lollen, learned counsel for the petitioners. I have also heard Mr. T.T.Tara, learned counsel for the respondents.

2. By this Civil Revision Petition under Article 227 of the Constitution of

India, the petitioners has assailed the ex-parte impugned order dated 04.04.2024 passed by the learned District Judge, Pasighat, East Siang District, in PSG Misc. Application No.01/2024 (Aity Padung & Anr vs Shri Kaling Mengu & Anr) wherein the learned trial Court has stayed the order dated 01.04.2024 passed by the learned Civil Judge (Senior Division) Pasighat, in Misc. Case No.14/2024 in Title Suit Case No.14/2024 contending that the said order was passed ex-parte without giving notice to the Caveator/petitioner.

3. The case in brief is that Misc Case No.14/2024 in Title Suit No.14/2024 was moved by the Plaintiffs/respondents herein before the Court of Civil Judge (Senior Division), Pasighat with a prayer for granting temporary injunction restraining the defendants/petitioners herein from entering into the suit land located at 3 miles, Pasighat measuring more than one pura (approx.). Accordingly, by an order dated 22.02.2024, an ex-parte ad interim was granted. However, by order dated 01.04.2024, the said ex-parte interim order dated 22.2.2024 was set aside and vacated by the learned Civil Judge (Senior Division) after hearing the parties.

4. The case of the petitioners is that after vacation of the ex-parte temporary injunction, the petitioner No.1 lodged a Caveat application before the appellate Court i.e. the District Judge Pasighat on 03.04.2024, which was registered as Caveat Petition No.4/2024 with a prayer to pass necessary orders to issue notice to the Caveator before passing any interim order, in the event of the prospective petitioners/respondents herein file any appeal before the said appellate Court challenging the order dated 01.04.2024 passed by the learned Civil Judge (Senior Division) Pasighat in Misc. application No.14/2024 in Title Suit No.14/2024.

5. The learned counsel for the petitioners submitted that on 04.04.2024, the respondents filed an appeal being registered as Misc Appeal No.01/2024 (Aity Padung vs Kaling Mengu & Anr) before the District Judge, Pasighat challenging the vacation order dated 01.04.2024 passed by the learned Civil Judge (Senior Division), Pasighat along with one Misc Application No.04/2024 in Misc Appeal No.01/2024 for stay of the vacation order dated 01.04.2024 and also filed another Misc(J)05/2024 in Misc.Appeal No.01/2024 praying for ad-interim order restraining the petitioner/opposite party and their agents etc from entering into the suit land or to pass status quo order.

6. The said Misc. Application was filed and moved as unlisted motion on the same day on 04.04.2024 before the learned District Judge, Pasighat which was allowed and fixed at 3.30 PM for hearing. By the said order, it was directed that in the meantime, the Filing Assistant shall intimate the Caveator for hearing of the matter. Accordingly, at 3.30 PM, the learned District Judge Pasighat took up the matter for hearing and passed the impugned ex-parte order dated 04.04.2024 in Misc. Appeal No.01/2024 (Aity Padung & Anr vs Kaling Mengu & Anr) whereby the impugned order dated 01.04.2024 passed by the learned Civil Judge (Sr. Div.) dated 01.01.2024 has been stayed till the next date with further direction to both the parties to maintain status quo. The operative part of the said order is reproduced herein bellow:

“Considering the entirety of the case, I am inclined to stay the order dated 01.04.2024 till the next date with a further direction to maintain status quo to both the parties as before or on the date of filing suit before the Ld. Court below and both the parties shall not have physical possession and construct anything upon the suit land and create any third party right

pending hearing of the appeal.

Accordingly, the impugned order dated 01.04.2024 is stayed.”

7. It is submitted that the petitioner had lodged a Caveat under section 148A of the Civil procedure code before the Court of the District Judge, Pasighat with a prayer for giving an opportunity to hear the caveator before passing any order in case the prospective petitioner/respondent herein file appeal impugning the order dated 01.4.2024. It is the case of the petitioner that before taking up the Misc. application, no notice was issued to the petitioner/caveator as it is apparent from the fact that the Caveat petition filed by the petitioner/Caveator still remained undisposed.

8. Being highly aggrieved by the said impugned order dated 04.04.2024, the petitioner preferred the instant Civil Revision Petition before this Court amongst others on the following grounds: that the learned District & Session Judge, Pasighat has passed the impugned order dated 04.04.2024 in violation of section 148A of the Civil Procedure Code 1908; that it is mandate of section 148 A to serve notice upon the Caveator thereby giving an opportunity before passing any order. However, in the instant case, the learned District Judge has not only allowed the Misc. App C No.01/24 to file and moved as an unlisted on the same day, but also heard the matter in the same afternoon at 3.30 PM and passed the impugned order dated 04.04.2024 without issuing notice upon the Caveator in total violation of the Rules. Therefore, it is submitted that the impugned order dated 04.04.2024 is non est in the eye of law and prays the same same be quashed and set aside.

9. While issuing notice, a record was called for which has been received

and I have perused the same.

10. Mr. T.T. Tara, learned counsel appearing for the respondents has fairly conceded the submission made by the learned counsel for the petitioner and submitted that although the notice given by the staff of the Court appears to have reached the learned counsel for the caveator through whatsapp message on the same day in his mobile; but, probably there was no sufficient time for the caveator to appear before the Court and participate in hearing. Therefore, he further fairly submitted that since some procedural error occurred in passing the impugned order; he has no objection, if the prayer of the petitioner for setting aside the impugned order is allowed and the matter is remanded back to the appellate Court i.e. District & Session Judge, Pasighat for consideration of the matter afresh by giving notice to the Caveator.

11. Having heard the parties and upon consideration of the record and the provisions of law as stated above, it appears that the petitioners herein has lodged a Caveat before the learned appellate Court i.e. District & Session Judge, Pasighat with a prayer to give notice upon them before passing any order in case the prospective appellant/respondents herein file an appeal against the order dated 01.04.2024 passed in Misc. application No.14/2024 in T.S No.14/2024. In fact, the appellants/respondents herein did file an appeal against the said impugned order dated 01.04.2024 passed in Misc Case No.20/2024 and the said appeal was moved as an unlisted matter on 04.04.2024. The District Judge there upon fixed the matter at 3.30 PM for hearing. However, the Caveator was not properly given notice before hearing the said Misc. Application 01/2024.

12. As per section 148 A of the Code of Civil Procedure, a notice is to be

given to the Caveator giving him an opportunity of hearing before passing any order. But in the instant case, no such notice was given to the Caveator/Petitioners herein as required under the law, thereby, the provision under section 148 A of the Code of Civil Procedure has been violated. As such, the impugned order dated 04.04.2024 passed by the District & Session Judge, Pasighat in Misc Appeal No.01/2024 cannot be sustained in law.

13. In view of the reasons stated above, the impugned order dated 04.04.2024 passed in MISC APP.C.No.01/24 is hereby quashed and set aside. The matter is accordingly remanded back to the District Court, Pasighat with a direction to hear the matter afresh after causing notice upon the Caveator as required under the law and dispose the same in accordance with the law.

14. The revision petition disposed of in terms above.

15. Return the LCR immediately

JUDGE

Comparing Assistant