



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

Case No. : CRP/51/2023

Sajo Bagang
S/o Shri Tachang Bagang, R/o Village Sanglokwa Bagang, PO/PS Chayang Tajo,
District East Kameng, Arunachal Pradesh, Presently residing at A-Sector near
Rajdhani Petrol Pump, PO and PS Naharlagun, District Papum Pare, Arunachal
Pradesh, Mobile No. 8798866355

VERSUS

Smti Mema Bagang
W/o Late Sema Bagang, R/o PTC Forest Colony Banderdewa, PO and PS
Banderdewa, District Papum Pare, Arunachal Pradesh.

Advocate for the Petitioner : Chorpok Modi

Advocate for the Respondent :

HON'BLE MRS. MALASRI NANDI

JUDGMENT & ORDER (ORAL)

(07.02.2024)

Heard Mr. C. Modi, learned counsel for the petitioner. None has appeared for the sole respondent.

2. The petitioner has filed this petition under Article 227 of the

Constitution of India read with Section 115 of the CPC praying for quashing of the impugned order, dated 14.08.2023 passed by the learned District Judge, Yupia in connection with Money Appeal No.02/2023 filed against the *Ex-parte* decree/order, dated 05.04.2018 passed by the learned Civil Judge (Senior Division), Yupia in Money Suit No. 102/2015.

- 3.** The factual matrix leading to filing of this revision petition is that in the year 2014, the petitioner along with five other persons took a loan of Rs.3,00,000/- (Rupees Three Lakhs) from one Smti. Nime Yangfo for a common purpose. While lending the said money, the lender had taken 2 (two) strings of local ornaments (Tadok) as the security of the said loan amount but the petitioner along with other persons who took the loan have failed to repay the same. Subsequently, an agreement was executed between the petitioner on 27.02.2014 amongst the borrowers for paying back the said loan amount to the lender. But as they failed to repay the loan amount, one suit was instituted vide Money Suit No. 102/2015.
- 4.** It is stated in the petition that the petitioner had no knowledge about the pendency of Money Suit till he came to know about the execution petition in connection with the said Money Suit. After coming to know about the pendency of the execution petition against him, he filed an appeal vide Money Appeal No. 02/2023 before the Court of District Judge, Yupia. After hearing the petitioner, the learned District Judge, Yupia on 13.07.2023 stayed the execution proceeding vide execution petition No. 10/2018 arising out of Money Suit No. 102/2015 and the date was fixed on 14.08.2023.

5. On 14.08.2023, the District Judge, Yupia held that the impugned order in the ex-parte proceeding was passed by the learned Civil Judge, Yupia in the year, 2018 in connection with Money Suit No.102/2015. But the learned counsel for the appellant did not file any application for condoning the delay of about 2 (two) years and accordingly, the appeal was dismissed on being not maintainable.

6. It was urged by the learned counsel for the petitioner that the petitioner had no knowledge about the institution of Money Suit No. 102/2015. As per order, dated 11.12.2015, notice was issued to the petitioner as defendant along with other defendants. On subsequent date though notice was not served to the petitioner but the ex-parte order was passed without giving any opportunity to the petitioner to make his submission in connection with Money Suit No. 102/2015.

7. Under such backdrop, the learned counsel for the petitioner prayed for setting aside the impugned order, dated 14.08.2023 passed by the District Judge, Yupia with a direction to the learned Court below to adjudicate the matter afresh by allowing the petitioner to proceed with the case accordingly.

8. Though, the petitioner had taken steps to the respondent through the dasti mode of service but as per the report, the respondent refused to accept the same. From the conduct of the respondent, it appears that the respondent is not interested to appear and make his submission in connection with the present revision petition.

9. I have considered the submission of the learned counsel for the

petitioner.

10. It appears from the order, dated 11.12.2015 passed by the learned Civil Judge (Senior Division) Yupia, that notice was issued to the petitioner as defendant and subsequent date was fixed on 28.01.2016 & 04.03.2016. As per order, dated 04.03.2016, it is reflected that summons issued to the defendant were not returned after service and the plaintiff was directed to issue fresh summons to the defendant by fixing date on 22.04.2016 and on the same date, the learned Civil Judge, Senior Division, Yupia had passed the following order, which is extracted hereinbelow for ready reference:-

“...Order 5, Rule 9, Sub-Rule 5 of the Civil Procedure Code provides that where summons are tendered or transmitted, the Court issuing the summons shall declare that the summons had been duly served upon the defendants, provided further that if the summons were properly addressed, pre-paid and duly sent by registered post, acknowledgement due, the declaration referred to this sub-rule shall be made notwithstanding the fact that the acknowledgement having been lost and mislead, or for any other reason, has not been received by the Court within thirty days from the date of the issue of summons. In the present case, the steps were sent vide pre-paid registered post, acknowledgment due to the right address of the defendants. But neither the AD Card returned after service and nor the steps returned un-served, by the mean time more than 30 days has already elapsed. As such as per the above provision of law, it is declared that the summons duly served upon the defendants.

Since the defendant Nos. 1 to 3 are found absent without any steps, the suit is proceeded ex-parte against the defendant Nos. 1 to 3".

11. On perusal of the order, dated 22.04.2016, it reveals that the notice was not served to the petitioner and it is also reflected from the order that the AD Card has not been returned after service. But the learned Civil Judge, Senior Division on the basis of Order 5, Rule 9, Sub-Rule 5 of the CPC by holding that as the steps were taken by the respondent and in the meantime, 30 days has been elapsed, the notice has been deemed to be served to the present petitioner, fixing next date on 14.06.2016 for filing of written statement by defendant No. 4. Subsequently, an execution case has been filed for execution of money decree, dated 05.04.2018 passed in Money Suit No. 102/2015. Against the said execution case, the present petitioner had approached the District Judge vide Money Appeal No. 02/2023 with a prayer to set aside the judgment and order, dated 05.04.2018 passed by the learned Civil Judge, Senior Division, Yupia. The petitioner has also prayed to stay the execution proceeding vide T.S. No. 10/2018 till final disposal of the matter. The learned District Judge, on considering the submission of the learned counsel for the petitioner, the Execution proceeding vide No.10/2018 was stayed in connection with original Money Suit No. 102/2015 by fixing a date on 14.08.2023.

12. On 14.08.2023, another order was passed by the Court of learned District Judge, Yupia stating that as the impugned ex-parte order was passed in the year, 2018 and no application was filed by the petitioner for

condoning the delay of about 2 years in filing the appeal, the appeal was dismissed as being not maintainable.

13. It appears from the order of the Civil Judge, Senior Division as well as District Judge, Yupia that the notice has not been served properly to the petitioner. According to the learned counsel for the petitioner, it has come to the knowledge of the petitioner only on filing of the execution petition before the Court on 01.06.2023 and from the date of knowledge, within the period of limitation, he filed the appeal before the Court of District Judge. Hence, the question of filing condonation petition beyond the period of limitation does not arise at all. From the order of the District Judge dated 14.08.2023, it is not clear when the petitioner had got the knowledge regarding pendency of Money Suit in the Court or the execution proceeding. No enquiry was made by the District Judge regarding delay in filing the appeal. The petitioner was also not asked to give any clarification whether any delay was caused in filing the appeal.

14. In a nutshell, it can be said that there is an irregularity made in service of notice to the petitioner in connection with Money Suit No. 102/2015 as well as the execution proceeding vide T.S. No. 10/2018.

15. In view of the above, this Court is of the view that the order passed by the District Judge, Yupia dated 14.08.2023 is liable to be set aside and accordingly, the order dated 14.08.2023 passed by the learned District Judge, Yupia in connection with Money Appeal No.02/2023 is set aside. The petitioner is at liberty to approach before the learned Civil Judge (Senior Division), Yupia by filing appropriate application for vacating the

ex-parte order, dated 22.04.2016 passed by the learned Civil Judge (Senior Division) and also with a prayer to stay the execution proceeding vide Execution Petition No. 10/2018. Thereafter, the learned Civil Judge (Senior Division), Yupia on filing such application by the petitioner shall consider the matter and pass necessary orders in accordance with law.

This Civil Revision Petition is accordingly disposed of. No order as to cost(s).

JUDGE

Comparing Assistant