GAHC040013652023

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

Case No. : CRP/60/2023

Techi Hemu
son of Shri Soteck Tachang, resident of Darlong village,
PO/PS Seijosa, district Pakke Kessang, Arunachal Pradesh.

VERSUS

Gagung Nabam and 6 Ors
S/o Sarbang Nabam, resident of Seijosa, PO/PS Seijosa,
district Pakke Kessang, Arunachal Pradesh.

2) THE STATE OF AP
Represented by the Secretary Land Management, Govt. of Arunachal Pradesh, Itanagar.

3) The Secretary
Land Management, Govt. of Arunachal Pradesh, Itanagar.

4) The Director
Land Management, Govt. of Arunachal Pradesh, Itanagar.

5) The Deputy Commissioner
Pakke Kessang, Govt. of Arunachal Pradesh, Lemmi.

6) The Additional Deputy Commissioner.
Pakke Kessang, Govt. of Arunachal Pradesh, Lemmi.

7) The District Land Management and Settlement Officer
Pakke Kessang, Govt. of Arunachal Pradesh, Limmi.

Advocate for the Petitioner : Pritam Taffo

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 10.04.2024

Heard Mr. E. Menjo, learned counsel for the petitioner. Also heard Mr. V. Jamoh, learned counsel for the respondent.

2. By filing this civil revision petition under Section 227 of the Constitution of India read with Section 115 of CPC 1908, the petitioner has assailed the order dated 30.08.2023 passed by the Court of Civil Judge (Sr. Division), Seppa, East Kameng District, Arunachal Pradesh in Title Suit No. 10/2023 under Section 34 of Specific Relief Act, 1963 read with Section 9 of CPC (Shri Gagung Nabam Vs. Shri Techi Hemu & 6 Ors.).

3. By the said impugned order dated 30.08.2023, the learned Civil Judge Senior Division has denied granting further time to the defendant/petitioner herein from filing written statement in TS No. 10/2023 on the ground that the written statement was not filed within statutory period of 120 days and passed the following order "***Since the written statement is not yet filled within the statutory period of 120 days, this Court is inclined to proceed the case without written statement. Accordingly, the case is proceeded for***

documents and issues".

4. Mr. Menjo, learned counsel for the petitioner submits that the defendant/petitioner herein had shown plausible reasons for his failure to file written statement within a stipulated time. In fact, the defendant/petitioner herein had filed his written statement on 30.08.2023 as per the direction of the learned Civil Judge (Sr.Div.) by signing affidavit and verification. However, the said written statement was returned to the defendant. The ground for return of written statement was that some annexed documents were not legible. However, the counsel for the petitioner could not rectify those illegible annexures documents immediately on the same days, as on that day another 4 (four) similar title suits were listed and the matter were about to reach in court. Thus, when the matter came up for hearing on 30.08.2023, the learned counsel prayed for further time to file corrected written statement. But, the learned counsel for the plaintiff/respondent No.1 herein raised an objection to grant of further extension of time for filling written statement on the ground that after expiry of statutory period of 120 days, no written statement could be allowed to be filed. Basing on the said objection, the learned civil judge has passed the impugned order.

5. The learned counsel further submits that as the defendant/petitioner herein, had already filed his written statement, the learned Court below ought to have given an opportunity to replace the illegible documents with legible one for proper dispensation of justice. It is further submitted that although the

provision provides for filing the written statement within 120 days, but it does not mean that the written statement could not be filed after expiry of 120 days of the receipt of the notice in a suit provided plausible reason is given for not filing on time as it is at the discretion of the learned court.

6. The learned counsel for the petitioner further submits that petitioner has a good case and the balance of convenience is in his favor and prays for setting aside and quashing of the impugned order dated 30.08.2023 and for direction to accept the written statement of the defendant/petitioner herein.

7. To support his submission, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court, held in the case of ***Salem Advocate Bar Association, T.N. vs Union of India***, reported in ***(2005) 6 SCC 344***, wherein, it has been held and observed as under:

> "*…20. The use of the word 'shall' in Order VIII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.*
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> *21. In construing this provision, support can also be had from Order VIII Rule 10 which provides that where any party from whom a written*

statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the Court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order VIII, the court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order VIII Rule 1. There is no restriction in Order VIII Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to 'make such order in relation to the suit as it thinks fit'. Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1."

8. Mr. V. Jamoh, learned counsel appearing for the respondent/plaintiff in title suit fairly submits that he has no objection, if this petition is allowed. However, he submits that a fine may be imposed upon the defendant/petitioner herein for causing unnecessary delay in filing written statement thereby causing harassment to plaintiff/respondent No.1 herein.

9. Heard the learned counsel for both the parties.

10. Considering the contention made in the application, submission made by

both the parties, and in view of the relevant provision of law and the decision of the Hon'ble apex Court referred above and also considering the facts and circumstances of the case, this court is of the opinion that for ends of justice, this petition can be allowed with certain condition as agreed upon by the parties. Accordingly, the impugned order dated 30.08.2023 passed by the learned Civil Judge (Sr. Division), Seppa, East Kameng District, Arunachal Pradesh in Title Suit No. 10/2023 is hereby set aside.

11. As a result, the defendant/petitioner herein shall be permitted to file his written statement in the Title Suit No. 10/2023 within 17 days from today i.e., on or before 26.04.2024 on the condition that he deposits a fine of Rs. 2,000/- (Rupees Two thousand) only before the learned Civil Judge Senior Division before filing his written statement. The fine so deposited by the defendant/petitioner herein shall be released to the plaintiff/respondent No.1 herein after proper verification of his identity by their counsel.

12. It is needless to say that the defendant shall serve with a copy of written statement to the plaintiff/respondent herein who shall also be given an opportunity to file rejoinder if desired as per the law.

With the above observation, the civil revision petition stands allowed and disposed of.

JUDGE

Comparing Assistant