

GAHC010000832024



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

Case No. : CRP/25/2024

MOZAFFAR @ MOZAUDDIN AND 4 ORS
S/O- LATE BOSORUDDIN, R/O- VILL.- BOROBILA PT-I, P.O. HOWRARPUR,
P.S. AND DIST. DHUBRI, ASSAM, PIN- 783324.

2: SAMINA BIBI
W/O- MOZAFFAR @ MOZAUDDIN
R/O- VILL.- BOROBILA PT-I
P.O. HOWRARPUR
P.S. AND DIST. DHUBRI
ASSAM
PIN- 783324.

3: SAMIUL HOQUE @ SAMINUR RAHMAN
S/O- MOZAFFAR @ MOZAUDDIN
R/O- VILL.- BOROBILA PT-I
P.O. HOWRARPUR
P.S. AND DIST. DHUBRI
ASSAM
PIN- 783324.

4: SOPIKUL HOQUE
S/O- MOZAFFAR @ MOZAUDDIN
R/O- VILL.- BOROBILA PT-I
P.O. HOWRARPUR
P.S. AND DIST. DHUBRI
ASSAM
PIN- 783324.

5: ROPIKUL HOQUE @ TEPPU SK @ APYAL RAHMAN
S/O- MOZAFFAR @ MOZAUDDIN
R/O- VILL.- BOROBILA PT-I
P.O. HOWRARPUR
P.S. AND DIST. DHUBRI
ASSAM

PIN- 783324

VERSUS

NUR MOHAMMAD AND 5 ORS

S/O- LATE ASHOR ALI, VILL.- BOROBILA PT-1, P.O. HOWRARPUR, P.S. AND
DIST. DHUBRI, ASSAM, PIN- 783324.

2:THE A.S.O.

DHUBRI CIRCLE

DHUBRI DISTRICT

ASSAM

PIN- 783301.

3:THE STATE OF ASSAM

REP. BY THE COLLECTOR OF DHUBRI DISTRICT

DIST. DHUBRI

ASSAM

PIN- 783301.

4:FULJAN BEWA

W/O- LATE ASHOR ALI

VILL.- BOROBILA PT-1

P.O. HOWRARPUR

P.S. AND DIST. DHUBRI

ASSAM

PIN- 783324.

5:ROSHIDA BIBI

D/O- LATE ASHOR ALI

VILL.- BOROBILA PT-1

P.O. HOWRARPUR

P.S. AND DIST. DHUBRI

ASSAM

PIN- 783324.

6:MURSHIDA BIBI

D/O- LATE ASHOR ALI

VILL.- BOROBILA PT-1

P.O. HOWRARPUR

P.S. AND DIST. DHUBRI

ASSAM

PIN- 783324

Advocate for the Petitioner : MR. S CHAUHAN

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

21.02.2024

Heard Mr. S. Chauhan, learned counsel for the petitioners.

This is an application under Article 227 of the Constitution of India challenging the order dated 07.12.2023 passed by the learned Civil Judge (Jr. Division) No. 3, Dhubri in T.S. No. 161/2022.

The petitioners are the defendant nos. 1,2,3,4 and 5 before the trial court. On 07.12.2022, the petitioners jointly filed their written statement and also filed an application seeking time to file counter claim.

The said written statement was not accepted by the trial court on the ground that as it was filed beyond the period of 90 (ninety) days as mandated in the order 8 of the Code of Civil Procedure and accordingly the same was rejected.

It is a settled position of law that period of ninety days as mandated in the Order 8 of the CPC is not a mandatory rather it is a directory one. Therefore, the trial court should have exercised judicial mind. It appears from the order that the trial court failed to exercise its judicial mind and straightway rejected the prayer of the petitioners.

This court is of the opinion that the impugned order is bad in law and accordingly the order dated 07.12.2023 passed by the learned Civil Judge (Jr. Division) No. 3, Dhubri in T.S. No. 161/2022 is set aside. The trial court is directed to accept the written statement filed by the petitioners i.e. defendant nos. 1,2,3,4 and 5 in the trial court within one month and thereafter, the trial court shall proceed to dispose of the case in accordance with law.

With the above the civil revision petition is disposed of.

JUDGE

Comparing Assistant