

GAHC010005712023



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

Case No. : CRP/9/2023

ARUN DUBEY AND ANR
S/O- ANAND SHANKAR DUBEY, R/O- VILL- HATTA BAZAR, P.O- SHEOPUR,
P.S- GAGAHA, DIST- GORAKHPUR, UTTAR PRADESH

2: BISWAJIT DAS
S/O- KANTILAL DAS
R/O- VILL- NO.1 BAGRIGAON
P.S- LALUK DIST- NORTH LAKHIMPUR
ASSA

VERSUS

JAGAT BORAH AND 2 ORS
S/O- LATE BHADESWAR BORAH , R/O- TOWN TELIAGAON, P.O
HAIBORGON, MOUZA- NIS SAHAR, DIST- NAGAON, ASSAM

2:RANTUMONI BORAH
S/O- LATE BHADESWAR BORAH
R/O- TOWN TELIAGAON
P.O HAIBORGON
MOUZA- NIS SAHAR
DIST- NAGAON
ASSAM

3:PRANJAL BORAH
S/O- LATE BHADESWAR BORAH
R/O- TOWN TELIAGAON
P.O HAIBORGON
MOUZA- NIS SAHAR
DIST- NAGAON ASSAM

Advocate for the Petitioner : MR. S K DEORI

Advocate for the Respondent : MS J KALITA (R-1 to 3)

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 27.03.2024

This is an application under Article 227 of the Constitution challenging the Order dated 07.12.2022 passed in Petition No. 920/2022 arising out of Money Suit No. 67/2019 by the learned Court of the Civil Judge, Nagaon whereby the application under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (for the short 'the Code') was rejected.

2. From a perusal of the materials on record, it reveals that the plaintiffs/respondents herein have instituted a suit being Money Suit No. 67/2019 for realization of an amount of Rs.16,84,711/- along with interest from the defendants.
3. The defendant Nos. 2 and 3 filed an application under Order I Rule 10 read with Section 151 of the Code for striking out their names from the array of the Defendants in the suit on the ground that they have resigned from the defendant No.1 Company. The learned Trial Court by an Order dated 07.12.2022 rejected the said application and the defendant Nos. 2 and 3 who are the petitioners herein being aggrieved have instituted the instant proceedings.
4. This Court had heard the learned counsel appearing on behalf of both the

petitioners as well as the respondents.

5. This Court also perused the impugned Order dated 07.12.2022 whereby the learned Trial Court had rejected the application filled by the defendant Nos. 2 and 3 on the ground that whether the defendant Nos. 2 & 3 have resigned from the defendant No.1 Company or whether the said defendants are at all liable for payment of any amount are mixed questions of law and fact, for which the same can only be decided in the trial.

6. This Court having perused the grounds assigned in the impugned order dated on 07.12.2022 is of the opinion that the learned Trial Court has not committed any jurisdictional error in passing the said order.

7. Accordingly, this Court finds no merit in the instant proceedings for which the instant proceedings stands dismissed.

8. This Court vide an Order dated 03.02.2023 had stayed the further proceedings of Money Suit No. 67/2019 pending before the Court of the Civil Judge, Nagaon. The said stay order stands vacated. The parties herein are directed to appear before the learned Trial Court on 2nd May, 2024 for further proceedings of the suit.

JUDGE

Comparing Assistant