

GAHC010014262024



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

Case No. : CRP(IO)/43/2024

MAYURI GOGOI
W/O- SRI RAJEN GOGOI, R/O- VILL.- DA- HUKUTA, P.O. AND P.S.
DULIAJAN, PIN- 786602, DIST. DIBRUGARH, ASSAM

VERSUS

BORNALI KALITA AND ANR
W/O- SRI JAYANTA DAS, R/O- EASTERN ENCLAVE-II, LAKHESWAR
BARUAH PATH, MRD ROAD, NEW GUWAHATI, P.S. NOONMATI,
GUWAHATI-20, DIST. KAMRUP(M), ASSAM

2:JAYANTA DAS
S/O- SRI THANESWAR DAS
R/O- EASTERN ENCLAVE-II
LAKHESWAR BARUAH PATH
MRD ROAD
NEW GUWAHATI
P.S. NOONMATI
GUWAHATI-20
DIST. KAMRUP(M)
ASSA

Advocate for the Petitioner : MS. S G BARUAH

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

19-02-2024

Heard Ms. S. G. Baruah, learned counsel appearing for the petitioner.

Seen the Office Note dated 16.02.2024, the respondents have refused to accept the notice therefore service of notice upon the respondents is complete.

This is an application filed under Article 227 of the Constitution of India challenging the order dated 28.11.2023 passed by the learned Civil Judge, No. 2, Kamrup (M) at Guwahati in TS No. 387/2023 whereby the learned Trial Court rejected its prayer of the petitioner, who is the defendant before the Trial Court, for granting time to file a written statement. The said prayer was rejected because the statutory period of 90 days has already elapsed.

This Court gone through the impugned order.

It is a settled position of law that the period of 90 days as mentioned by Order VIII of the CPC is not a mandatory one rather it is a directory one.

I find that the leaned Trial Court failed to exercise judicial mind by passing the impugned order. Therefore, the impugned order is set aside.

The petitioner is directed to file a written statement within next 10 days, which will be accepted by the learned Trial Court. Thereafter the Court shall proceed to dispose of the case in accordance with the procedure laid down by law.

The revision petition stands disposed of.

JUDGE

Comparing Assistant