

GAHC010014932016



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

Case No. : CRP/158/2016

SANJIT DUTTA
S/O SRI RANJIT DUTTA, R/O H/NO.68, A.K. AZAD ROAD, REHABARI, P.S.
PALTANBAZAR, GUWAHATI, DIST- KAMRUP METRO, ASSAM

VERSUS

M/S. ORIENT BODY CONSTRUCTION and ANR.
(ON THE DEATH OF ITS PROPRIETOR LATE TINKU SARKAR HIS LEGAL
HEIR IS ADDED AT 1.1)
A PROPRIETORSHIP FIRM, REP. BY ITS PROP. SMTI. SUPRIYA SARKAR, W/O
LATE TINKU SARKAR, RESIDENT OF JYOTIKUCHI, LOKHRA ROAD, NEAR
ADAGUDAM HANUMAN MANDIR, GUWAHATI-34, DIST.-KAMRUP(M),
ASSAM.

1.1:SMTI. SUPRIYA SARKAR
W/O LATE TINKU SARKAR
RESIDENT OF JYOTIKUCHI
LOKHRA ROAD
NEAR ADAGUDAM HANUMAN MANDIR
GUWAHATI-34
DIST.-KAMRUP(M)
ASSAM.

2:STATE BANK OF INDIA
REP. BY ITS BRANCH MANAGER
GUWAHATI MEDICAL COLLEGE BRANCH
GHY-5
DIST- KAMRUP METRO
ASSA

Advocate for the Petitioner : MS.H DEKA
Advocate for the Respondent : MR.A SATTAR R

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

14-06-2024

Heard Shri B. D. Goswami, learned counsel for the petitioner. Also heard Shri A. Sattar, the learned counsel for the respondent no. 1. Shri A. Parvez, learned counsel has appeared for the respondent no. 2, which was subsequently impleaded in this proceeding.

2. The petitioner has put to challenge orders dated 22.07.2015 and 15.02.2016 passed by the learned Civil Judge, No. 2, Kamrup. By the first order, the learned Court had closed the PWs. By the second order dated 15.02.2016, the earlier order was reiterated.

3. Shri Goswami, the learned counsel for the petitioner has submitted that the suit was instituted in the year 2010 for recovery of money. It is submitted that because of wrongdoing of the respondent no. 1 as the tortfeasor, the petitioner/plaintiff has suffered loss and in fact a proceeding was also instituted against him in the learned DRT, Guwahati wherein, a substantial amount was required to be paid by him in terms of the Certificate issued.

4. It is submitted that it is because of the action of the respondent no. 1 in damaging the vehicle in question whereby an allegation has been made that the chassis was cut and reduced whereby the entire balance of the vehicle was affected leading to causing of accident.

5. The learned counsel has also submitted that there was a communication

gap between the petitioner and his counsel which had led to the aforesaid situation. In this regard, he had filed a complaint before the Bar Council. Shri Goswami, the learned counsel has also informed that the concerned counsel has also passed away in the meantime.

6. *Per contra*, Shri Sattar, the learned counsel for the respondent no. 1 has submitted that the orders impugned have been passed by the learned Court by taking into consideration all the material facts and circumstances and there is no perversity in the said orders. It is submitted that unless any perversity or gross illegality is able to be demonstrated, this Court may not exercise the supervisory jurisdiction under Article 227 of the Constitution of India to interfere with such orders.

7. Shri Parvez, the learned counsel for the respondent no. 2 has however submitted that he would not have any major role in the adjudication as it was his client who had given the loan and was subsequently recovered through the learned DRT.

8. A perusal of the first order dated 22.07.2015 would show that the scope to adduce PWs was closed. The learned Court has however recorded that for the last 4 years before passing of the order, the case was at the stage of filing of evidence by the PWs. The Court has also recorded that vide an earlier order dated 29.04.2015, a cost of Rs.1000/- was imposed which was not deposited. Taking into consideration all the aforesaid facts, the order was passed.

9. In the subsequent order dated 15.02.2016, the Court was considering a petition by which further time was sought for to obtain certified copy of an MVI report dated 16.01.2007. The learned Court had however observed that vide the

earlier order dated 22.07.2015, it was already directed that no further opportunity would be given for adducing PWs.

10. It transpires that against the initial order dated 22.07.2015, no application for recall was filed and therefore subsequent order dated 15.02.2016 cannot be found fault with.

11. This Court has also noticed that the suit was instituted in the year 2010 and as recorded by the learned Court, till a period of 4 years, the evidence of PWs were not filed. Though there may be some substance in the submission that there was a communication gap between the petitioner and his counsel, such communication gap cannot be stretched to a period of 4 years which itself shows lack of *bona fide* on the part of the petitioner to pursue the case.

12. The power to be exercised by this Court under Article 227 is a power of supervision and to ensure that the Courts below act within the ambit of law. The impugned orders do not reflect that there has been any error in exercise of powers either from the point of jurisdiction or from the point of consideration of the relevant materials which were before the Court. This Court is accordingly of the considered view that no case for interference is made out.

13. Petition is accordingly dismissed.

JUDGE

Comparing Assistant