

GAHC010018112024



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

Case No. : CRP(IO)/44/2024

JANARDHAN SAHA AND ANR
S/O- LATE KALIDAS SAHA, R/O- BAGRIBARI ARAIANI, P.O. AND P.S.
BAGRIBARI, DIST. KOKRAJHAR, ASSAM, PIN- 783349.

2: RISHIKESH SAHA
S/O- LATE KALIDAS SAHA
R/O- BAGRIBARI ARAIANI
P.O. AND P.S. BAGRIBARI
DIST. KOKRAJHAR
ASSAM
PIN- 783349

VERSUS

KRISHNA GOPAL KARMAKAR
S/O- LATE GOURCH. KARMAKAR, VILL.- BAGRIBARI ARIANI, P.O. AND P.S.
BAGRIBARI, DIST. KOKRAJHAR, ASSAM, PIN- 783349.

Advocate for the Petitioner : MD H R AHMED

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

05.02.2024

Heard Md. H R Ahmed, learned counsel for the petitioners.

This is an application filed under Article 227 of the Constitution of India challenging the

order dated 29.11.2023 passed by the learned Civil Judge (Jr. Division), Kokrajhar in T.S. No. 40/2021 (new)/ T.S. No. 06/2016 (old).

In the case before the trial court, the plaintiff amended the plaint. Thereafter, the petitioners being the defendants filed additional written statement after more than 90 days. Therefore, the defendant filed a petition under the Limitation Act praying for condoning the delay. Trial court held that under the said circumstances, Section 5 of the Limitation Act is not applicable and on that ground, the prayer for condoning the delay was rejected.

I have considered the submission of the learned counsel for the petitioners. Order VIII Rule 1 of the CPC provides that a written statement shall be filed within a maximum period of 90 days. Now, the law is settled that the aforesaid period of 90 days as provided under Order VIII Rule 1 of the CPC is not mandatory rather it is directory. Therefore, in that circumstances, the trial court has to exercise judicial mind in accepting or rejecting the same.

The learned trial court has rightly held that Section 5 of the Limitation Act is not applicable in that circumstances. Even then, the trial court did not apply judicial mind when the additional written statement was accepted or rejected. Therefore, the impugned order dated 29.11.2023 passed by the learned Civil Judge (Jr. Division), Kokrajhar in T.S. No. 40/2021 (new)/ T.S. No. 06/2016 (old) is bad in law and stands set aside. The trial court is directed to accept the additional written statement filed by the petitioners/defendant nos. 1 and 2 and thereafter, the court shall proceed to dispose of the matter in accordance with law.

With the above, the present civil revision petition is disposed of.

JUDGE

Comparing Assistant