

GAHC010028892020



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

Case No. : CRP(IO)/55/2020

ABDUS SATTAR SIKDAR AND 5 ORS.
S/O- LATE SUWAB ALI SIKDAR, R/O- VILL- SONAPUR, KAPALKATA, P.O
AND P.S- SONAPUR, DIST- KAMRUP (M), ASSAM, PIN- 782402

2: RADHIDA BEGUM
W/O- LATE WAHID SIKDAR
R/O- VILL- SONAPUR
KAPALKATA
P.O AND P.S- SONAPUR
DIST- KAMRUP (M)
ASSAM
PIN- 782402

3: SADDAM HUSSAIN SIKDAR
S/O- LATE WAHID SIKDAR
R/O- VILL- SONAPUR
KAPALKATA
P.O AND P.S- SONAPUR
DIST- KAMRUP (M)
ASSAM
PIN- 782402

4: ND. IKRAM HUSSAIN SIKDAR
S/O- LATE WAHID SIKDAR
R/O- VILL- SONAPUR
KAPALKATA
P.O AND P.S- SONAPUR
DIST- KAMRUP (M)
ASSAM
PIN- 782402

5: MD. AKRAM HUSSAIN SIKDAR
S/O- LATE WAHID SIKDAR
R/O- VILL- SONAPUR

KAPALKATA
P.O AND P.S- SONAPUR
DIST- KAMRUP (M)
ASSAM
PIN- 782402

6: MD. YAHAYA SIKDAR
S/O- MD. ABDUS SATTAR SIKDAR
R/O- VILL- SONAPUR
KAPALKATA
P.O AND P.S- SONAPUR
DIST- KAMRUP (M)
ASSAM
PIN- 78240

VERSUS

ABDUL KUDDUS HAZARIKA @ BABU HAZARIKA AND ANR
S/O- LATE HABIB HAZARIKA @ HAJARAT HAZARIKA, R/O- VILL
SONAPUR, KAPALKATA, P.O AND P.S- SONAPUR, DIST- KAMRUP(M),
ASSAM, PIN- 782402

2:REJINA KHATUN
D/O- LATE RUSTAM ALI
R/O- VILL- SONAPUR
KAPALKATA
P.O AND P.S- SONAPUR
DIST- KAMRUP (M)
ASSAM
PIN- 78240

For the Petitioner(s) : Mr. D. Nandi, Advocate

For the Respondent(s) : Mr. V. Kumar, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 13.05.2024

This is an application under Article 227 of the Constitution challenging the orders dated 20.01.2018, 09.04.2018 and 23.09.2019 passed by the learned Court of the learned Civil Judge No.1, Kamrup (M) at Guwahati in Title Suit

No.446/2017 whereby the learned Trial Court debarred the Petitioners herein who are the Defendant Nos. 3, 5, 6, 7, 8 and 9 from filing their written statement as well as also rejected the application seeking review of the order dated 09.04.2018.

2. This Court has perused the documents enclosed with the instant petition as well as also the orders which have been passed by the learned Trial Court. In terms with the order dated 20.01.2018, the learned Trial court observed that the records shows that the copies of the documents in seven sets were filed earlier to be meant for the Defendant Nos. 3, 5, 6, 7, 8 and 9 and accordingly fixed 05.03.2018 for filing of the written statement. However, on 05.03.2018, the Defendant Nos. 3, 5, 6, 7, 8 and 9 again sought for adjournment by filing a petition bearing No.1128/2018 and the learned Trial Court observed in the said order that the copy of the plaint was received on 08.02.2018. Thereupon, the case was fixed on 09.04.2018 for service report and written statement by the Defendant Nos. 3, 5, 6, 7, 8 and 9. However, on 09.04.2018, as the written statement was not filed by the Defendant Nos. 3, 5, 6, 7, 8 and 9, the learned Trial Court debarred the said defendants who are the Petitioners herein from filing their written statement. On an off date, a petition was filed on 08.05.2018 by the Petitioners who are the Defendant Nos. 3, 5, 6, 7, 8 and 9 stating inter alia that the written statement has been duly filed and to accept the same. The said petition was registered and numbered as Petition No.2313/2018. However, it seems that the learned Trial Court did not take note of the said petition on 05.06.2018 rather took cognizance of the petition filed on the same date bearing Petition No.2314/2018 under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 read with Section 151 praying for review of the order dated 09.04.2018. Vide the order dated 23.09.2019, the said petition seeking review

was rejected and it is under such circumstances, the instant petition has been filed challenging the orders dated 20.01.2018, 09.04.2018 and 23.09.2019.

3. I have heard Mr. D. Nandi, the learned counsel appearing on behalf of the Petitioners and Mr. V. Kumar, the learned counsel appearing on behalf of the Respondents.

4. From a perusal of the petition being Petition No. 2313/2018 which was filed on 08.05.2018, it is seen that the written statement was filed by the Petitioners herein who were the Defendant Nos. 3, 5, 6, 7, 8 and 9 on 08.05.2018. It is also seen that in the order dated 20.01.2018 that the plaintiff had not furnished copies of the annexed documents for which they could not prepared the written statement. In the order dated 05.03.2018, the learned Trial Court duly acknowledged that the copy of the plaint was received on 08.02.2018 and thereby fixed 09.04.2018 for the written statement of the Defendant Nos. 3, 5, 6, 7, 8 and 9. However, on 09.04.2018, as the written statement was not filed, the learned Trial Court held that the period of 90 days was over. However, if this Court takes note of the order dated 05.03.2018, the learned Trial Court having categorically observed that the plaint was received on 08.02.2018 and as such filing of the written statement on 08.05.2018 was within the period stipulated under Order VIII Rule 1 of the Code. Under such circumstances, this Court interferes with the order dated 09.04.2018 and directs the learned Trial Court to accept the written statement so filed by the Petitioners who are the Defendant Nos. 3, 5, 6, 7, 8 and 9.

5. The order dated 23.09.2019 therefore loses its significance taking into account that the order dated 09.04.2018 has been duly interfered with.

6. This Court further takes note of that vide an order dated 19.02.2020, the

further proceedings of Title Suit No.446/2017 was stayed. The said order stands vacated and the parties who are duly represented are directed to appear before the learned Trial Court on 10.06.2024. The learned Trial Court shall proceed with the adjudication of the suit in accordance with law by taking into account the observations made hereinabove.

7. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant