

GAHC010051942024



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

Case No. : CRP/34/2024

ANUWARUZ ZAMAN AND ANR
S/O- LATE MOMTAZ UDDIN, VILL.- BAGURIGURI, P.O. AND P.S. JURIA,
DIST. NAGAON, ASSAM, PIN- 782103.

2: NURUL HASAN
S/O- LATE MOMTAZ UDDIN
VILL.- BAGURIGURI
P.O. AND P.S. JURIA
DIST. NAGAON
ASSAM
PIN- 782103

VERSUS

ON THE DEATH OF HABEJ ALI, HIS LEGAL HEIRS FULESA KHATUN AND 4
ORS.
D/O- LATE HABEJ ALI, R/O- VILL.- BAGURIGURI, P.O. AND P.S. JURIA, DIST.
NAGAON, ASSAM, PIN- 782103.

2: HALIMA KHATUN
D/O- LATE HABEJ ALI
R/O- VILL.- BAGURIGURI
P.O. AND P.S. JURIA
DIST. NAGAON
ASSAM
PIN- 782103.

3: ON THE DEATH OF YESIN ALI
HIS LEGAL HEIRS JOMILA KHATUN
W/O- LATE YESIN ALI
R/O- VILL.- BAGURIGURI
P.O. AND P.S. JURIA
DIST. NAGAON
ASSAM

PIN- 782103.

4:INSAN ALI
S/O.- LATE ABED ALI
R/O- VILL.- BAGURIGURI
P.O. AND P.S. JURIA
DIST. NAGAON
ASSAM
PIN- 782103.

5:NUR MOHAMMAD
S/O.- LATE ABED ALI
R/O- VILL.- BAGURIGURI
P.O. AND P.S. JURIA
DIST. NAGAON
ASSAM
PIN- 782103

Advocate for the Petitioner : MD. M H CHOUDHURY

Advocate for the Respondent : MR M HALOI

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

ORDER

21.06.2024

Heard Shri MK Choudhury, learned counsel for the petitioners. Also heard Shri P. Kataki, learned counsel for the respondents.

2. Considering the subject matter, this revision petition is taken up for final disposal at the admission stage.
3. The petitioners are the defendants in Title Suit No. 82/2023 which was filed for declaration of right, title and interest, confirmation of possession, recovery of khas possession and for permanent injunction.
4. The petitioners as defendants had entered appearance and the date for filing written statement was fixed on 26.05.2023 followed by another date

20.07.2023. On the said date, however due to certain wrong noting of dates, the learned counsel for the petitioners did not appear and the matter was decided to be proceeded *ex-parte* against the petitioners and the next date was fixed for *ex-parte* evidence on 14.09.2023. The petitioners had accordingly filed an application for setting aside the order to proceed *ex-parte*.

5. Vide the impugned order dated 05.02.2024, the aforesaid application has been rejected and the next date was posted for *ex-parte* evidence of the plaintiff.

6. Shri Choudhury, learned counsel for the petitioners has submitted that though, as a matter of fact, there was non-appearance of the counsel of the petitioners on 20.07.2023, there were genuine reasons and in any case, on the said date, the extended period of filing written statement was yet to be over. He accordingly submits that the decision to proceed *ex-parte* was not in the interest of justice as the petitioners / defendants were deprived of their valuable right to defend and contest the suit. He also submits that all these grounds were elucidated in the petition filed for vacating *ex-parte* and by taking a hyper technical approach, the impugned order has been passed, dismissing the said application.

7. Shri Kataki, learned counsel for the respondents has however, by referring to the impugned order dated 05.02.2024 submitted that the application for vacating the *ex-parte* was filed under Order IX Rule 13 of the CPC which does not provide for such application to be filed by a defendant during the pendency of the suit. He otherwise submits that sufficient time was granted to the defendants and in the said period, the defendants had failed to submit the written statement.

8. This Court has noticed that while filing the application for vacating the order to proceed *ex-parte*, the provision of the Code of Civil Procedure which has been quoted is Order IX Rule 13.

9. It is a settled position of law that quoting of a wrong provision of law or not quoting any provision of law shall not be a reason to discard an application if the said application substantively meets the requirement of law vis-a-vis the relief sought for.

10. This Court has also noticed that though on 20.07.2023, there was default on the part of the counsel in appearing, certain reasons have been cited regarding wrong noting of dates, Shri Choudhury, learned counsel for the petitioners has also strenuously contended that recourse to proceed *ex-parte* on the first date, that too before expiry of the extended period of limitation to file written statement would cause immense hardships and prejudice to his clients.

11. The rival submissions have been considered.

12. The decision to proceed *ex-parte* on 20.07.2023 was undoubtedly within the extended period available for filing written statement. Though a written statement is required to be filed within the prescribed period of limitation of 30 days, the same can be extended up to 90 days and on 20.07.2023, only 72 days had expired from the date of receipt of service of notice.

13. Considering all the aforesaid aspects, this Court is of the considered opinion that interest of justice would call for allowing the petitioners to file their written statement in the concerned title suit. Accordingly, the impugned order dated 05.02.2024 is set aside and the petitioners / defendants are allowed to file their written statement, which however has to be done within the next date fixed before the Trial Court, which is said to be fixed on 11.07.2024.

14. The petitioners are however, required to pay cost of Rs.5000/- (Rupees Five Thousand) to the plaintiffs as a condition precedent.
15. The Civil Revision Petition is accordingly allowed.

JUDGE

Comparing Assistant