

GAHC010054902024



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

Case No. : CRP(IO)/102/2024

MOHAMMAD KARIM ALI
S/O- LATE TOTA MIYA, R/O- HOUSE NO. 9, TOTA PATH BYE LANE,
OPPOSITE SANKARDEV NETRALAYA, BASISTHA ROAD, BELTOLA
TINIALI, GUWAHATI-781028, DIST. KAMRUP(M), ASSAM

VERSUS

RITA SARMAH
W/O- LATE LOHIT CHANDRA SARMAH, R/O- HOUSE NO. 30, SUKURI
RABHA PATH, BONGAON, NEAR SANKARDEV SISHU VIDYA NIKETAN,
BELTOLA, GUWAHATI-781028, DIST. KAMRUP(M), ASSAM

Advocate for the Petitioner : MR R K MOUR

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 18-03-2024

This is an application under Article 227 of the Constitution of India challenging the order dated 02.02.2024 passed by the learned Court of Civil (Senior Division) No. 2, Kamrup (M) at Guwahati in connection with petition No.

459/2024.

2. Taking into account that the instant application requires urgent disposal and the presence of the respondents being not required, this Court takes up the instant proceedings for disposal at the motion stage.

3. The case of the petitioner herein is that the petitioner filed a suit being Title Suit No. 773/2023 before the learned Court of Civil Judge (Senior Division) No. 1, Kamrup (M) at Guwahati, which was subsequently endorsed to the learned Court of Civil Judge (Senior Division) No. 2, Kamrup (M) at Guwahati for disposal. The said suit was filed seeking specific performance of the Deed of Agreement for Sale dated 29.05.2023 which was registered bearing Deed No. 11329/2023 executed between the plaintiff and the defendant.

4. The plaintiff prior to filing of the said suit had purchased e-stamps for the execution of the Deed of Sale bearing Certificate No. IN-AS61256535284405V of Rs.3,41,000/- (Rupees Three Lakh Forty One Thousand) and had also deposited the registration fee of Rs.2,05,600/- (Rupees Two Lakh Five Thousand Six Hundred) vide e-challan bearing No. GRN AS 005056500202324P on 06.11.2023. In addition to that the petitioner had also prepared 3 (Three) banker cheques in the name of the defendant, (a) banker cheque No. 175182 dated 07.11.2023 for Rs.20,000/- (Rupees Twenty Thousand) from the Union Bank of India, Maidamgaon Branch, (b) banker cheque No. 526852 dated 14.11.2023 for Rs.53,00,000/- (Rupees Fifty Three Lakh) only from the Indian Bank, Beltola Branch and (c) banker cheque No. 175199 dated 18.11.2023 for Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand) drawn on Union Bank of India, Maidamgaon Branch and had also drawn one personal cheque dated 14.11.2023 for Rs.1,30,000/- (Rupees One Lakh Thirty Thousand).

5. Taking into account that the period of refund of the e-stamps and the registration fee with deduction of 10% of the value is six months only and thereafter, the petitioner would not be able to get refund of the said amount and further to that as the validity of the said banker cheques, which were prepared, had already been expired, the petitioner sought the permission from the Court for initiating the appropriate refund process and as such, filed a petition bearing No. 459/2024.

6. The learned Trial Court vide the order dated 02.02.2024 rejected the petition No. 459/24 on the ground that the prayer of the plaintiff is not tenable at this stage as the Court has not yet finally adjudicated the matter. It is against the said order to the extent of rejection of the petition No. 459/24, the instant proceedings have been initiated.

7. This Court upon taking into account Section 16(c) of the Specific Relief Act, 1963, finds it relevant to observe that the said provision requires the plaintiff/petitioner to prove that he had performed or is ready or willing to perform the essential terms of the contract which are to be performed by him other than the terms the performance of which have been prevented or waived by the defendant.

8. In the instant case, the petitioner/plaintiff had claimed to have purchased the e-stamps as well as deposited the due amount for the registration fee. The petitioner/plaintiff further claims that he had purchased the demand drafts in respect to the remaining amount. This aspect of the matter would be required to be duly taken note of while the suit is to be adjudicated. However, it cannot also be lost sight of that the e-stamps so purchased as well as the challans deposited for the registration fee of the amounts mentioned hereinabove would be just lying idle till disposal of the suit. Similarly, the bank drafts referred to

hereinabove have now become non-negotiable taking into account that the period of three months have already lapsed from the date when the said bank drafts were prepared. While the said bank drafts have now become non-negotiable, the money would be unnecessarily lying with the bank and no useful purpose therefore would be served.

9. Considering the above, this Court is the opinion that the learned Trial Court is required to revisit its decision in respect to the petition No. 459/24 taking into account the above observations.

10. The learned counsel for the petitioner herein submits that the next date is fixed on 28.03.2024. Accordingly, this Court, therefore, disposes of the instant petition thereby directing the learned Court of Civil Judge (Senior Division) No. 2, Kamrup (M) at Guwhati to verify the details of the e-stamps, e-challans as well as the bank drafts which the petitioner/plaintiff shall produce before the learned Trial Court on the next date in original and thereupon, keep due authenticated copy of the same in the records. On the basis thereof, this Court further directs the learned Trial Court to decide as to whether any meaningful purpose would be served in keeping those bank drafts, e-stamps as well as the e-challans, moreso, in view of the above observations.

11. The learned Trial Court may in its wisdom decide as to whether requiring the petitioner herein to submit an undertaking to furnish fresh e-stamps, e-challans for registration fee as well as the fresh bank drafts in respect to the remaining amount at the later stage, would serve the purpose.

In the above terms and observations, this CRP(IO) stands disposed of.

JUDGE

Comparing Assistant