

GAHC010066462024



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

Case No. : CRP(IO)/114/2024

ASSAM VALLEY EDUCATION SOCIETY AND ANR
REPRESENTED BY ITS PRESIDENT THE PLAINTIFF/APPLICANT

2: MD. LUTFOR RAHMAN
S/O LATE ABDUL JALIL MONDAL
R/O MOTHER TERESSA PATH
HATIGAON
GUWAHATI-38
P.S.-HATIGAON
DIST-KAMRUP (M)
ASSA

VERSUS

MRS. RABIYA AHMED AND ANR
W/O MR. FIRDUS AHMED,

2:FIRDUS AHMED
S/O LATE ABDUL GONE
R/O HOUSE NO-79
CHACHAL ROAD
NEAR BRINDABAN APARTMENT
SIX MILE
GUWAHATI-22
P.S.-DISPUR
DIST-KAMRUP (M)
ASSA

For the appellant(s) : Mr. G. Uddin, Advocate

For the respondent (s) : Mr. A. Biswas, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

28.03.2024

This is an application under Article 227 of the Constitution challenging the order dated 30.09.2023 passed in Misc. (J) Case No.932/2019 arising out of the Title Suit No.209/2018.

2. By the said impugned order, the learned Trial Court, i.e. the Court of the Civil Judge (Senior Division) No.3, Kamrup (M) at Guwahati had rejected the application filed by the petitioners for condonation of delay in preferring the application seeking restoration of the suit which was dismissed for default vide the order dated 12.02.2019.

3. This Court has duly taken note of the order dated 06.02.2019 passed in Title Suit No.209/2018. On that very date, the learned Trial Court granted the plaintiffs an additional opportunity for filing the written statement on 12.02.2019 to the counterclaim filed by the defendants. The suit was not fixed for hearing. However, on 12.02.2019, on the grounds that the plaintiffs neither filed the written statement to the counterclaim nor appeared on the said date, had dismissed the suit being Title Suit No.209/2018, but further proceeded with the counterclaim thereby fixing 29.04.2019 for ex-parte hearing in respect of the counterclaim.

4. Subsequent thereto on an off date, the plaintiffs submitted the written statement against the counterclaim filed by the defendant No.1, i.e. on 25.03.2019. The said written statement was kept on record and the matter was fixed on 29.04.2019 for hearing.

5. It further reveals from the order sheet of the Title Suit No.209/2018 that an application was filed on 28.11.2019 under Order IX Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'the Code') for restoration of the suit being Title Suit No.209/2018 along with an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in preferring the application under Order IX Rule 4 of the Code. The said application seeking condonation of delay was registered as Misc.(J) Case No.932/2019.

6. From the perusal of the impugned order dated 30.09.2023 passed in Misc.(J) Case No.932/2019, the application for condonation of delay of 63 days in filing the application under Order IX Rule 4 of the Code was rejected on the grounds that sufficient cause was not shown. It is under such circumstances, the instant application has been filed.

7. This Court had heard the learned counsel for the petitioners as well as the learned counsel appearing on behalf of the respondents. This Court is shocked and surprised in the manner in which the Trial Court has conducted the suit proceedings. This Court having perused the order dated 06.02.2019, finds that the learned Trial Court had fixed 12.02.2019 for filing written statement by the plaintiffs against the counterclaim. If that be so, there was no reason on the part of the learned Trial Court to dismiss the suit on 12.02.2019 in as much as the suit was not fixed for hearing. During the course of hearing, it was brought to the attention of this Court that in the meantime, the learned Trial Court had already accepted the written statement filed by the plaintiffs to the counterclaim.

8. This Court further finds it very apposite to observe that as in the instant case, the provision of Order IX Rule 8 of the Code did not apply

taking into account that the suit was not called for hearing. The question of filing application seeking condonation of delay was not necessary. In fact, the dismissal of the suit vide the order dated 12.02.2019 on the ground that the plaintiff was not represented in the present facts is completely foreign to the provision of the Code, that too when the suit was not fixed for hearing and the circumstances did not permit the exercise of powers under Order IX Rule 2 and Order IX Rule 3 of the Code.

9. Consequently, this Court not only sets aside the impugned order dated 30.09.2023 passed in Misc.(J) Case No.932/2019 arising out of Title Suit No.209/2018 but also sets aside the order dated 12.02.2019 in so far as the suit was dismissed for default. The Title Suit No.209/2018 is restored to the file of the learned Trial Court, i.e. the Court of the Civil Judge (Senior Division) No.3, Kamrup (M) at Guwahati.

10. The learned counsels appearing on behalf of the parties have apprised this Court that next date is fixed before the learned Trial Court on 28.05.2024 for framing of issues. Taking into account the above, this Court directs the learned Trial Court to proceed with the suit along with the counterclaim as per the provisions of law.

11. Before parting with the records, this Court further opines and observes that in view of the setting aside the order dated 12.02.2019, the order dated 30.09.2023 passed in Misc.(J) Case No.377/2018; Misc.(J) Case No.607/2018 and Misc.(J) Case No.608/2018 are all set aside and the said Miscellaneous Applications are also restored to the file of the learned Trial Court to be decided in accordance with law.

12. In view of the above, the instant petition stands disposed of.

JUDGE

Comparing Assistant