

GAHC010079542024



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

Case No. : CRP/51/2024

RUPAK PAUL
S/O LATE RAKESH CHANDRA PAUL, R/O PARK ROAD, P.O. AND P.S.-
SILCHAR, DIST- CACHAR, ASSAM

VERSUS

M/S SARADAMANI STORE
A PARTNERSHIP FIRM AT CENTRAL ROAD, P.O. AND P.S.-SILCHAR, DULY
REPRESENTED BY ITS PARTNERS NAMELY

1.1:SISIR KUMAR ROY
S/O LATE SRISH CHANDRA ROY
R/O BILPAR
P.O. AND P.S.-SILCHAR
DIST-CACHAR
ASSAM
PIN-788005

1.2:ASHISH KUMAR ROY
S/O LATE SRISH CHANDRA ROY
R/O BILPAR
P.O. AND P.S.-SILCHAR
DIST-CACHAR
ASSAM
PIN-788005

1.3:DEBASISH ROY
S/O LATE SRISH CHANDRA ROY
R/O BILPAR
P.O. AND P.S.-SILCHAR
DIST-CACHAR
ASSAM

PIN-78800

For the petitioner (s) : Mr. D. Chakraborty, Advocate

For the respondent (s) : Mr. G. N. Sahewalla, Sr, Advocate

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

24.06.2024

Mr. D. Chakraborty, the learned counsel appearing on behalf of the petitioner submits that he may be permitted to withdraw the instant proceedings with the liberty to challenge the judgment and decree passed by the learned First Appellate Court dated 12.03.2024 passed in Title Appeal No.7/2022.

2. This Court has duly taken note of that the suit was filed by the petitioner herein as plaintiff seeking for decree that he is a monthly tenant and he should not be evicted without due process. The said suit was dismissed and thereagainst an Appeal was filed which was also dismissed.

3. In the opinion of this Court, the instant petition under Section 115 of the Code of Civil Procedure, 1908 is not maintainable taking into account that against the decree, there is a requirement of filing a Second Appeal within the meaning of Section 100 of the Code of Civil Procedure, 1908.

4. It is relevant to take note of Section 8 of the Assam Urban Area Rent Control Act, 1972 is not applicable taking into account that it was not the suit filed by the landlord. Under such circumstances, this Court therefore dismisses the instant petition on the ground of maintainability.

5. Be that as it may, taking into account that the petitioner has been bonafidely litigating before this Court, the period from the date of the filing of the instant petition, i.e. on 18.04.2024 till date, be excluded in the circumstance the petitioner herein prefers any Appeal against the judgment and decree dated 12.03.2024 passed in Title Appeal No.7/2022.

6. The counsel for the petitioner herein is also given the liberty to file an application before the Registry for the certified copies of the judgment and decree passed by the learned First Appellate Court as well as the learned Trial Court which are part of the instant petition. In the circumstance, if such application is filed, the Registry shall forthwith and not later than 5 days therefrom provide the certified copies of the judgments.

7. The Registry shall retain the LCR for 1 (one) month and thereafter return the LCR to the Court below.

JUDGE

Comparing Assistant