

GAHC010081702022



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

Case No. : CRP(IO)/88/2022

MONTUL KUMAR NATH
S/O LATE DHANESWAR NATH, ADD-NEAR GYANDEEP BOYS HOSTEL,
GHORPORA CHUBURI, P.S. AND P.O.-TEZPUR, DIST-SONITPUR, ASSAM,
PIN-

VERSUS

SUDESH KUMAR SINGH AND ANR
S/O SRI KASHI PRASAD SINGH, SR. ADVOCATE TEZPUR BAR
ASSOCIATION, HOME ADD-NEAR KANAKLATA CIVIL HOSPITAL, P.O. AND
P.S.-TEZPUR, DIST-SONITPUR, ASSAM, PIN-784001

2:HARESH PRASAD SINGH
S/O KASHI PRASAD SINGH
ADD-NEAR KANAKLATA CIVIL HOSPITAL
P.O. AND P.S.-TEZPUR
DIST- SONITPUR
ASSAM
PIN-78400

Advocate for the Petitioner : MD. M U AHMED,

Advocate for the Respondent : MR B PUSHILAL (r-2),

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

19.09.2024

Heard Mr. M.U. Ahmed, learned counsel for the petitioner. Also heard Mr. S.K.

Singh, the respondent No.1-in-person and Mr. B. Pushilal, learned counsel appearing for the respondent No.2.

2. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the correctness or otherwise of the orders dated 04.01.2022 and 05.01.2022, passed in Title Suit No.78/2010 by the learned Munsiff No.1, Tezpur, whereby the learned Munsiff No.1, Tezpur, rejected the Petition No.100/2022 filed by the petitioner/defendant praying to adduce limited defense evidence after amendment of his written statement.

3. Mr. Ahmed, learned counsel for the petitioner submits that the petitioner on account of prevalent Covid-19 pandemic situation and also due to different reasons could not cross-examine the witnesses of the plaintiffs/respondents, for which he was debarred from cross-examining them vide order dated 12.07.2019 and fixed the suit for defendant's/petitioner's evidence. But, vide impugned order dated 05.01.2022, the learned Trial Court has dismissed the Petition No.100/2022 filed by the petitioner to provide him an opportunity for filing of evidence of defendants witness in affidavit. But, in view of the order passed by this Court in CRP(IO) No.413/2019, the learned Trial Court has dismissed the Petition No.100/2022.

4. Mr. Ahmed submits that the petitioner has already been penalized for failing to cross-examine the witnesses of the plaintiffs/respondents and if he is not allowed to adduce evidence, then he will be deprived of an opportunity to defend his case effectively and therefore, it is contended to allow the petition.

5. Whereas, both the respondents have filed their written objection opposing the prayer being made in the petition and enclosed several orders passed by the learned Trial Court from 12.07.2019 till 05.01.2022. It is the stand of the respondents that the petitioner has suppressed the material facts and misleads the Courts by not producing the relevant orders passed by the learned Trial Court in between 12.07.2019 and 05.01.2022.

6. Mr. S.K. Singh, the respondent No.1-in-person submits that this petition is not at all maintainable and the petitioner has suppressed the material facts here in this case and

also filed an application before the learned Trial Court for adjourning the case making false statement. Referring to Annexure-B at page-69 of the objection petition, Mr. Singh submits that in fact the CRP (IO) was filed on 09.12.2019, which has been registered on 18.12.2019. But, before filing of the CRP (IO) before this Court, the petitioner has apprised the learned Trial Court about filing of the CRP(IO) and thereby misleads the Court and he has not approached the Court in clean hands and that the conduct of the petitioner is not at all up to the mark and the case is pending since long and therefore, Mr. Singh contended to dismiss the petition.

7. On the other hand, Mr. Pushilal, learned counsel for the respondent No.2 also vehemently opposed the petition. Mr. Pushilal submits that the petitioner was granted sufficient opportunity, but he failed to avail the same and he had mislead the Court and also made suppression of the material facts before this Court for which he is not entitled to the relief claimed in this petition and therefore, it is contended to dismiss the same.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record.

9. It appears that after closing of evidence of the parties, the said suit was fixed for argument. But, thereafter both the parties have filed their amended pleadings. Thereafter, both the parties were allowed to adduce further evidence. The respondents have submitted their evidence-in-affidavit. Thereafter sufficient opportunities were afforded to the petitioner to cross-examine the witnesses. But, the petitioner had failed to avail the same, for which, vide order dated 12.07.2019, the petitioner was debarred from cross-examination of the witnesses and the the case was posted for evidence of the D.Ws. But, till 28.11.2019, the petitioner could not submit his evidence for which the learned trial court had fixed the case for argument. The petitioner then preferred a revision petition being CRP (I/O) No. 413/2019 before this court. But the same was dismissed on 17.11.2021.

10. Further, it appears after passing of the order dated 12.07.2019, by the learned Trial Court debarring cross-examination of the plaintiffs' witnesses by the present

petitioner and the same being affirmed by this Court in CRP(IO) No.413/2019, vide order dated 17.11.2021, the conduct of the petitioner before the learned Trial Court appears to be not at all satisfactory. It is indeed reprehensible. But, at the same time, it also cannot be ignored that at the relevant time Covid-19 pandemic was prevalent, for which normal Court work was suspended and it had impacted the conduct of the petitioner as well as of the respondents before the learned Trial Court.

11. Given the nature of dispute involved between the parties and also given the pandemic situation prevalent at the relevant time as well as the prayer made in this petition challenging the order dated 05.01.2022, this Court is of the view that despite the unsatisfactory conduct of the petitioner, he needs to be given a chance to defend his case by allowing him to file defendant's evidence-in-affidavit. It has to be born in mind that right to fair trial is right of both the parties. In fair trial, fair opportunity is required to be given to both the parties.

12. Accordingly, balancing the right and interest of both the parties, this Court is inclined to allow this petition, but he has to pay a sum of Rs. 10,000/ (Rupees ten thousand) being the cost to the respondents, which shall be deposited before the learned trial court on next date. It is provided that the learned Trial Court shall afford one last opportunity to the petitioner to file affidavit of his witnesses before it within a period of 2(two) weeks from today, failing which the learned Trial Court shall proceed to hear and dispose of the matter, in accordance with law.

Sd/- Robin Phukan
JUDGE

Comparing Assistant