

GAHC010084832024



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

Case No. : CRP(IO)/150/2024

MUKUL BARMAN AND 2 ORS.

S/O- LATE BENI MADHAB BARMAN, R/O- WARD NO. 2, KOKRAJHAR
TOWN, P.O., P.S. AND DIST. KOKRAJHAR, BTR, ASSAM

2: ARATI BARMAN

W/O- LATE PHANINDRA BARMAN

R/O- WARD NO. 2

KOKRAJHAR TOWN

P.O.

P.S. AND DIST. KOKRAJHAR

BTR

ASSAM

3: SUCHITRA BARMAN

W/O- JATINDRA MOHAN BARMAN

R/O- WARD NO. 3

KOKRAJHAR TOWN

P.O.

P.S. AND DIST. KOKRAJHAR

BTR

ASSAM

PIN- 783370

VERSUS

SANKAR BARMAN AND 3 ORS.

S/O- LATE SRISTHIDHAR BARMAN, R/O- VILL.- KOKRAJHAR BAGISA, P.O.,
P.S. AND DIST. KOKRAJHAR, BTR, ASSAM, PIN- 783370.

2: SARAT BARMAN

S/O- LATE SRISTHIDHAR BARMAN

R/O- VILL.- KOKRAJHAR BAGISA

P.O.

P.S. AND DIST. KOKRAJHAR

BTR
ASSAM
PIN- 783370.

3:GURUDAS BARMAN
S/O- LATE SRISTHIDHAR BARMAN
R/O- VILL.- KOKRAJHAR BAGISA
P.O.
P.S. AND DIST. KOKRAJHAR
BTR
ASSAM
PIN- 783370.

4:RUHIDAS BARMAN
S/O- LATE SRISTHIDHAR BARMAN
R/O- VILL.- KOKRAJHAR BAGISA
P.O.
P.S. AND DIST. KOKRAJHAR
BTR
ASSAM
PIN- 783370

For the Petitioner(s) : Mr. B. J. Mukherjee, Advocate

For the Respondent(s) : None appears

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 13.05.2024

Heard Mr. B. J. Mukherjee, the learned counsel appearing on behalf of the Petitioners.

2. The instant application has been filed challenging the order dated 15.03.2024 passed in Title Suit No.46/2023 by the learned Civil Judge, (Junior Division), Kokrajhar whereby the learned Trial Court did not accept the counter claim filed by the Defendant Nos. 1, 2 and 3 thereby giving liberty to the said

Defendant Nos. 1, 2 and 3 to file independent suit in connection with the subject matter of the counter claim.

3. The learned counsel for the Petitioners submitted that the learned Trial Court completely failed to take note of the judgment of the Supreme Court in the case of ***Jag Mohan Chawla and Another Vs. Dera Radha Swami Sansang and Others reported in (1996) 4 SCC 699*** wherein it has been categorically observed that the counter claim need not relate to the original cause of action but can be made on an independent and different cause of action even which accrued to the defendant after the institution of the suit. The learned counsel further referred to paragraph No.5 of the said judgment and more particularly to the relevant portion of the said paragraph which is quoted herein below:

“5. In sub-rule (1) of Rule 6-A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject-matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection

(sic protraction), the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit.”

4. This Court has perused the impugned order dated 15.03.2024 passed by the Court of the learned Civil Judge (Junior Division), Kokrajhar and from a perusal of the said order, it appears that the said order is in conflict with the settled position of law as above noted by the Supreme Court. The learned counsel for the Petitioners submitted that this judgment was not placed before the learned Trial Court. It is also the opinion of this Court that had this judgment been pointed out before the learned Trial Court, the learned Trial Court would not have passed this order.

5. Considering the above, this Court closes the instant petition thereby giving liberty to the Petitioners to file a review application before the learned Trial Court by 31.05.2024. If such review application is filed within this period, the same shall be construed to be filed within the period of limitation and the learned Trial Court shall duly take note of the said judgment and pass appropriate orders.

6. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant