

GAHC010095732024



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

Case No. : CRP(IO)/158/2024

ANJALI BHATTACHARJYYA
W/O HITESH BHATTACHAJYYA, RESIDENT OF F.A AHMED NAGAR,
PURANA BASTI, HOUSE NO. 3, PO KHANAPARA, GUWAHATI 22, PS
DISPUR, DIST KAMRUP M ASSAM

VERSUS

HITESH BHATTACHARJYYA
S/O GIRISH CH. BHATTACHARJYYA , RESIDENT OF F.A AHMED NAGAR,
PURANA BASTI, HOUSE NO. 3, PO KHANAPARA, GUWAHATI 22, PS
DISPUR, DIST KAMRUP M ASSAM

For the petitioner (s) : Mr. S. N. Krishnatraya, Advocate

For the respondent (s) : Mr. K. H. Saikia, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

29.05.2024

This is an application under Article 227 of the Constitution challenging the orders dated 02.03.2024 as well as 10.04.2024.

2. By the order dated 02.03.2024, the evidence of the plaintiff

witnesses were closed on account of the petitioner herein who is the respondent did not cross-examine the plaintiff witnesses. Subsequent thereto, the petitioner herein had filed an application for recalling of the order dated 02.03.2024 which was rejected vide the order dated 10.04.2024. It is under such circumstances, the petitioner is before this Court.

3. This Court has heard Mr. S. N. Krishnatraya, the learned counsel for the petitioner and Mr. K. H. Saikia, the learned counsel appearing on behalf of the respondent. The counsel appearing on behalf of the petitioner submitted that on account of the petitioner suffering from ailments and as it was beyond her control, the petitioner could not appear before the learned Trial Court on 02.03.2024 and immediately thereupon when the petitioner appeared by filing the application which was registered as petition No.820/24. However, the same was rejected on the ground that certain medical documents were not placed. The learned counsel for the petitioner submits that the matter being in the Family Court where the representation through Advocate is not permissible in view of Section 13 of the Family Courts Act, 198, the interest of justice demands that the petitioner ought to be given an opportunity by the learned Trial Court without being so technical.

4. On the other hand, the learned counsel appearing on behalf of the respondent submitted that the respondent had appeared before the Family Court on 41 occasions since 2019 wherein the petitioner had appeared only on 10 occasions. It was alleged that the petitioner was delaying the disposal of the said proceedings which has been pending for the last 5 years, he therefore submits that there is no error in the order dated

02.03.2024 as well as the order dated 10.04.2024.

5. I have heard the learned counsel for the parties and have taken into account their respective submissions. From the materials on record, it reveals that the petitioner herein is diabetic patient and she has also renal ailments. It is further seen that on 02.03.2024, the petitioner could not appear before the learned Trial Court on the ground that the petitioner had developed chest pain on 01.03.2024. However, the said explanation was not accepted by the learned Trial Court on the ground that medical evidence has not been placed.

6. In the instant proceedings, this Court had duly taken note of the medical evidence which was placed and is of the opinion that the petitioner ought to be granted another chance as serious prejudice would be caused.

7. Accordingly, this Court therefore interferes with the orders dated 02.04.2024 as well as 10.04.2024 thereby directing the learned Trial Court to permit one additional opportunity to the petitioner to cross-examine the plaintiff witnesses.

8. This Court vide an order dated 15.05.2024 had stayed the further proceedings of F.C.(Civil) Case No.138/2019. The said stay order stands vacated and the parties are directed to appear before the learned Principal Judge, Family Court No.3 Kamrup (M) At Guwahati on 25.06.2024. Upon appearance of the parties, the learned Trial Court shall fix a date for cross-examination of the plaintiff witnesses.

9. It is made clear that on such date which would be fixed, the petitioner has to cross-examine else the learned Trial Court shall proceed

with the disposal of the suit in accordance with law.

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

JUDGE

Comparing Assistant