

GAHC010111022024



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

Case No. : CRP(IO)/189/2024

ISMAIL HOQUE

S/O- LATE KHOKA SHEIKH, R/O- SARAIGHAT NAGAR, NEAR MOSQUE, P.O.
PANDU, P.S. JALUKBARI, DIST- KAMRUP (M), ASSAM, E-MAIL ID-
ismail.hoque@gmail.com, MOBILE NO.- 9678801275

VERSUS

JINNATARA BEGUM AND 3 ORS

D/O- LATE MOTIUR RAHMAN, R/O- C.R. DAS ROAD, WARD NO.8, DHUBRI
TOWN, BUILDING OF BANDHAN BANK, NEAR HORISABA, P.O. P.S.
DHUBRI, DIST.- DHUBRI, ASSAM, PIN- 783301, MOBILE NO. 6003974676

2:SMTI. ZARIN RAHMAN

W/O- SRI QAMAR YUSUF

PERMANENT RESIDENT OF HOUSE NO. 42M/2M

AINUDDINPUR

NEAR CHETNA BOYS INTER COLLEGE

P.O. P.S. KARELI

DIST.- ALLAHABAD

UTTAR PRADESH

PIN- 211016 CORRESPONDING ADDRESS- C/O- JINNATARA BEGUM

R/O- C.R. DAS ROAD

WARD NO.8

DHUBRI TOWN

BUILDING OF BANDHAN BANK

NEAR HORISABA

P.O. P.S. DHUBRI

DIST.- DHUBRI

ASSAM

PIN- 783301

MOBILE NO. 6003974676

3:MR. HARMOHAN DAS
PUBLIC PROSECUTOR OF THE COURT OF DISTRICT AND SESSION JUDGE
DHUBRI
MEMBER OF DHUBRI BAR ASSOCIATION
P.O. P.S. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301
MOBILE- 9435324196

4:MR. JAMSHEDUL BARI SARCAR
MEMBER OF DHUBRI BAR ASSOCIATION
P.O. P.S. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301
MOBILE- 943584897

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the appellant : Shri M. H. Ahmed, Advocate.

Advocates for the respondent : xxxx

Date of hearing : **11.06.2024**

Date of Judgment : **11.06.2024**

JUDGMENT & ORDER

Heard Shri M. H. Ahmed, learned counsel for the petitioner, who has filed this application under Article 227 of the Constitution of India challenging an order dated 22.04.2024 passed by the learned Civil Judge, Dhubri in TS No. 7/2023.

2. By the aforesaid order, leave has been granted to the respondent to engage another counsel.

3. It is submitted that the petitioner, who is an advocate was initially engaged

by the respondent nos. 1 and 2 to represent themselves in TS No. 7/2023. However, during the pendency of the suit, they wanted to engage respondent nos. 3 & 4 as their counsel and accordingly, the application was filed for leave of the Court for such change of counsel and engagements of respondent nos. 3 & 4. It is the case of the petitioner that the respondent nos. 1 & 2 did not seek any no objection from the petitioner and without such no objection, new counsel could not have been engaged. The learned counsel has referred to Rule 12 of the ***Gauhati High Court (Conditions of Practice of Advocates) Rules, 2010***. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in the case of ***M. Poornachandran and Anr Vs State of Tamil Nadu and Ors.*** reported in ***(1996) 6 SCC 755*** and another judgment of the Hon'ble Orissa High Court in ***Beta @ Bibekananda @ Santosh Hansdah @ Santosh Hansda Vs State of Odisha*** [order dated 04.08.2021 in BLAPL No. 9893 of 2019]. The learned counsel accordingly submits that interference of this Court may be made.

4. It transpires that in the aforesaid suit, the petitioner who is a counsel was initially engaged. It also transpires from the materials on record that the said respondent nos. 1 & 2 had chosen to change their counsel. In the context of the submission made that the petitioner did not issue any No Objection Certificate, Rule 12 of the aforesaid ***Rules of 2010*** may be examined. For ready reference, the said Rule is extracted herein below:-

“12. No Advocate shall be permitted to file an appointment or memorandum of appearance in any proceedings in which another Advocate is already on record for the same party save with the consent of the former Advocate on record or the leave of the Court, unless the former Advocate has ceased to practice or has by reason of infirmity of mind or body or otherwise become unable to continue to act.”

5. As per the said Rule, no advocate shall be permitted to file an appointment or memorandum of appearance in which another advocate is already on record without the consent of the former advocate on record or the leave of the Court. The Rules has contemplated a situation wherein the consent of the former advocate may not be given and under those circumstances, the provision has been left for the Court to grant leave.

6. A litigant is free to choose his advocate and no advocate can claim any lien over any *lis*. It would be an absolutely unreasonable proposition that only on account of non-issuance of No Objection Certificate, another advocate may not be engaged by the party in accordance with law.

7. The materials on record would also show that the petitioner himself had issued a notices dated 05.09.2023 (Annexures-D & E) to the clients (respondent nos.1 & 2) by registered post expressing his intention to withdraw from the case. The said notice was also replied to by the respondent no. 1 on 19.09.2023. The application filed for leave to engage new counsel has stated all the aforesaid facts which was duly considered by the learned Court.

8. The reliance upon the case of ***M. Poornachandran*** (supra) is wholly misplaced. In that case, the Hon'ble Supreme Court was dealing with a review petition in which appearance was made by a counsel without the no objection by the advocate on record. It is under that context that the Hon'ble Supreme Court had dismissed the petition.

9. The case of the **Orissa High Court** sought to be relied upon is not applicable as the facts are entirely different. In the said case the change was done not only in absence of any NOC from the previous counsel but also without

the consent of the party. In the instant case, the party (respondent nos. 1 & 2) had duly filed an application seeking leave to engage new counsel who had subsequently appeared by filing Vakalatnama.

10. As held above, the litigation has every right to engage a counsel of his choice and no fetters can be put on such exercise of discretion.

11. In the considered opinion of this Court, no case for exercise of the jurisdiction under Article 227 of the Constitution of India is made out.

12. Petition is accordingly dismissed.

JUDGE

Comparing Assistant