

GAHC010107602024



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

Case No. : CRP(IO)/176/2024

RANJIT KAKATI AND 2 ORS.

S/O- LATE UTTAM KAKATI, R/O- VILL.- CHILLIPARA BIRPARA, MOUZA-
BIRPARA, BANGAON, P.O. BIRPARA, P.O. BOKO, PIN- 781123, ASSAM

2: MINTU KAKATI

S/O- SRI RANJIT KAKATI
R/O- VILL.- CHILLIPARA BIRPARA
MOUZA- BIRPARA
BANGAON
P.O. BIRPARA
P.O. BOKO
PIN- 781123
ASSAM

3: MINU KAKATI

W/O- SRI RANJIT KAKATI
R/O- VILL.- CHILLIPARA BIRPARA
MOUZA- BIRPARA
BANGAON
P.O. BIRPARA
P.O. BOKO
PIN- 781123
ASSA

VERSUS

DALIMI KALITA AND ANR

W/O- LATE SARAT KALITA, R/O- VILL.- GITA MANDIR, MATHGHARIA, P.O.
GEETANAGAR, P.S. NOONMATI, PIN- 781003, DIST. KAMRUP, ASSAM

2: SURAJIT KALITA

S/O- LATE SARAT KALITA
R/O- VILL.- GITA MANDIR
MATHGHARIA

P.O. GEETANAGAR
P.S. NOONMATI
PIN- 781003
DIST. KAMRUP
ASSA

Advocate for the Petitioner : MS S S ZIA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

03.06.2024

Heard Ms. S S Zia, learned counsel for the petitioners.

This is an application filed under Article 227 of the Constitution of India challenging the Order dated 05.03.2024 passed by the learned Civil Judge (Junior Division), Kamrup, Amingaon in T.S. No. 241/2022.

The petitioners being the defendant nos. 1,2 and 3 prayed for time to file their written statement. The trial court held that the period of 90 days as mandated by Order VIII of the CPC had elapsed. Therefore, petitioners were not given opportunity to file their written statement.

It is a settled position of law that the period of 90 days as mandated by Order VIII of the CPC is a directory provision. Therefore, while rejecting the prayer of the defendants, the trial court should have exercised judicial mind by showing reasons for passing the said orders. The trial court straightway rejected the prayer only on the ground that the period of 90 days had already elapsed. The impugned order is bad in law and accordingly stands set aside.

The petitioners/ defendant nos. 1,2 and 3 shall be given an opportunity to file their written statement and, thereafter, the trial court shall proceed to dispose of the case in accordance with law.

With the above, the present civil revision petition is disposed of.

JUDGE

Comparing Assistant