

GAHC010118832024



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

Case No. : CRP(IO)/200/2024

BASANTI DAS
W/O- SRI PULAK DAS,
R/O- DHALIGAON (MAIN GATE),
P.O.- DHALIGAON,
P.S.- KAJALGAON,
DIST.- CHIRANG, BTR, ASSAM.

VERSUS

PUNESWAR BARMAN AND 2 ORS
S/O- LATE ROMAKANTA BARMAN,
RESIDENT OF VILLAGE- SILIKHAGURI,
P.O.- ULUBARI, P.S.- BIJNI,
DIST.- CHIRANG, BTR, ASSAM
PIN- 783390.

2:NARAYAN BARMAN
S/O- SRI PUNESWAR BARMAN

RESIDENT OF VILLAGE- SILIKHAGURI

P.O.- ULUBARI
P.S.- BIJNI

DIST.- CHIRANG
BTR
ASSAM
PIN- 783390.

3:PRABIN BARMAN
S/O- SRI PUNESWAR BARMAN

RESIDENT OF VILLAGE- SILIKHAGURI

P.O.- ULUBARI
P.S.- BIJNI

DIST.- CHIRANG
BTR
ASSAM
PIN- 783390

Advocate for the Petitioner : MR. FIRUZ KHAN, MR U CHAUDHURY, DR AZIZ KHAN, MR. ABHIJIT MENA

Advocate for the Respondent : ,

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

01.08.2024

1. Heard Mr. A. Khan, learned counsel for the petitioner. No one has appeared for the respondents side, though the notices were duly served on them. Therefore, this Court deems it proper to proceed *ex parte* against the respondent in this civil revision petition.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner Smti. Basanti Das impugning the order dated 13.12.2023 as well as 10.05.2024, whereby the prayer of the petitioner for accepting the written statement against the counter-claim filed by the respondents was rejected on the ground that the period of 90 days for filing counter-claim is over.

3. The learned counsel for the petitioner has submitted that the petitioner has filed a Title Suit for declaration of right, title and interest and for

delivery of khas possession against the respondents before the Court of learned Civil Judge (Senior Division), Chirang. The said suit has been registered as Title Suit No. 10/2023.

4. It is submitted by the leaned counsel for the petitioner that in the said suit the respondents appeared and filed a written statement on 23.08.2023, along with the written statement, the respondents also filed counter-claim against the petitioner/plaintiff.

5. The learned counsel for the petitioner has submitted that on 1st February, 2024, the petitioner had filed a written statement against the counter-claim filed by the respondents. However, by order dated 10.05.2024, the Trial Court refused to accept the same on the ground that the petitioner was earlier debarred from filing the written statement on the ground that he had failed to submit his written statement within the 90 days period.

6. It is also stated in the impugned order dated as the counter-claim was received by the present petitioner on 23.08.2023, the statutory period for submission of written statement against counter-claim has expired on 03.11.2023. Moreover, the Trial Court also did not accept the reason of ailment shown by the petitioner for not filing the written statement on 03.11.2023, as the supporting medical documents which were submitted by the petitioner before the Trial Court showing his ailment showed that the petitioner fell ill only on 07.11.2023, whereas, on 03.11.2023, she was well and is in a fit condition to appear before the Court for filing written statement. Hence, the prayer was rejected.

7. The leaned counsel for the petitioner has submitted that the Trial Court failed to take into consideration that on 03.11.2023, the petitioner/plaintiff was directed to submit her written statement on 13.12.2023 and on that day,

she was not well, as she was suffering from jaundice.

8. I have considered the submissions made by the learned counsel for the petitioner and have perused the materials available on record.

9. On perusal of the order dated 13.12.2023, the order reflects that the petitioner/plaintiff was directed to submit the written statement against the counter-claim on 13.12.2023, whereas, on that day, she was suffering from ailment as the supporting medical document shows that she suffered from ailment on 07.11.2023. Hence, the ground shown by the Trial Court for not accepting the written statement does not appear to be in consonant with the documents which are available on record. Moreover, on perusal of the fitness certificate submitted by the petitioner, it also appears that the fitness certificate which the petitioner annexed along with the application before the Trial Court shows that the petitioner became fit to do her usual job on 19.12.2023. Therefore, it is apparent that she did not fully recover on 13.12.2023.

10. In view of above, it appears that the petitioner has a reasonable ground for failing to file the written statement within the time prescribed by the Trial Court.

11. The learned counsel for the petitioner has also submitted that the issues are yet to be framed in the pending Title Suit as impleadment petition have been filed by the sister and niece of the present petitioner before the Trial Court, which is fixed for consideration on the next date, i.e. 16th August, 2024.

12. In view of the reasons mentioned hereinabove as well as the fact that the issues are yet to be framed, the written statement filed against the counter-claim by the petitioner is allowed to be accepted by the Trial Court subject to payment of cost of Rs. 2000/- to the opposite parties/respondents.

13. With the above observations, this civil revision petition is allowed and

accordingly disposed of.

JUDGE

Comparing Assistant