

GAHC010119122016



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

Case No. : CRP/363/2016

NIRUPAM PATHAK
S/O LT. RABILALA PATHAK, A R/O SRS ROAD, UZAN BAZAR, GUWAHATI

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY SECY. OF ASSAM LAW DEPARTMENT

2:PRADIP DAS
S/O LT. DULARI DAS
R/O LAMB ROAD
AMBARI
GHY-1
P.S. LATASIL
DIST- KAMRUP METRO
PRESENTLY RESIDING AT MAKALMUWA
DIST- NALBARI
ASSAM

3:BASANTI DAS
D/O LT. DULARI DAS
R/O BAMUNIMAIDAM RAILWAY COLONY
GHY-3
DIST- KAMRUP METRO

4:PRATIMA DAS
D/O LT. DULARI DAS
R/O PANBAZAR
GHY-1
P.S. PANBAZAR
DIST- KAMRUP METRO
ASSAM

5:KALPANA DAS
D/O LT. DULARI DAS
R/O BAMUNIMAIDAM RAILWAY COLONY
GHY-20
DIST- KAMRUP METRO
ASSA

For the appellant(s) : Mr. R. Sarmah, Advocate

For the respondent (s) : Mr. A. Ikbali, Advocate
Mr. K. K. Bhattacharjee, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

05.04.2024

This is an application under Article 227 of the Constitution challenging the order dated 20.08.2016 passed in petition No.3910/15 and 1973/16 by the Court of the learned Civil Judge No.3, Kamrup (M) at Guwahati and Money Suit No.316/2011.

2. From a perusal of the materials on record, it reveals that the respondents herein as plaintiffs had filed the suit seeking recovery of Rs.50,7,550/- along with interest @ 9% per annum from 04.05.2009 till institution of the suit along with sum of Rs.27,000/- towards the cost of building/construction materials and pendete-lite and future interest @ 9% per annum from the date of institution of the suit. The said suit was registered and numbered as Title Suit No.316/2011.

3. The petitioner herein who was the defendant filed his written statement. On the basis thereof, as many as 6 Issues were framed. From

the materials on records, it further transpires that on 05.03.2014, evidence on affidavit of PW1 was filed. Thereupon, on 28.05.2014, the plaintiff sought for adducing the evidence of the office bearers of K. U. Samiti which was allowed in presence of the defendant. On 30.07.2014, the official witnesses and the plaintiff's witness were duly present. However, none appeared for the defendant till 3:00 PM. However, for the ends of justice, the Court fixed the matter on 01.09.2014 for evidence of the official witnesses. On 01.09.2014, the plaintiff witness as well as the official witnesses were duly present and for the defendant, i.e. the petitioner herein *hajira* was filed, but no one from the defendant side was present till 4:30 PM for cross-examination of the plaintiff witnesses. Under such circumstances, the Court vide the order dated 01.09.2014 held that the cross-examination of PW3 would be deemed to have been declined and PW3 was discharged thereby fixing 24.04.2014 for cross-examination of PW1 & PW2. On 29.04.2014, both the plaintiff witnesses were present for cross-examination but the defendant was absent and that too no steps were also taken. Under such circumstances, the cross-examination of PWs were deemed to be declined by the defendant for which the case was fixed on 18.12.2014. Though both sides appeared on that day but the defendant did not file any evidence and also did not file any petition seeking adjournment for which the suit was fixed on 27.01.2015 for argument.

4. The record further reveals that on 07.03.2015, again both sides were present and the counsel for the defendant filed a petition for another date for argument and the Trial Court permitted the same thereby fixing 07.04.2015 for argument as a last chance. On 07.04.2015, a new set of

counsels appeared on behalf of the defendant requesting time for conducting the case. The learned Trial Court again as a last chance adjourned the matter to 28.04.2015 for argument. The record further reveals that on 28.04.2015 instead of making the arguments, an application was filed by the defendant to the effect that the matter be referred to mediation. The Trial Court taking into account the above, referred the matter to mediation fixing 25.06.2015 for report of the mediation centre. However, no report was submitted on 25.06.2015 for which the matter was again fixed on 31.07.2015. On 31.07.2015, the report was submitted when the plaintiff was duly present, however the defendant was absent for which the Trial Court again fixed the matter on 11.08.2015 for argument. It is under such circumstances that on 11.08.2015, that too at 12:30 PM, the defendants filed an application under Section 151 of the Code which was numbered as petition No.3910/15. The plaintiff side filed objection on 09.09.2015.

5. While the said application under Section 151 of the Code was pending, on 15.06.2016, the defendant filed another petition being petition No.1973/2016 for recalling the witnesses for examination and for allowing the defendant to lead evidence. The said petition was numbered as petition No.1973/16.

6. Vide the impugned order dated 20.08.2016, the learned Trial Court rejected both the applications being petition No.3910/15 as well as the petition No.1973/16 holding inter-alia that no materials were placed on record to substantiate the grounds on which both the applications were filed. It was also observed by the learned Trial Court that the grounds shown did not inspire confidence because there is no reason to believe

that the defendant was suffering from certain ailments preventing him from appearing before the Court.

7. Mr. R. Sarma, the learned counsel for the petitioner made a specific submission was that the earlier counsel who was engaged in the matter did not take appropriate steps which had been resulted in passing of these orders, and as such, on account of the fault of the earlier counsel, the petitioner who was the defendant in the suit should not be penalized. I have also heard Mr. A. Iqbal, the learned counsel for the respondents.

8. This Court had perused the petition under Section 151 of the Code which was registered as petition No.3910/15. This Court, in the previous segments of the instant order, had categorically mentioned under what circumstances and when the said petition was filed. In paragraph No.2 of the said petition, the ground which has been taken is that the defendant failed to instruct his counsel. On the other hand, in the petition under Order XVIII Rule 17 which was the petition being No.1973/16, it appears that the defendant took the stand that the earlier counsel did not inform the defendant. Therefore, both the stands are contradictory on the face of it. In view of that, it is the opinion of this Court that the conduct of the defendant who is the petitioner herein does not inspire this Court to interfere with the impugned order dated 20.08.2016, and accordingly, the instant petition stands dismissed.

9. The Registry is directed to immediately remit the LCR to the Court below.

10. As both the parties are represented, this Court fixes the matter on 14.05.2024 before the Trial Court, i.e. the Court of the Civil Judge No.3,

Kamrup (M) at Guwahati for further proceedings in the suit in accordance with law.

11. The Registry shall ensure that the records of the suit is received by the learned Trial Court at least 5 days before the next date so fixed by this Court and for that purpose, if necessary, the Registry may resort to a Special messenger for remitting the records.

12. Interim order, if any stands, vacated.

JUDGE

Comparing Assistant