

GAHC010120982016



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

Case No. : CRP/412/2016

M/S. ICICI BANK LTD. and ANR.
HAVING IT'S COOPERATE OFFICE AT ICICI BANK TOWERS, BANDRA-KURLA COMPLEX, MUMBAI- 400051 AND CARRYING ON THE SAID BANKING BUSINESS THROUGH DIVERSE BRANCHES THROUGHOUT INDIA AND ALSO ONE BRANCH AT GOLAGHAT SITUATED AT TOKANI CIRCLE, HOSPITAL ROAD, GOLAGHAT, P.O. and P.S.- GOLAGHAT, ASSAM, REP. BY ITS BRANCH MANAGER AS THE PRINCIPAL AND AUTHORISED OFFICER FOR THE BANK.

2: ICICI BANK LTD.
GOLAGHAT BRANCH
TOKANI CIRCLE
HOSPITAL ROAD
GOLAGHAT
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621
REP. BY IT'S BRANCH MANAGER
THE PRINCIPAL AND AUTHORISED OFFICER FOR THE BANK

VERSUS

DIGANTA KUMAR SAIKIA and 15 ORS.
S/O- LT. UPEN SAIKIA, R/O- NEW AMOLAPATTY, GOLAGHAT TOWN, P.O.,
P.S. and DIST.- GOLAGHAT, ASSAM, PIN- 785621.

2:GAUTAM CHUTIA
S/O- SRI DIMBESWAR CHUTIA
C/O- SRI DIGANTA KR. SAIKIA
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.

P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

3:DIGANTA TERANG
S/O- LT. MOHAN SINGH TERANG
C/O- SRI DIGANTA KR. SAIKIA
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

4:SHANKAR PRASAD SONAR
S/O- RAM CHARITRA SONAR
C/O- DIGANTA KR. SONAR
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

5:MONOJ DAS
S/O- NOT KNOWN
C/O- DIGANTA KR. SONAR
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

6:JIBON SAIKIA
S/O- SRI HAREN SAIKIA
C/O- DIGANTA KR. SONAR
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

7:SATYEN BARUAH
S/O- LT. LUDU BARUAH
C/O- DIGANTA KR. SONAR
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

8:KRISHNA SAIKIA
S/O- LT. SOMESWAR SAIKIA
C/O- DIGANTA KR. SONAR
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

9:TAPAS MEDHI
C/O- DIGANTA KR. SAIKIA
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

10:TANKESWAR DAS
S/O- LT. RONGA DAS
C/O- DIGANTA KR. SAIKIA
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

11:RUPAK DUTTA
S/O- LT. DEBA NATH DUTTA
C/O- DIGANTA KR. SAIKIA
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY

GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

12:RITU CHETIA
S/O- SRI SARHI CHUTIA
C/O- DIGANTA KR. SAIKIA
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

13:TIRANGAMONI SAIKIA
S/O- SRI ATUL SAIKIA
C/O- DIGANTA KR. SAIKIA
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

14:MANASH PRATIM BORO
S/O- SRI GIRIDHAR BORO
C/O- DIGANTA KR. SAIKIA
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621.

15:DULESWAR BORA
S/O- SRI GOLAP BORA
C/O- DIGANTA KR. SAIKIA
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM

PIN- 785621.

16:MONOJ SAIKIA
S/O- SRI AKON SAIKIA
C/O- DIGANTA KR. SAIKIA
S/O- LT. UPEN SAIKIA
R/O- NEW AMOLAPATTY
GOLAGHAT TOWN
P.O.
P.S. and DIST.- GOLAGHAT
ASSAM
PIN- 785621

For the Petitioner(s) : Mr. S. R. Gogoi, Advocate

For the Respondent(s) : Mr. P. Basfor, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 10.04.2024

1. This is an application filed under Article 227 of the Constitution challenging the order dated 22.06.2016 passed by the Court of the learned Civil Judge, Golaghat in Title Suit No.09/2015 whereby the application filed by the Petitioners herein for vacation of the ex-parte order and further for acceptance of the written statement was rejected.

2. From the materials on record, it reveals that the Petitioners herein received the summons on 19.09.2015 and thereupon only on 25.01.2016 filed an application for vacating the ex-parte order as well as also submitted the joint written statement. However, on account of delay of 38 days beyond the permissible 90 days, the learned Trial Court rejected the prayer for acceptance of the written statement and fixed 27.07.2016 for ex-parte hearing.

3. This Court had duly taken note of the application so filed wherein it has been mentioned that it was on account of official problems, the petitioners could not file the written statement. It is however relevant to take note of that along with the said application filed for vacating the ex-parte order, the petitioners have also submitted the joint written statement. It is well settled that the provisions of Order VIII Rule 1 is directory provision. Even if it is directory, the requirement to follow the mandate of filing the written statement within the period prescribed therein have to be adhered to. However in the exceptional circumstances, the period can be enlarged.

4. Mr. P. Basfor, the learned counsel appearing on behalf of the Respondents strongly objects to the instant proceedings on the ground that the circumstances stated in the proceedings do not qualify to come within the ambit of exceptional circumstances.

5. In the instant case, this Court has duly taken note of that the written statement was submitted on 25.01.2016 and the delay was only 38 days. This Court has also perused the copy of the plaint and therefrom, it reveals that there are serious allegations which requires inter-party adjudication. As the written statement has already been filed, it is the opinion of the Court that the said written statement is required to be taken on record. Accordingly, this Court interferes with the order dated 22.06.2016 and directs the learned Trial Court i.e. the Court of the learned Civil Judge, Golaghat to accept the written statement filed by the petitioners who are the Defendant Nos.1 and 2 in Title Suit No.9/2015.

6. This Court is also aware of the fact that on account of the delay in filling the written statement, the suit which was filed in the year 2015 is still at the stage of pleadings. Under such circumstances, it is the opinion of this Court that

certain costs have to be imposed. In the opinion of this Court, cost of Rs.25,000/- would be deemed to be reasonable. Accordingly, this Court directs the Petitioners herein who are Defendant Nos.1 and 2 in the suit to deposit the cost of Rs.25,000/- on the next date so fixed by this Court in Title Suit No. 9/2015.

7. Taking into account that the parties have been duly represented, this Court fixes the matter before the learned Trial Court on 13.05.2024 on which date the Petitioners herein who are the Defendant Nos.1 and 2 in the suit shall deposit the said amount of Rs.25,000/- before the learned Trial Court which shall be a condition precedent for acceptance of the written statement. It is made clear that failure to deposit the said amount would revive the order dated 22.06.2016.

8. The interim order which has been passed on 07.11.2016 stands vacated.

9. The plaintiffs in the said proceedings would be at liberty to file application before the learned Trial Court for release of the said amount and the Trial Court shall pass appropriate orders in that regard.

10. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant