

GAHC010122442023



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

Case No. : CRP(IO)/169/2023

BHAVEN CH. SAIKIA
S/O LATE KRISHNARAM CHUTIA, R/O GAYAN GAON, SIVASAGAR TOWN,
WARD NO. 5, P.O.-SIVASAGAR, P.S.-SIVASAGAR, DIST-SIVASAGAR, ASSAM

VERSUS

ARUP KASHYAP AND ANR.
S/O LATE TAPAN DEY, R/O PHUKON NAGAR, KALIBARI, WARD NO. X,
SIVASAGAR TOWN, P.O.-SIVASAGER, P.S.-SIVSAGAR, DIST- SIVASAGAR,
ASSAM

2:RAJIB KASHYAP
S/O LATE TAPAN DEY
R/O PHUKON NAGAR
KALIBARI
WARD NO. X
SIVASAGAR TOWN
P.O.-SIVASAGER
P.S.-SIVSAGAR
DIST- SIVASAGAR
ASSA

Advocate for the petitioner(s): Ms. B Bhuyan

Advocate for the respondent(s): Ms. A Saikia

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

28.06.2024

Heard Ms. B Bhuyan, the learned counsel appearing on behalf of the petitioner and Ms. A Saikia, the learned counsel appearing on behalf of the respondent.

2. This is an application under Article 227 of the Constitution challenging the order dated 15.03.2023 passed in Misc(J) Case No.59/2022 arising out of Title Suit No.08/2015, whereby the Court of the learned Munsiff No.1, Sivasagar had rejected the application filed for permitting the petitioner, who is the defendant in the suit to cross examine the plaintiffs' witnesses and also to adduce defendant's evidence.

3. This Court has perused the records of the instant proceedings including the petition which was filed being Petition No.353/2021, the order which was passed on 30.03.2022 in Misc.(J) Case No.32/2021 as well as the petition which was filed being Petition No.574/2022 and the impugned order, which has been passed.

4. It appears from the materials on record that it was on the fault of the counsel which had led to the defendant being deprived of cross examination of the plaintiffs' witnesses as well as adducing defendant's evidence.

5. Taking into account that a substantive right of defense had been affected of the defendant and the procedural laws are always subservient to the interest of justice, this Court interferes with the orders dated 30.03.2022 as well as the order dated 15.03.2023 passed by the learned Trial Court in Misc.(J). Case No.32/2021 and Misc(J).Case No.59/2022 respectively.

6. This Court further permits the defendant to cross examine the plaintiffs' witnesses and also to adduce evidence.
7. This Court, however, makes it very clear that the defendant as a special circumstances, has been given further chance to cross the plaintiffs' witnesses and as such, would not be entitled to seek for any adjournment pursuant to the date so fixed by the learned Trial Court.
8. It has been informed to the Court by the learned counsels appearing on behalf of the parties that the next date is fixed on 05.07.2024. On the said date, the learned Trial Court shall fix a date for cross examination of the plaintiffs' witnesses.
9. It is further made clear that on the said date so fixed, the defendant shall not be entitled to seek for any further adjournment.
10. With the above, the instant revision petition stands disposed of.

JUDGE

Comparing Assistant