

GAHC010126512024



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

Case No. : CRP/69/2024

UPEN BARMAN AND 3 ORS.
S/O- LATE SRINATH BARMAN, VILL.- BARMAN PARA, P.O., P.S. AND DIST.
KOKRAJHAR, B.T.R., ASSAM, PIN- 783334.

2: SUBIR BARMAN
S/O- LATE SRINATH BARMAN
VILL.- BARMAN PARA
P.O.
P.S. AND DIST. KOKRAJHAR
B.T.R.
ASSAM
PIN- 783334.

3: MANIK CH. BARMAN
W/O- LATE SRINATH BARMAN
VILL.- BARMAN PARA
P.O.
P.S. AND DIST. KOKRAJHAR
B.T.R.
ASSAM
PIN- 783334.

4: RATAN BARMAN
S/O- LATE GAJEN BARMAN
VILL.- BARMAN PARA
P.O.
P.S. AND DIST. KOKRAJHAR
B.T.R.
ASSAM
PIN- 783334

VERSUS

SONATAN BARMAN AND 2 ORS

S/O- LATE SUKARU BARMAN, VILL.- WEST DIMALGAON, P.O. TITAGURI,
P.S. AND DIST. KOKRAJHAR, B.T.R., ASSAM, PIN- 783370.

2:RUPOM BARMAN
S/O- LATE SUKARU BARMAN
VILL.- WEST DIMALGAON
P.O. TITAGURI
P.S. AND DIST. KOKRAJHAR
B.T.R.
ASSAM
PIN- 783370.

3:KALYAN BARMAN
S/O- LATE SUKARU BARMAN
VILL.- WEST DIMALGAON
P.O. TITAGURI
P.S. AND DIST. KOKRAJHAR
B.T.R.
ASSAM
PIN- 783370

Advocate for the Petitioner : MR R ISLAM, MS. A HUSSAIN

Advocate for the Respondent : MR P K DAS (R-1 to 3), MR. M BARUAH (R-1 to 3)

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 13.08.2024

- 1.** Heard Mr. R. Islam, learned counsel for the petitioners. Also heard Ms. N. Sarkar, learned counsel for the respondents.
- 2.** This application under Section 115 of the Code of Civil Procedure, 1908 impugning the order dated 19.03.2024 whereby the written statement filed by the petitioners in the said suit was not accepted by the Trial Court as same was beyond the period of 90 days from the date of service of summons.
- 3.** The learned counsel for the petitioners has submitted that the

petitioners are the defendant in the suit filed by the respondents/plaintiffs that on 13.02.2024 when date of Title Suit No. 43/2023 was fixed for necessary orders, they filed the written statement which was not accepted by the Trial Court as it was held to be beyond the period of 90 days. However, the learned counsel for the petitioners submits that the date prior to 13.02.2024 which was fixed by the Trial Court was 12.01.2024 and, there was no date in between 12.01.2024 and 13.02.2024. Whereas, according to the learned counsel for the petitioners 90th days from the receipt of summons by the present petitioners completes only on 04th February, 2024 and as the Title Suit No. 43/2024 was not fixed for 04.02.2024 they could not file the written statement within 90 days period, apart from the other reasons mentioned by them for delay of 9 days in filing the written statement.

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

5. On perusal of the materials available on record, it appears that the summons issued to the defendants i.e., the present petitioners by the Trial Court in Title Suit No. 43/2023 were received by them on 06th November, 2023 and by that count the 90 days gets over on 04th February, 2024. However, from record, it appears that in between 12th January, 2024 to 13th February, 2024, no date was fixed by the Trial Court and, hence, it is submitted by the learned counsel for the petitioners that on 15th February, 2024, the petitioners/defendants prayed before the Court for accepting the written statement after a delay of 11 days.

6. The learned counsel for the petitioners has submitted that the

presently the suit is pending at the stage of filing evidence of witnesses of plaintiff. The learned counsel for the petitioners has submitted that as no written statement has been filed and, therefore, no issues could be framed and the case is still pending at the stage of filing of evidence of plaintiff side.

7. On perusal of the impugned order, it appears that the Trial Court rejected the prayer of the above named petitioners for accepting the written statement filed by them as it was filed after 11 days beyond the period of 90 days and the petitioners had failed to give proper reasons for delay of 11 days caused by them in filing the written statement.

8. In this regard, the observations made by the Apex Court in the case of “**Kailash vs Nanhku & Ors**” reported in “**(2005) 4 SCC 480**” are relevant, which are quoted herein below:-

*“**28.** All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774] are pertinent: (SCC p. 777, paras 5-6)*

“The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise

would be wholly inequitable. ... Justice is the goal of jurisprudence — processual, as much as substantive.”

9. As the petitioners who are the defendants in the suit are willing to contest the suit by filing written statement and as the ends of justice would be served if the petitioners are allowed to participate in the adjudicatory process by filing the written statement process, this Court is of considered opinion that the written statement filed by the petitioners before the Trial Court may be accepted by the Trial Court for the ends of justice. Hence, the impugned order dated 19.03.2024 is hereby set aside and the petitioners are directed to file written statement on the next date fixed i.e., on 22.08.2024, subject to payment of cost of Rs.5,000/- to the respondents side. The payment of cost imposed by this Court shall be the condition precedent to the filing of written statement by the petitioners on the next date fixed as indicated hereinabove.

10. With the above observations, this Civil Revision Petition is hereby disposed of.

JUDGE

Comparing Assistant