

GAHC010143302024



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

Case No. : CRP(IO)/249/2024

MD NUR ISLAM
SON OF LATE LOKMAN ALI,
RESIDENT OF VILLAGE- KACHARIGAON,
MOUZA- JURIA, POLICE STATION- JURIA,
POST OFFICE- KALIADINGA,
DISTRICT- NAGAON, ASSAM,
PIN- 782128.

VERSUS

MD ABDUL MATIN
SON OF LATE YAKUB ALI,
RESIDENT OF VILLAGE- KACHARIGAON,
MOUZA- JURIA, POLICE STATION- JURIA,
POST OFFICE- KALIADINGA,
DISTRICT- NAGAON, ASSAM,
PIN -782128.

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent :

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

24.07.2024

- 1.** Heard Mr. A.I. Uddin, the learned counsel for the petitioner.
- 2.** This application under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 has been filed by the petitioner, namely, Md. Nur Islam, impugning the order dated 04.07.2024 passed by the Executing Court (the Court of learned Munsiff No. 2), Nagaon in Title Execution Case No. 11/2023, whereby, the learned Executing Court had rejected the petition No. 1784/2024 filed by the petitioner/judgment debtor for ad-interim stay of the execution proceeding in the Execution Case, during the pendency of the appeal which has already been preferred by the present petitioner against the *ex-parte* judgment and decree dated 18.03.2023.
- 3.** The facts relevant for consideration of the instant revision petition is that the respondent had filed a Title Suit before the Court of learned Munsiff No. 2, Nagaon for declaration of right, title and interest and recovery of khas possession of the suit land, which was registered as Title Suit No. 52/2012.
- 4.** The learned counsel for the petitioner has submitted that though the present petitioner, who was the defendant in the aforesaid Title Suit had appeared before the Trial Court and had filed his written statement. However, thereafter, he defaulted due to his old age and ailment.
- 5.** It is submitted by the learned counsel for the petitioner that the Trial Court ought to have proceeded under Order XVII Rule 2 of the Code of Civil Procedure, however instead of that it proceeded as if the trial is proceeding normally and ultimately decreed the suit against the plaintiff.

6. The plaintiff preferred a Title Appeal against the decree though passed by the Trial Court before the Court of learned Civil Judge Senior Division, Nagaon, however, as there was a delay in preferring the first appeal before the said Court, the petitioner had also preferred an application under Section 5 of the Limitation Act, 1963 for condonation of the delay in preferring the first appeal.

7. It is submitted by the learned counsel for the petitioner that the First Appellate Court had issued notice to the opposite party in the Misc. Case relating to condonation of delay petition. In the meanwhile, as the execution case was filed before the Executing Court, the present petitioner had filed a petition, which is numbered as 1784/2024 before the said Court for stay of execution during the pendency of the appeal, which has been preferred by the present petitioner. The said petition was, however, dismissed by the Executing Court on the ground that there is no order of the stay passed by the First Appellate Court and this instant revision petition has been preferred against the said dismissal order dated 04.07.2024 passed in Title Execution Case No. 11/2023.

8. The learned counsel for the petitioner has submitted that in the meanwhile, i.e. on 23rd July, 2024, the decree has already been executed by evicting the present petitioner from the suit land and delivering the possession of the same to the judgment debtor/respondent and therefore, the instant revision petition has become infructuous.

9. In view of the submissions made by the learned counsel for the petitioner, this revision petition is closed on becoming infructuous with an observation that the petitioner is at liberty to seek any remedy, to which he is entitled to before the Court of learned Civil Judge Senior Division, Nagaon,

before which the appeal filed by the present petitioner as well as condonation of delay application is presently pending.

10. With the above observations, this petition is accordingly disposed of.

JUDGE

Comparing Assistant