

GAHC010147392023



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

Case No. : CRP(IO)/266/2023

M/S KAUSAHAL TRADING COMPANY AND ANR
HAVING ITS OFFICE AND PRINCIPAL PLACE OF BUSINESS AT
SARUPATHAR, GOLAGHAT, ASSAM,
P.O. AND P.S.- SARUPATHAR, PIN- 785601, DISTRICT- GOLAGHAT, ASSAM.
BEING REPRESENTED BY ITS PROPRIETOR SRI KAUSHAL GINORIA,
S/O- LATE SHIV PD. GINORIA,
RESIDENT OF SARUPATHAR, DISTRICT- GOLAGHAT (ASSAM),
P.O. AND P.S.- SARUPATHAR, PIN- 785601,
DISTRICT- GOLAGHAT, ASSAM.

2: KAUSHAL GINORIA
S/O- LATE SHIV PD. GINORIA

RESIDENT OF SARUPATHAR

DISTRICT- GOLAGHAT (ASSAM)

P.O. AND P.S.- SARUPATHAR

PIN- 785601

DISTRICT- GOLAGHAT
ASSAM

VERSUS

M/S RAHUL TRADING CO AND 4 ORS
HAVING ITS OFFICE AND PRINCIPAL BUSINESS AT BOKAJAN,
KARBI ANGLONG (ASSAM).

2:KIRAN DEVI GUPTA
W/O- LATE AJAY KUMAR GUPTA

RESIDENT OF MAIN ROAD

BOKAJAN TOWN

KARBI ANGLONG (ASSAM).

3:ANSU GUPTA
D/O- LATE AJAY KUMAR GUPTA

RESIDENT OF MAIN ROAD
BOKAJAN TOWN

KARBI ANGLONG (ASSAM).

4:NISU GUPTA
D/O- LATE AJAY KUMAR GUPTA

RESIDENT OF MAIN ROAD
BOKAJAN TOWN

KARBI ANGLONG (ASSAM).

5:RAHUL GUPTA
S/O- LATE AJAY KUMAR GUPTA

RESIDENT OF MAIN ROAD
BOKAJAN TOWN

KARBI ANGLONG (ASSAM)

Advocate for the Petitioner : MR. A K SAHEWALLA, MS Z DOLEY,MR. W SHARMA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 27.11.2024

Heard Mr. A. K. Sahewalla, learned counsel for the petitioners. None appears for the respondents.

2. Office note dated 30/09/2024 shows that in respect of notices issued to

the respondent Nos. 1 to 5 have been received back with postal remark
"refused, return to the sender".

3. By filing this petition under Article 227 of the Constitution of India read with section 151 of CPC, 1908, the petitioners have challenged the impugned order dated 01/07/2022 passed by the learned Civil Judge, Golaghat in Misc case no. 09/2021 arising out of Title Suit no. 13/2020 and the order dated 04/05/2023 passed by the same court in petition no. 1472 of 2022 whereby the prayer for review of the order dated 01/07/2022 was dismissed.

4. The petitioners as plaintiffs filed a suit before the Civil Judge, Golaghat vide Title Suit no. 13/2020 against the opposite parties who are arrayed as defendants in the said suit. The factual matrix leading to filing of the suit is that M/s Rahul and company i.e., respondent no. 1 is the proprietorship firm of late Ajay Kumar Gupta (since deceased). During his lifetime, he had purchased goods worth Rs. 6, 95,000/- and issued a cheque for the said amount in the name of M/s Kushal Trading company. On presentation of the said cheque before the bank, the said cheque was dishonored with the endorsement *"payment stop by drawer"*.

5. On receipt of the unpaid cheque, the petitioner and his family members tried to contact the opposite parties/defendants and it came to know that said Ajay Kumar Gupta expired on 23/08/2020. The other legal heirs of the deceased were reluctant to pay the said amount. Finding no other alternative, the petitioners as plaintiffs filed a suit for recovery of amount due along with consequential reliefs vide Title Suit no. 13/2020.

6. Learned counsel for the petitioner has submitted that the learned trial

court has failed to appreciate the fact that the properties of the deceased Late Ajay Kumar Gupta, were being disposed of by the respondents and the petitioner had no idea as to which properties the deceased left behind. In view of the situation, it is necessary to disclose their assets by the defendants for proper adjudication regarding recovery of the amount due. As such, learned counsel for the petitioners prays to set aside the orders dated 01/07/2022 and 04/05/2023.

7. By referring to the Judgment of Hon'ble Supreme Court in the case of ***Rahul S. Shah vs. Jitendra Kumar Gandhi and others***, reported in (2021) 6 SCC 418, learned counsel for the petitioners has pointed out that the Hon'ble Supreme Court has held in the said case that in a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit.

8. On the basis of the said Supreme Court judgment, a notification was issued by this court dated 26/08/2021 by incorporating 118C, which is reproduced as follows –

“118C: In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers u/s 151 CPC, demand security to ensure satisfaction of any decree.”

9. On the basis of the said notification and the Judgment of the Hon'ble Supreme Court, the petitioners filed a petition before the learned trial court with a prayer to direct the respondents/ defendants to disclose their assets. After

hearing both sides, the prayer of the petitioner was rejected by the trial court vide order dated 01/07/2022. Subsequently, another petition vide no. 1472/2022 was filed for review of the order dated 01/07/2022 and after hearing both sides, the said prayer of the petitioners was also rejected. Against the said order of rejection, the petitioners have preferred the present revision petition.

10. I have considered the submissions of the learned counsel for the petitioners. The conduct of the respondents shows that they are not willing to contest the matter in issue regarding disclosure of their assets. Hence, the prayer of the petitioners is allowed.

11. The orders dated 01/07/2022 and 04/05/2023 are hereby set aside.

12. The respondents/ defendants are directed to disclose their assets before the learned trial court by following the Judgment of Rahul S. Shah (Supra) and the notification of this court in clause 118C dated 26/08/2021 within four weeks from the date of receipt of the certified copy of this order.

13. After furnishing of documents regarding the assets of the defendants, the trial court will decide on the issue of attachment after hearing both sides in accordance with law.

14. With the above observation, the civil revision petition stands disposed of.

JUDGE

Comparing Assistant