

GAHC010148782023



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

Case No. : CRP(IO)/216/2023

KAMAKHYA SAHA
S/O LT. HARI DAS SAHA, R/O WARD NO. 3, KHARUPETIA TOWN, P.O. AND
P.S.-KHARUPETIA, DIST-DARRANG, ASSAM

VERSUS

ALOK KUMAR BANTHIA AND 2 ORS.
S/O SRI DHANRAJ BANTHIA, R/O WARD NO. 1 OF KHARUPETIA, MOUZA-
PACHIM SIALMARI, DIST-DARRANG, ASSAM

2:AMAR DEY
S/O LT. UPEN DEY
R/O WARD NO. 7 OF KHARUPETIA
MOUZA-PACHIM SIALMARI
DIST-DARRANG
ASSAM

3:SMTI. ANJANA SAHA
W/O SRI UTTAM KR. SAHA
R/O WARD NO. 7 OF KHARUPETIA
MOUZA-PACHIM SIALMARI
DIST-DARRANG
ASSA

For the petitioner (s) : Mr. D. P. Chaliha, Sr. Advocate

For the respondent (s) : Mr. C. Goswami, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

26.06.2024

Heard Mr. D. P. Chaliha, the learned senior counsel assisted by Ms. M. Roy, the learned counsel appearing on behalf of the petitioner and Mr. C. Goswami, the learned counsel appearing on behalf of the respondents.

2. This is an application filed under Article 227 of the Constitution challenging the order dated 08.05.2023 whereby the learned Trial Court had rejected the evidence on affidavit filed by the DW1 in view of the fact that on three occasions earlier, the DW1 did not present himself for cross-examination.

3. This Court has duly taken note of that on 07.01.20223, the DW1 had submitted his evidence on affidavit, that too after imposition of cost and the learned Trial Court fixed the matter on 06.02.2023 for cross-examination of DW1. On 06.02.2023; 10.03.2023 and 27.03.2023, DW1 did not appear to face the cross-examination. Under such circumstances on 27.03.2023, the learned Trial Court fixed 08.05.2023 for cross-examination of DW as a last chance. However, on 08.05.2023, the DW again did not appear for which the impugned order was passed.

4. This Court taking into account the provisions of Order XVII Rule 1 of the Code of Civil Procedure, 1908 is of the opinion that the impugned order does not require any interference.

5. Accordingly, this Court dismisses the instant petition.

6. The order dated 17.07.2023 passed in the instant proceedings stands

vacated and the parties are directed to appear before the learned Trial Court on 05.08.2024 for further proceedings.

JUDGE

Comparing Assistant