

GAHC010152502022



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

Case No. : CRP(IO)/180/2022

M/S. LAKSHMI AGENCY AND ANR.
SHOP NO. L-10, DAILY BAZAR, DULIAJAN-786602, P.O. AND P.S.-DULIAJAN,
DIST-DIBRUGARH, ASSAM

2: SMT. LAKSHMI PHALAHARI
W/O SHRI JAGDISH PHALARI
C/O LAKSHMI AGENCY
DAILY BAZAR
DULIAJAN-786602
P.O. AND P.S.-DULIAJAN
DIST-DIBRUGARH
ASSA

VERSUS

SAHEB SINGH AND SONS PROPERTIES
AN ASSOCIATION OF PERSONS (AOP) OWNING PROPERTIES , INCLUDING
THE SCHEDULED PREMISES FOR THE USE AND BENEFITS OF ITS
MEMBER VIZ., SHRI RAKESH KUMAR SINGH, S/O LATE SAHEB SINGH,
AGED ABOUT 62 YEARS HAVING ITS PRINCIPAL PLACE OF BUSINESS AT
DUKIAJAN-786602, P.O. AND P.S.-DULIAJAN, DIST-DIBRUGARH, ASSAM

For the Petitioner(s) : Mr. K. J. Saikia, Advocate

For the Respondent(s) : Mr. G. N. Sahewalla, Sr. Advocate
: Mr. P. Deka, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 04.03.2024

1. The instant application has been filed under Article 227 of the Constitution for setting aside and quashing the order dated 10.02.2021 passed by the learned Munsiff No.1, Dibrugarh (hereinafter referred to as "the Trial Court") in Title Suit No.4/2019 whereby the counter claim filed by the Petitioners was excluded. Further to that, the Petitioners have also assailed the order dated 02.03.2022 by which the review filed to the order dated 10.02.2021 was rejected.
2. This Court has duly perused the copy of the plaint in Title Suit No.4/2019. A perusal of the said plaint reveals that the plaintiff who is the Respondent herein has filed the suit for eviction of the defendants as well as for recovery of arrear rent.
3. The record further reveals that the written statement was filed along with a counter claim denying the grounds on which the suit was filed as well as also seeking a declaration that the defendant is not defaulter and seeking adjustment of dues or expenditures on account of new construction of the suit premises with monthly rent of Rs.1,067/-. This Court has also perused Paragraph No.6 of the said counter claim wherein it has been stated that the value of the counter claim was Rs.2,00,000/-.
4. Considering the above, this Court has also taken note of the provisions of Order VIII Rule 6A of the Code of Civil Procedure, 1908 and is of the opinion that in the present facts of the instant case, the learned Trial Court ought not to have rejected the said counter claim and directed the Petitioners herein who are

the defendants to file a separate suit. The filing of a separate suit would only amount to multiplicity of proceedings which is not in the interest of justice.

5. Considering the above, this Court sets aside the order dated 10.02.2021 whereby the learned Trial Court rejected the counter claim of the Petitioners/the defendants and directed the defendants to file a separate suit. Further to that, the order dated 02.03.2022 by which the review to the order dated 10.02.2021 was rejected being consequential is also set aside. The counter claim be taken on record by the learned Trial Court and the said be proceeded accordingly.

6. This Court has also heard Mr. G. N. Sahewalla, the learned Senior counsel appearing on behalf of the plaintiffs who submitted that on account of the present proceedings as well as the filing of the counter claim, there has been a delay in disposal of the suit for recovery. This Court has taken the matter in its entirety and is of the opinion that a request can be made to the learned Court below for disposal of the said suit at the earliest and preferably within a period of 1 (one) year from the date of appearance of the parties.

7. This Court has also taken note of that on 08.08.2022, the proceedings of the suit have been stayed by this Court. The said stay order is vacated and the parties herein are directed to appear before the learned Trial Court on 19.03.2024 for further proceedings of the suit.

8. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant