

GAHC010153112024



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

Case No. : CRP(IO)/281/2024

GAURI KANTA BRAHMA
S/O- LATE HARENDRA CH. BRAHMA, R/O- VILL.- MONAKOCHA, P.O. AND
P.S. FAKIRAGRAM, DIST. KOKRAJHAR, B.T.R, ASSAM

VERSUS

KONSHER BRAHMA AND 2 ORS.
S/O- LATE GOKUL CHANDRA BRAHMA, R/O- VILL.- BORO BHATARMARI,
WARD NO. 4, P.O., P.S. AND DIST. KOKRAJHAR, BTR, ASSAM, PIN- 783370.

2:DENGKHW BRAHMA
S/O- LATE GOKUL CHANDRA BRAHMA
R/O- VILL.- BORO BHATARMARI
WARD NO. 4
P.O.
P.S. AND DIST. KOKRAJHAR
BTR
ASSAM
PIN- 783370.

3:PRABHABATI BRAHMA
W/O- LATE GOKUL CHANDRA BRAHMA
R/O- VILL.- BORO BHATARMARI
WARD NO. 4
P.O.
P.S. AND DIST. KOKRAJHAR
BTR
ASSAM
PIN- 783370

Advocate for the Petitioner : MR. B J MUKHERJEE, MS R SAHA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 12.08.2024

Heard Mr. B.J. Mukherjee, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, the petitioner, namely, Gauri Kanta Brahma has put to challenge the correctness or otherwise of the order dated 22.07.2024, passed in Title Suit No. 12/2024, passed by the learned Civil Judge (Junior Division), Kokrajhar.

3. It is to be noted here that vide impugned order dated 22.07.2024, the learned Civil Judge (Junior Division), Kokrajhar has refused to accept the written statement filed by the petitioner as defendant No. 1 therein.

4. Mr. Mukherjee, learned counsel for the petitioner submits that the petitioner is one of the defendants in Title Suit No. 12/2024, instituted by one Konsher Brahma and two others, before the Court of learned Civil Judge (Junior Division), Kokrajhar. In the said title suit, the petitioner received summon on 13.03.2024, and the period of 90 days, for filing the written statement expired on 13.06.2024. But, within the stipulated period the petitioner could not submit his written statement. Mr. Mukherjee, referring to the medical documents enclosed at page No 55 to 92 in the additional affidavit filed by the petitioner, submits that the petitioner is suffering from chronic kidney disease and he used to visit Chennai in every two months and on account of his illness, he could not contact his engaged counsel and therefore, he could not file written statement in time. Thereafter, on 22.07.2024, the petitioner approached the learned Civil Judge (Junior Division), Kokrajhar by filing a petition under Section 151 of the

Code of Civil Procedure, to accept the written statement. But, the learned trial Court, vide impugned order dated 22.07.2024, has dismissed the petition on the ground that the medical report submitted by the petitioner disclosed that on no occasion he was admitted in a Hospital and the documents also failed to disclose his physical inability for which he could not consult his engaged counsel to file written statement within the stipulated period, and thereafter, referring to a decision of Hon'ble Supreme Court in the case of Salem Advocate Bar Association (2) vs. Union of India, reported in (2005) 6 SCC 344, the learned Court has dismissed the petition as he failed to show any exceptional circumstances of his failure to file written statement within 90 days from the date of receipt of summon. Mr. Mukherjee further submits that the order so passed by the learned trial Court caused serious prejudice to the petitioner in as much as, he used to visit Chennai on account of his ailment in every two months, and that the petitioner is ready to contest the suit and therefore, it is contended to allow the petition.

5. Having heard the submission of learned counsel for the petitioner, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 22.07.2024 and the medical documents enclosed with the additional affidavit at page No. 54 to 92.

6. In the case of Salem Advocate Bar Association (2) (supra), Hon'ble Supreme Court has held that Order 8 Rule 1 of the Code of Civil Procedure is directory and the Court is empowered to extend the time limit in exceptional case.

7. In the case in hand, the petitioner has submitted medical documents. Perusal of the medical documents indicates that the petitioner is suffering from chronic kidney disease and it also appears that in every two months, he used to

visit Chennai for his treatment. I find no reasons as to why this circumstance would not be an exceptional circumstance to allow the petitioner to file his written statement even after expiry of 90 days.

8. Having considered above and also considering the submission of Mr. Mukherjee, learned counsel for the petitioner and the decision of Hon'ble Supreme Court in Salem Advocate Bar Association (2) (supra), this Court is unable to endorse the view so taken by the learned trial Court in the impugned order dated 22.07.2024, that no exceptional circumstance is shown by the petitioner for his failing to file written statement within 90 days.

9. Under the above facts and circumstances, this Court is inclined to allow this petition. Accordingly, the impugned order dated 22.07.2024 stands set aside and quashed. The learned trial Court is directed to take onboard the written statement submitted by the petitioner and thereafter, proceed to hear and dispose of the suit in accordance with law.

10. In terms of above, this revision petition stands disposed of.

JUDGE

Comparing Assistant