

GAHC010154522024



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

Case No. : CRP(IO)/313/2024

JAHIDUL ISLAM MULLAH
S/O MD. JALIL MULLAH
VILL- DHANBANDHA, P.S. BARPETA,
DIST. BARPETA, ASSAM
PIN-781309

VERSUS

KAMALESWAR PATHAK AND ANR
S/O LATE GAYARAM PATHAK,
R/O BATI KURIHA, P.O. NAGAON, P.S. BARPETA, DIST. BARPETA, ASSAM
PIN-78130

2:GAURI KANTA PATHAK
S/O LATE GAYARAM PATHAK

R/O BATI KURIHA
P.O. NAGAON
P.S. BARPETA

DIST. BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MD. S Z B AKLAS, MR. M A SHEIKH, MR. A M S MAZUMDER

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 27.09.2024

Heard Mr. M.A. Sheikh, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, read with Sections 115/151 of the CPC, the petitioner has put to challenge the correctness or otherwise of the order dated 02.07.2024, passed by the learned Civil Judge (Junior Division) No. 1, Barpeta, in Title Suit No. 349/2021.

3. It is to be noted here that vide impugned order dated 02.07.2024, the learned trial Court had allowed the respondents/defendants to file written statement at a belated stage and vide order dated 09.07.2024, accepted the written statement.

4. Mr. Sheikh, learned counsel for the petitioner submits that the learned trial Court had committed illegality in allowing the respondents to file written statement beyond 90 days without a petition for condonation of delay and assigning any reason in accepting the written statement. Mr. Sheikh also submits that while the written statement could not be filed within the stipulated period of 90 days, then filing of the same beyond 90 days should have been accompanied by a petition for condonation of delay and citing of ground for failing to file written statement within the stipulated time. But, the learned trial Court had accepted the written statement without assigning any reason for the same and without a petition being filed for condonation of delay and as such, Mr. Sheikh has contended to allow the petition by setting aside the impugned order.

5. Having heard the submission of Mr. Sheikh, 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 02.07.2024.

6. It appears from the record that the respondents had filed written statement on 22.12.2022, i.e. after more than a year, and no application was filed for condonation of delay and no ground is also assigned for the same and as such, it cannot be said that the impugned order dated 02.07.2024, withstands the legal scrutiny.

7. It is also to be noted here that in the case of **Intiyaz Sheikh Vs. Puma Se**, reported in **MANU/DE/2716/2021**, the Delhi High Court has held that a written statement filed belatedly cannot be taken on record without there being an application of condonation of delay. The Madras High Court in the case of **Ramesh Flowers Private Limited vs. Sumit Srimal**, reported in **2024 SCC OnLine Mad 4785**, has held that filing of written statement after the expiry of 30 days can be accepted only if there is an application in writing for condonation of delay, as Order 8 Rule 1 of the CPC envisages recording of reasons by the Court for permitting belated filing of written statement. It is also held that when the Court is expected to record reasons, it is obvious that there must be an application for condonation in writing and it also presupposes that the defendant offers proper explanation for the delay and when there is no such application either for condonation of delay in filing the written statement or for extension of time for filing the written statement, the Court ought not to on its own extend time for filing the written statement while granting adjournments and doing so would be contrary to Order 8 Rule 1 of the CPC.

8. In the case in hand, having examined the impugned order and the record, I find that no application had been filed herein this case assigning any ground for failing to file written statement in time. The learned trial Court had also not

recorded any reason for accepting the same beyond the stipulated period and as such, the impugned order dated 02.07.2024, fails to withstand the legal scrutiny and accordingly, the same stands set aside and quashed. In doing so, this Court has taken note of the provision of Order 8 Rule 1 of the CPC and the decisions of the Delhi High Court and the Madras High Court.

9. In terms of above, this revision petition stands disposed of, at this motion stage itself.

JUDGE

Comparing Assistant