

GAHC010159902024



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

Case No. : CRP(IO)/296/2024

OM PRAKASH AGARWAL
S/O- LATE MANAHAR LAL AGARWALLA, R/O- CHAMBER ROAD,
TINSUKIA TOWN, DIST. TINSUKIA, ASSAM

VERSUS

TINSUKIA DEVELOPMENT CORPORATION LIMITED AND 3 ORS.
A PUBLIC LIMITED COMPANY, DULY INCORPORATED AND REGISTERED
UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT A.T.
ROAD, TINSUKIA TOWN, P.O., P.S AND DIST. TINSUKIA, ASSAM

2:M/S BANWARILAL JAGANNATH
A HUF FIRM
OPERATED BY ITS KARTS SRI SATYANARAYAN AGARWAL
S/O- LATE JAGANNATH AGARWAL
HAVING ITS PRINCIPAL PLACE OF BUSINESS AT CHAMBER ROAD
OPP. JAIN MANDIR
TINSUKIA
P.O.
P.S. AND DIST. TINSUKIA
ASSAM

3:SATYANARAYAN AGARWAL
S/O- LATE JAGANNATH AGARWAL
R/O- KANYAPATHSHALLA GULLI
TINSUKIA TOWN
P.O.
P.S. AND DIST. TINSUKIA
ASSAM

4:RAMESH AGARWAL
S/O- LATE JAGANNATH AGARWAL

R/O- KANYAPATHSHALLA GULLI
TINSUKIA TOWN
P.O.
P.S. AND DIST. TINSUKIA
ASSA

Advocate for the Petitioner : MR. A K GUPTA, MR. R S MISHRA, MS M NIROLA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 14.08.2024

Heard Mr. A.K. Gupta, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, the petitioner, namely, Om Prakash Agarwal has put to challenge the correctness or otherwise of the order dated 15.06.2024, passed by the learned Civil Judge (Junior Division) No. 2, Tinsukia, in Title Suit No. 32/2010.

3. It is to be noted here that vide impugned order dated 15.06.2024, the learned Civil Judge (Junior Division) No. 2, Tinsukia has partly allowed the Petition No. 487/2024, filed by the petitioner. It is also to be noted here that vide Petition No. 487/2024, the petitioner has prayed for calling the record of the cases depositing rent from the Court of learned Civil Judge, (Junior Division) No.1-cum- Rent Controller, Tinsukia, which are being exhibited in the evidence-in-affidavit as Ext.-B1 to Ext.-B82. But, the learned trial Court has agreed to call for the record of Ext.-B1 to Ext.-B17, but rejected the prayer to call for record of Ext.-B18 to Ext.-B82, on the ground that the said exhibits were not mentioned in the written statement filed by the present petitioner.

4. Mr. Gupta, learned counsel for the petitioner, submits that the petitioner is a

defendant in Title Suit No.32/2010, filed by the respondent No.1 for eviction from the suit premises and he has been depositing the rent with the Rent Controller, Tinsukia. He had filed written statement and enclosed therewith the receipt of depositing rent vide B1 to B17. Mr. Gupta further submits that after filing of the written statement also he has been depositing rent with the Rent Controller vide Ext.B18 to Ext.B-88 and therefore, the same could not be enclosed with the written statement. Therefore, he had filed a petition for calling the record of Ext.B1 to Ext. B88 from the Rent Controller, Tinsukia. Mr. Gupta further submits that the learned trial court vide impugned order had allowed to prayer of the petitioner to call for record of Ext.B1 to Ext.B.17, but, rejected the prayer for calling the record of Ext.-B18 to Ext.-B82 on the ground that the same had not been mentioned in the written statement. Mr. Gupta also submits that the impugned order suffers from non application of mind and in the interest of justice calling of the said record are very much required and that the case is pending for record and evidence of D.W.1 and therefore, it is contended to set aside the impugned order, so far it relates to dismissal of the prayer of the petitioner in respect of calling of the records of Ext.-B18 to Ext.-B82, from the Rent Controller, Tinsukia.

5. Having heard the submission of the 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 15.06.2024.

6. It appears that the learned trial Court has allowed the prayer of the petitioner for calling the records of rent cases in connection with Ext.-B1 to Ext.-B17, but, it had rejected the prayer for calling the records of Ext.-B18 to Ext.-B82, on the ground that the same were not mentioned in the written statement filed by the petitioner, and that the petitioner did not take the leave of the Court

to file copies of Treasury Challan, pertaining to Ext.-B18 to Ext.-B82.

7. It appears that the reason for non-mentioning of the records of Ext.-B18 to Ext.-B82 in written statement by the petitioner is that the rent vide Ext.-B18 to Ext.-B82 were deposited only after filing of written statement. That being so the reason appears to be reasonable and justified.

8. It is well settled that fair trial is fundamental right as enshrined in Article 21 of the Constitution of India. Fair trial includes affording of proper opportunity to both the parties to a proceeding, be it Civil or Criminal, to prove their respective cases. And denial of such opportunity to either of the parties impairs their fundamental right.

9. Having examined the impugned order of rejection of the prayer of the petitioner, on the touchstone of the aforesaid principle this court is of the view that the same failed to withstand the legal scrutiny. If the records of rent case of Ext.B18 to B.88 is necessary to establish the case of the petitioner then definitely the records of said cases ought to have been called for.

10. Thus, having considered the submission of Mr. Gupta, learned counsel for the petitioner and also considering the facts and circumstances on the record, this Court is inclined to allow the petition. Accordingly, it is provided that the learned trial Court shall call for the record pertaining to Ext.-B18 to Ext.-B82, from the Rent Controller, Tinsukia and thereafter, proceed to hear the matter in accordance with law.

11. In terms of above, this revision petition stands disposed of. The party has to bear its own costs.

JUDGE

Comparing Assistant