

GAHC010161972024



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

Case No. : CRP(IO)/299/2024

SARIF UDDIN LASKAR
SON OF LATE MANTASIR ALI LASKAR,
RESIDENT OF VILL- NIZ BANSKANDI PART-III,
P.O.- BANSKANDI, P.S.- LAKHIMPUR,
DISTRICT- CACHAR, ASSAM.

VERSUS

ABJOL HUSSAIN LASKAR AND 2 ORS
SON OF LATE ASAB UDDIN LASKAR,
RESIDENT OF VILL. NIZ- BANSKANDI PART-III,
P.O.- BANSKANDI, P.S.- LAKHIPUR,
DISTRICT- CACHAR, ASSAM, PIN- 788101.

2:MAJIDUL HAQUE LASKAR
SON OF MOINUL HAQUE LASKAR

RESIDENT OF VILL. NIZ- BANSKANDI PART-III

P.O.- BANSKANDI
P.S.- LAKHIPUR

DISTRICT- CACHAR
ASSAM
PIN- 788101.

3:MOIJUL HAQUE LASKAR
SON OF MOINUL HAQUE LASKAR

RESIDENT OF VILL. NIZ- BANSKANDI PART-III

P.O.- BANSKANDI

P.S.- LAKHIPUR

DISTRICT- CACHAR
ASSAM
PIN- 788101

Advocate for the Petitioner : MR. L R MAZUMDER, MR E HUSSAIN,MR. A ISLAM

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 14-08-2024

Heard Mr. L.R. Mazumder, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, read with Section 151 of the C.P.C., the petitioner has put to challenge the correctness or otherwise of the order dated 04.07.2024, passed by the learned Civil Judge (Junior Division), Lakhipur, Cachar, in Petition No. 4/4 in Title Suit No. 01/2019.

3. It is to be noted here that vide order dated 04.07.2024, the learned trial court has dismissed the petition filed by the petitioner to adduce additional evidence.

4. Mr. Mazumder, learned counsel for the petitioner submits that P.W.2 and P.W.3 who were named in the list of witnesses and whose examination-in-chief were also filed before the learned trial court could not be examined on account of their bad health condition and that the medical documents were also submitted before the learned trial court along with the petition. Mr. Mazumder further submits that instead of these 2 witnesses, the petitioner prays for allowing him to examine 2 other witnesses in place of P.W.2 and P.W.3 in order to establish his case, but the learned trial court has dismissed the same on the ground that the petitioner has deliberately delaying the proceeding. Mr. Mazumder also submits that examination of these new witnesses is necessary in the interest of justice 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 as well as the documents placed on record and also perused the impugned order dated 04.07.2024.

6. It appears that the name of 2 witnesses as P.W.2 and P.W.3 were submitted in the list of witnesses and their examination-in-chief in affidavits were also filed, but on account of their illness, P.W.2 and P.W.3 could not be examined.

7. It is to be noted here that Order 16 Sub-Rule 3 to Rule 1 empowers the court to permit a party to call any witness whose name has not been mentioned in the list filed under Sub-Rule 1, if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

8. Here in this case, it appears that the petitioner has shown sufficient cause that on account of illness, P.W.2 and P.W.3 could not be examined and for which their examination-in-chief were dispensed with.

9. It is the contention of Mr. Mazumder, learned counsel for the petitioner that examination of 2 more witnesses, are required in the interest of justice. It is well settled that right to fair trial is a right of both the parties in a proceeding be it criminal or civil. Fair trial includes fair and proper opportunities to be afforded to both the parties to prove their respective cases.

10. Having considered above and also considering the relevant provision of law as well as 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 allow the petitioner to examine 2 more witnesses.

11. Mr. Mazumder, learned counsel for the petitioner submits that the list of the witnesses has not been submitted with the petition. Accordingly, it is provided that the learned counsel for the petitioner shall submit the list of two new witnesses within a week. On furnishing the list, the learned trial court shall proceed to examine them in accordance with law.

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

JUDGE

Comparing Assistant