

GAHC010165252023



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

Case No. : CRP(IO)/243/2023

UTPAL DAS AND ANR
S/O- LATE BHRIGU MALLA DAS,
RESIDENT OF DONA RESIDENCY,
VIP ROAD, SIX MILE,
P.S.- DISPUR, GUWAHATI,
P.O.- KHANAPARA, PIN- 781022,
DISTRICT- KAMRUP(M), ASSAM.

2: DR. SWARGA JYOTI DAS
WIFE OF SRI UTPAL DAS

RESIDENT OF DONA RESIDENCY

VIP ROAD
SIX MILE

P.S.- DISPUR
GUWAHATI

P.O.- KHANAPARA
PIN- 781022

DISTRICT- KAMRUP(M)
ASSAM

VERSUS

M/S DONA BUILDERS PRIVATE LIMITED AND 2 ORS
A PRIVATE LIMITED COMPANY INCORPORATED AND REGISTERED
UNDER THE PROVISIONS OF THE INDIAN COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT 108, SHIV-ASHISH, 66- S.V. ROAD,
ANDHERI (WEST), MUMBAI- 400058
AND LOCAL ADDRESS AT FLAT NO. 101,
DONA TOWERS, G.S. ROAD, (1ST FLOOR),

P.S. BHANGAGARH, P.O.- CHRISTIAN BASTI,
PIN- 781005, DISTRICT- KAMRUP(METRO),
ASSAM.

2:ABANI DAS
SON OF LATE SARBESHWAR DAS

MANAGING DIRECTOR OF M/S DONA BUILDERS PRIVATE LIMITED.
RESIDENT OF FLAT NO. 901

DONA TOWERS
G.S. ROAD

(1ST FLOOR)
P.S.- BHANGAGARH

P.O.- CHRISTIAN BASTI
PIN- 781005

DISTRICT- KAMRUP(METRO)
ASSAM.

3:SAAHIL ABANI DAS
SON OF SRI ABANI DAS

RESIDENT OF FLAT NO. 901

DONA TOWERS
G.S. ROAD

(1ST FLOOR)
P.S.- BHANGAGARH

P.O.- CHRISTIAN BASTI
PIN- 781005

DISTRICT- KAMRUP(METRO)
ASSAM

Advocate for the Petitioner : MR G RAHUL

Advocate for the Respondent : MR. R ALI (r-1 TO 3)

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

15.03.2024

This is an application under Article 227 of the Constitution challenging the impugned order dated 12.07.2023 passed in Misc.(J) Case No.423/2022.

2. A perusal of the impugned order dated 12.07.2023 reveals that an application was filed by the plaintiff seeking amendment of the plaint to the extent as mentioned in paragraph 2 of the said application.

3. The respondents filed their written objections objecting to the amendment of the plaint. The learned trial court vide order dated 12.07.2023 allowed the said amendment with a cost of Rs.2000/- to be paid to the defendants.

4. Being aggrieved, the instant proceeding has been initiated. This Court has duly taken note of the stage at which the said amendment application was filed i.e. at the stage after framing of the issues and at the time when steps were being taken in accordance with Order XVI of the Code. This Court having perused the impugned order is of the opinion that the learned trial court did not commit any jurisdictional error or any illegality in permitting the amendment, *inasmuch as*, a perusal of the said amendment reveals that the same are required for an effective adjudication of the suit.

5. This Court however finds it very pertinent to observe that while allowing

the amendment, the suit is relegated back to the stage of pleadings, thereby the defendants now has to again file additional pleadings and the suit has to proceed from that stage. Under such circumstances, the cost which has been imposed of Rs.2000/- in the opinion of this Court is neither adequate nor reasonable. This Court is of the opinion that the cost should have been at least realistic. In the opinion of this Court, the cost for allowing the amendment application is therefore increased to Rs.11,000/-.

6. This Court further taking into account the above, vacates the order dated 02.08.2023 passed by this Court and directs the parties herein to appear before the learned trial court on 28.03.2024. On which date, the plaintiff shall file their amended plaint. Failing which, consequences in terms with Order XVI Rule 18 of the Code shall follow. Further to that, the plaintiffs shall also deposit the cost of Rs.11,000/- so enhanced herein, at the time of filing the amended plaint, which shall be a condition precedent for acceptance of the amended plaint.

7. This Court further observes that the defendants shall be at liberty to file an application before the learned trial court for release of the said amount and the learned trial court shall pass appropriate orders thereupon.

8. This revision petition accordingly stands disposed of.

JUDGE

Comparing Assistant