

GAHC010173392023



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

Case No. : CRP(IO)/255/2023

M/S MARBLE CENTER AND ANR
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT SREENIWAS BASUDEO
COMPLEX, G.S.ROAD, GANESHGURI, GUWAHATI-05, THROUGH ITS
PROPRIETOR, SMT. LILA DEVI LAHOTY, WIFE OF SHRI PRADEEP LAHOTY

2: SMT. LILA DEVI LAHOTY
W/O- SHRI PRADEEP LAHOTY
PROPRIETOR OF M/S MARBLE CENTER
SREENIWAS BASUDEO COMPLEX
G.S.ROAD
GANESHGURI
GUWAHATI- 781005
DISTRICT- KAMRUP (METRO)
ASSAM
PHONE NO. 94351-0942

VERSUS

M/S SHREENIWAS BASUDEO AND 2 ORS
A UNIT OF ASSAM VEGETABLE AND OIL PRODUCTS LTD., GENERAL
MERCHANT AND COMMISSION AGENTS, HAVING ITS REGISTERED
OFFICE AT G.S.ROAD, GANESHGURI, GUWAHATI-05, REPRESENTED BY
ITS AUTHORIZED DIRECTOR, MRS. ANJU DEORAH, WIFE OF SRI PANKAJ
DEORAH

2:MRS. ANJU DEORAH
WIFE OF SRI PANKAJ DEORAH
AUTHORIZED DIRECTOR OF M/S SREENIWAS BASUDEO
GANESHGURI
GUWAHATI-5
AT PRESENT RESIDENT OF SPANISH GARDEN
FLAT NO. C-404
ZOO ROAD
GUWAHATI-05

DISTRICT- KAMRUP (METRO)
ASSAM

3:ASSAM VEGETABLE AND OIL PRODUCTS LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT
1956
HAVING ITS REGISTERED OFFICE AND PRINCIPAL PLACE OF BUSINESS
AT G.S.ROAD
GANESHGURI
GUWAHATI-5 AND IS REPRESENTED BY ITS AUTHORIZED DIRECTOR
MRS. ANJU DEORAH WIFE OF SRI PANKAJ DEORAH PHONE- 85381-82982
E-MAIL- KAPIL0503JAIN@GMAIL.CO

Advocate for the Petitioner : MR. A K PURKAYASTHA, MR J CHOPRA,MR. S K SINGH,MR.
V K CHOPRA,MS. B BORO

Advocate for the Respondent : MR. N ALAM, MR K JAIN, FOR CAVEATOR

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

27.08.2024

Heard Mr. A.K. Purkayastha, learned Senior Counsel assisted by Mr. S. Sarma, learned counsel for the petitioner and Mr. N. Alam, learned counsel for the respondents.

2. In this petition, under Article 227 of the Constitution of India read with Section 115 of the C.P.C., the petitioner has put challenge the correctness or otherwise of the order dated 26.06.2023, passed by the learned Civil Judge No. 2, Kamrup (M) at Guwahati, in Misc. (J) Case No. 584/2019, arising out of Title Suit No. 165/2019.

3. It is to be noted here that vide order dated 26.06.2023, the learned Civil Judge No. 2, Kamrup (M) at Guwahati has dismissed the petition No.

2775/2019, under Order 7 Rule 11(d) & (f) read with Section 151 of the C.P.C., filed by the petitioners/defendants, for rejection of plaint,

4. The background facts leading to filing of the present petition are adumbrated herein below :-

“The respondent as plaintiff instituted a Title Suit No. 165/2019 against the petitioners/defendants for eviction of the petitioners/ defendants from the tenanted premises and realization of arrear licensee fee, with other reliefs, before the learned Civil Judge No. 2, Kamrup (M) at Guwahati. The petitioners/defendants have entered appearance before the learned court and thereafter, having gone through the record of the learned court, the petitioners/defendants found that the respondents/ plaintiffs did not take any steps for issuance of summons upon the petitioners/defendants, within the statutory period of 7 days as provided under Order 7 Rule 9 of the C.P.C.

Thereafter, the petitioners/defendants had filed a petition No. 2775/2019, under Order 7 Rule 11(d) & (f) read with Section 151 of the C.P.C. for rejection of the plaint. Then the learned court had registered a case, being Misc. (J) Case No. 584/2019, wherein the respondents/plaintiffs had filed their objection and thereafter, hearing both the parties, the learned court had vide impugned order, dated 26.06.2023, rejected the said petition filed by the petitioners/defendants.”

5. Mr. Purkayastha, learned Senior Counsel appearing of the petitioner, submits that as the respondents/plaintiffs have failed to take steps within the stipulated period, as per provision of Order 7 Rule 11(f) of the C.P.C., and as such

the plaint has to be rejected. Mr. Purkayastha further submits that the learned court had failed to appreciate the provision of Order 7 Rule 9 of the C.P.C. and also Order 7 Rule 11(f) of the C.P.C. Referring two decisions of Hon'ble Supreme Court in the case of **Salem Advocate Bar Association, Tamil Nadu vs. Union of India**, reported in **(2003) 1 SCC 49** and **C.S. Ramaswamy vs. V.K. Senthil**, in **Civil Appeal No. 500 of 2022**, submits that the learned Civil Judge No. 2, Kamrup (M) at Guwahati had committed manifest illegality in not rejecting the petition filed by the petitioner. Mr. Purkayastha further submits that the impugned order is illegal and therefore, it is contended to set aside the same.

6. On the other hand, Mr. Alam, learned counsel for the respondents has supported the impugned order. Mr. Alam submits that the learned Civil Judge No. 2, Kamrup (M) at Guwahati while issuing summons to the petitioners/defendants had not fixed any time line for taking steps and as such, it cannot be said that the impugned order suffers from any illegality or infirmity. Mr. Alam further submits that this petition ought to have been filed under Order 7 Rule 9 of the C.P.C., instead of Order 7 Rule 11(f) and therefore, Mr. Alam has contended to dismiss the petition.

7. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned order, dated 26.06.2023, passed by the learned Civil Judge No. 2, Kamrup (M) at Guwahati, in Misc. (J) Case No. 584/2019 and also gone through the decisions referred by Mr. Purkayastha.

8. It is to be noted here that the Hon'ble Supreme Court in the case of **Salem Advocate Bar Association (Supra)**, has held as under:-

“16. Our attention has been drawn to Order 7 Rule 11 to which clauses (e) and (f) have been added

which enable the court to reject the plaint where it is not filed in duplicate or where the plaintiff fails to comply with the provisions of Rule 9 of Order 7. It appears to us that the said clauses being procedural would not require the automatic rejection of the plaint at the first instance. If there is any defect as contemplated by Rule 11 (e) or non-compliance as referred to in Rule 11(f), the court should ordinarily give an opportunity for rectifying the defects and in the event of the same not being done the court will have the liberty or the right to reject the plaint.”

9. In the case of **C.S. Ramaswamy (supra)** Hon’ble Supreme Court has held that if on a meaningful not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code, taking care to see that the grounds mentioned therein is fulfilled.

10. It is also to be noted here that the Kerala High Court in the case of **Razack Trading Company vs. J.K. Industries Limited**, reported in **AIR 2003 KER 171**, has held as under:-

“So even if there was failure on the part of the plaintiff to comply with the order, the court below ought to have granted reasonable time to the plaintiff to cure defects before rejecting the plaint. The petitioner has averred that he had already taken steps.”

11. In the case in hand, having gone through the impugned order dated 26.06.2023, I find that the suit was filed on 11.04.2019, before the learned Civil Judge No. 2, Kamrup (M) at Guwahati by the respondents/plaintiffs and thereafter, on 08.05.2019, the learned court had directed the respondents/plaintiffs to take

steps and the process fee for the steps was paid on 26.09.2019, and the process was issued on 01.07.2019, and copy was served upon the petitioners/defendants on 21.07.2019. Thus, it appears that the respondents/plaintiffs could not take steps upon the petitioners/defendants within the stipulated period as provided under Order 7 Rule 9 of the C.P.C.

12. However, it appears that while the learned court had issued direction to the respondent, vide order dated 08.05.2019, to take steps upon the petitioners/defendants, no time was fixed. However, Order 7 Rule 9 provides for issuing direction to take step within seven days. The Rule read as under: –

“Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.”

13. But, as mandated no such direction was issued to the respondent herein by the learned court to take step within seven days. And therefore, the process fee for the steps was paid on 29.06.2019, however, well within the next date fixed i.e. 29.06.2019. It also appears that no time limit was fixed vide order dated 08.05.2019, to take step. The learned Civil Judge No. 2, Kamrup (M) at Guwahati has accepted the steps and issued the same to the petitioners/defendants on 01.07.2019, which was served upon the petitioners/defendants on 21.07.2019, and accordingly, they had entered appearance on 22.07.2019 and filed petition No. 2755/19 for rejection of the plaint under Order 7 Rule 11(d) and (f). But, there was no prayer for invocation of the provision under Order 7 Rule 9 of the C.P.C. and as such, there appears to be substance in the submissions, so advance by Mr. Alam learned counsel for the

respondent.

14. As held by Hon'ble Supreme Court in the case of **Salem Advocate Bar Association (Supra)**, the court should ordinarily give an opportunity for rectifying the defects and in the event of the same not being done, the court will have the liberty or the right to reject the plaint. It is also the view of the Kerala High Court that reasonable time has to be granted to the plaintiff to cure defects, if any, before rejecting the plaint.

15. Thus, having examined the impugned order in the light of the aforesaid decision, this Court is of the view that the learned Civil Judge No. 2, Kamrup (M) at Guwahati has rightly dismissed the petition and it cannot be said that while rejecting the petition, the learned court had committed any illegality or exceeded its jurisdiction. Therefore, this court is unable to record concurrence to the submission of Mr. Purkayastha, the learned counsel for the petitioner.

16. In that view of the matter, this Court finds no merit in this petition and accordingly, the same stands dismissed.

17. Interim order passed earlier, if any, stands vacated.

JUDGE

Comparing Assistant