

GAHC010175042024



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

Case No. : CRP(IO)/324/2024

JITU BORA
S/O- LATE PHONIDHAR BORAH, R/O- DADHORA, DERGAON, P.O. AND P.S.
DERGAON, DIST. GOLAGHAT, ASSAM

VERSUS

BULBUL BORA AND 3 ORS.
S/O- LATE PHONIDHAR BORAH @ KUCH, R/O- DADHORA, DERGAON, P.O.
AND P.S. DERGAON, DIST. GOLAGHAT, ASSAM

2:JUGESWAR BORA
S/O- LATE BHUGESWAR BORAH
R/O- DADHORA AHUM GOAN
DERGAON MISAMARA MOUZA
DIST. GOLAGHAT
ASSAM

3:ON THE DEATH OF BHOGESWAR BORA
HIS LEGAL HEIRS SMTI. BHANU BORA
D/O- LATE BHUGESWAR BORA
R/O- GOWAL GAON
P.O. MUDOI GAON
P.S. DERGAON
DIST. GOLAGHAT
ASSAM

4:BINTU BORA
S/O- LATE PHONIDHAR BORAH @ KUCH
R/O- DADHORA
DERGAON
P.O. AND P.S. DERGAON
DIST. GOLAGHAT

ASSA

Advocate for the Petitioner : MR. A K SAHEWALLA, MR. W SHARMA, MR P GOGOI, MR D GOSWAMI

Advocate for the Respondent : ,

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER**

11.09.2024

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

2. Order dated 01.02.2024, passed by the learned Civil Judge (Senior Division), Golaghat, in Title Suit No.16/2021 is challenged in this petition under Article 227 of the Constitution of India, read with Section 115 and 151 of the Code of Civil Procedure, 1908.

3. It is to be noted here that vide impugned order dated 01.02.2024, the learned Trial Court had dismissed the Petition No.1349/2023, filed by the petitioner, under Section 148, read with Section 151 of the CPC, whereby the petitioner has prayed for acceptance of the written statement filed by the petitioner/plaintiff against the counter claim filed by the defendants.

4. Mr. Sahewalla, learned counsel for the petitioner, submits that the learned Trial Court has rejected the petition filed by the petitioner on the ground that there is no explanation of the delay of 10 days from 03.07.2023 to 13.07.2023 in filing the written statement. But, Mr. Sahewalla submits that there is no time limit for filing the written statement against the counter claim and that along with the petition dated 13.07.2023, the petitioner has already filed the written statement and unless the petitioner is allowed to file the said written statement, he will not be able to establish his case during trial and that the reason for delay is that no document along with the counter claim was furnished

to the petitioner and that the petitioner has been able to prepare written statement when the documents were furnished to him, and therefore, Mr. Sahewalla contended to allow this petition.

5. Having heard the submission of 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 01.02.2024.

6. It appears that in paragraph no.2 of the petition dated 13.07.2023, the petitioner has categorically stated that along with the counter claim filed by the defendants, the copies of documents were not served upon the present petitioner and therefore, the written statement could not be prepared in time. That being so, it cannot be said that there is no explanation for delay. This aspect, however, eschewed consideration of the learned Trial Court and on such count, the impugned order appears to be arbitrary and the same requires interference of this Court.

7. Thus, having considered the submission of learned counsel for the petitioner and also considering the facts and circumstances on the record, this Court is inclined to allow this petition. The impugned order dated 01.02.2024 stands set aside and quashed. The learned Trial Court is directed to accept the written statement filed by the petitioner/plaintiff and thereafter, to proceed with the case in accordance with law.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant