

GAHC010176202024



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

Case No. : CRP(IO)/336/2024

ROBEN MALO
S/O- LATE AMULYO MALO,
R/O- VILL. CHALANTAPARA,
P.O.- CHALANTAPARA,
P.S.- JOGIGHOPA,
DIST.- BONGAIGAON, ASSAM,
PIN- 783388.

VERSUS

BABU SHARMA AND 3 ORS
S/O- LATE NONIGOPAL SARMA,
VILL. AND P.O.CHALANTAPARA,
P.S.- JOGIGHOPA,
DIST.- BONGAIGAON (ASSAM),
PIN- 783388.

2:KALPANA SARMA
D/O- SRI BABU SHARMA

VILL. AND P.O.CHALANTAPARA

P.S.- JOGIGHOPA

DIST.- BONGAIGAON (ASSAM)

PIN- 783388.

3:LAKSHMI PRIYA SARMA
D/O- SRI BABU SHARMA

VILL. AND P.O.CHALANTAPARA

P.S.- JOGIGHOPA

DIST.- BONGAIGAON (ASSAM)

PIN- 783388.

4:BIBHUTI DAS

S/O- LATE LAKSHMI KT. DAS

VILL.- KOREYA PAPER MILL

P.O. AND P.S.- JOGIGHOPA

DIST.- BONGAIGAON (ASSAM)

PIN- 783382

Advocate for the Petitioner : MS. R CHOUDHURY, MS. B. HAZARIKA,MS F N ZAMAN

Advocate for the Respondent : ,

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

ORDER

09.09.2024

Heard Ms. R. Choudhury, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, read with Section 151 of the Code of Civil Procedure, the petitioner, namely, Roben Malo has challenged the correctness or otherwise of the order, dated 14.05.2024, passed by the learned Civil Judge (Junior Division), North Salmara, Abhayapuri, in Title Suit No.42/2021 (Old Title Suit No.7/2015). It is to be noted here that vide impugned order dated 14.05.2024, the learned Trial Court had partly allowed the Petition No.990/2024, filed by the petitioner for adjournment, but rejected the prayer to grant another date to file the evidence of DW-2.

3. Ms. Choudhury, learned counsel for the petitioner submits that unless the petitioner is allowed to file evidence of DWs, he will be seriously prejudiced. And therefore, Ms. Choudhury submits that only one date may be given to the petitioner to file the evidence of DWs.

4. Having heard the submission of Ms. Choudhury, learned counsel for the petitioner, I have gone through the petition and the documents placed on record and also perused the impugned order, dated 14.05.2024.

5. It is to be noted here that the petitioner is the defendant in Title Suit No.7/2015, which is renumbered as Title Suit No.42/2021, pending before the Court of learned Civil Judge (Junior Division), North Salmara, Abhayapuri. The said suit is pending at the stage of DWs. On 10.05.2024 the petitioner has filed a petition, No.990/2024, praying for adjournment and granting another date for filing the evidence of DWs. But, the learned Trial Court, vide impugned order dated 14.05.2024, while allowing the prayer of adjournment, had rejected the prayer for filing evidence of DWs.

6. It is to be noted here that fair trial is now recognized as a fundamental right guaranteed under Article 21 of the Constitution of India. Fair trial is a right of both the parties to the proceeding. Fair trial includes the grant of fair and proper opportunity to both the parties.

7. Here in this case, it appears from the impugned order, dated 14.05.2024 that, on that day, the petitioner could not file the evidence of other DWs on account of illness. But, the learned Trial Court had rejected the said prayer on the ground that no medical document was annexed with the petition and also on the ground that the case is pending at the stage of filing of evidence of DWs since long and he already availed several adjournment. However, it appears that the case is still in the stage of evidence of DWs. Next date is fixed for cross-examination of DWs. That being so, giving another opportunity to file evidence of DWs to the petitioner would neither cause any delay nor

cause any prejudice to the other side.

8. In the given factual background and also taking note of the submission of Ms. Choudhury, learned counsel for the petitioner, and further considering the requirement of fair trial, which warrants grant of fair and proper opportunity to both the parties, this Court is inclined to allow this petition.

9. It is provided that the learned Trial Court shall afford another opportunity to the petitioner to file the evidence of DWs in the case in hand and thereafter, shall proceed with the trial in accordance with law.

10. In terms of above, this civil revision petition stands disposed of at the motion stage itself.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant