

GAHC010182432024



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

Case No. : CRP(IO)/328/2024

SEFALI SINHA
W/O- SRI BIJOY SINHA, D/O- LATE SACHINDRA SINHA, VILL. AND P.O.
CHENCOORIE, P.S. SILCHAR, DIST. CACHAR, ASSAM

VERSUS

BIJOY SINHA
S/O- LATE JATINDRA MOHAN SINHA, VILL.- BIHARA, PT-IV, P.S.
KATIGORAH, DIST. CACHAR, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY, U U KHAN, MR A AHMED

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

05.09.2024

Heard Mr. M.A. Choudhury, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, the petitioner has put to challenge the correctness or otherwise of the order dated 05.08.2024, passed by the learned Principal Judge, Family Court, Cachar at Silchar, in F.C. (Civil) Case No. 244/2018.

3. It is to be noted here that vide order dated 05.08.2024, the learned Principal Judge, Family Court, Cachar at Silchar has closed the cross-examination of the

respondent's witnesses by the present petitioner.

4. Mr. Choudhury, learned counsel for the petitioner submits that the petitioner is a respondent in F.C. (Civil) Case No. 244/2018, which was instituted by her husband and the said case was fixed on 05.08.2024, for cross-examination of the plaintiff's witnesses and on that day, the Amicus Curiae, appointed to defend the case of the petitioner, filed the Hazira, but she could not be able to cross-examine the witnesses of the plaintiff, on account of her sudden illness and the learned Principal Judge, Family Court, Cachar at Silchar, vide order dated 05.08.2024, has closed the plaintiff's evidence illegally and arbitrarily and therefore, Mr. Choudhury has contended that one last opportunity may be granted to the petitioner to cross-examine the witnesses of the respondent.

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 order dated 05.08.2024.

6. It appears that on 05.08.2024, the Amicus Curiae, appointed to defend the case of the petitioner, filed the Hazira, but she could not be able to cross-examine the witnesses of the respondent, on account of her illness and the learned Principal Judge, Family Court, Cachar at Silchar, vide order dated 05.08.2024, has closed the plaintiff's evidence, as no document was submitted to substantiate the plea.

7. It is to be noted here that right to fair trial is a fundamental right, as granted by 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.

8. In the case in hand, by closing the prosecution evidence, the present petitioner was denied of the opportunity to cross-examine the witnesses of the respondent and as such, serious prejudice is caused to her. Admittedly, no medical

document was enclosed with the petition to support the contention made therein. But, it is submitted that the learned Amicus Curiae suddenly fell ill. In that view of the matter the learned trial court ought to have afforded another chance to the present petitioner instead of closing the evidence.

9. Having considered above and also considering the submission of learned counsel for the petitioner, this court is inclined to allow the petition. And accordingly, it is provided that the learned Principal Judge, Family Court, Cachar at Silchar shall afford one last opportunity to the petitioner to cross-examine the witnesses of the respondent. The petitioner shall appear before the learned court, on the next date to be fixed by it.

10. It is made clear that in the event of failing to cross-examine the witnesses on that day, the learned Principal Judge, Family Court, Cachar at Silchar shall proceed to hear and dispose of the matter in accordance with law.

11. In terms of above, this C.R.P. stands disposed of.

JUDGE

Comparing Assistant