

GAHC010190112024



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

Case No. : CRP(IO)/350/2024

K. L. DUDHORIA AND SONS (HUF)
FLAT NO. 401, BUILDING NO. 3, ANMOL COMPLEX, ANDHERI KURLA
ROAD, ANDHERI- EAST, MUMBAI-59, MAHARASHTRA.

VERSUS

JAY KUMAR DUGAR AND 3 ORS
S/O- LATE ASHKARAN DUGAR, KARTA OF ASHKARAM DUGAR (HUF).

2:RAJU DEVI DUGAR
W/O- LATE ASHKARAN DUGAR.

3:JAYANT KUMAR DUGAR
S/O- LATE VIJAY SINGH DUGAR
KARTA OF M/S VIJAY SINGH DUGAR (HUF).

4:CHANDA DEVI DUGAR
W/O- LATE VIJAY SINGH DUGAR. (ALL ARE CO-OWNERS AND JOINTLY
KNOWN AS HANUMAN MAL DUGAR AND OTHER
ALL ARE RESIDENTS OF DUGAR BUILDING
KAMRUP CHAMBER ROAD
FANCY BAZAR
KAMRUP(M)
GUWAHATI-781001
ASSAM)

Advocate for the Petitioner : MR. O P BHATI, MR T C DAS,MR. P SARMA,S. K. GUPTA

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

Date : 18.09.2024

Heard Mr. O.P. Bhati, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, the petitioner has challenged the correctness or otherwise of the order dated 30.07.2024, passed by the learned Civil Judge (Junior Division) No. 2, Kamrup(M), Guwahati, in Title suit No. 169/2019.

3. It is to be noted here that vide impugned order dated 30.07.2024, the learned trial Court has dismissed the petition, being Petition No. 1656/2024, filed by the petitioner for adjournment of the case and thereby, closed the cross-examination of P.W.1.

4. Mr. Bhati, learned counsel for the petitioner submits that the case was pending for cross-examination of P.W.1 before the learned trial Court on 30.07.2024, but on that day, he was out of station and to that effect, one petition, being Petition No. 1656/2024 was filed before the learned trial Court for adjournment of the case enclosing the Air Ticket to substantiate the plea. But, the learned trial Court, vide impugned order dated 30.07.2024, rejected the prayer of the petitioner and closed the cross-examination of P.W.1 in the interest of speedy trial of the matter in dispute. Mr. Bhati also submits that he is ready to cross-examine P.W.1 on any date and therefore, it is contended to allow this petition.

5. Having heard the learned counsel for the petitioner, I have carefully gone through the petition and the documents placed on record and perused the impugned order dated 30.07.2024.

6. It appears that on that day, the learned counsel for the petitioner was absent and to that effect, Petition No. 1656/2024 was filed stating that the

counsel for the petitioner was out of station and to substantiate the same, the petitioner has enclosed one Air Ticket, which is being enclosed with this petition at page No. 60. Thus, it appears that sufficient cause has been shown for adjournment of the case on 30.07.2024.

7. It also appears that the case is pending at the stage of cross-examination of P.W.1. It is well settled that the right to cross-examine a witness, apart from being a natural right, is a statutory right. Section 137 of the Indian Evidence Act, 1872, provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Indian Evidence Act, 1872 confers a right on the adverse party to cross-examine a witness, who has been examined-in-chief, subject of course to expression of his desire to the said effect. But, indisputably, such an opportunity has to be granted. It is also well settled that right to fair trial is a fundamental right. In a fair trial, fair opportunity has to be given to both the parties to the proceeding. Denial of cross-examination as such, is denial of right to fair trial.

8. Keeping the aforesaid aspect in mind and also considering the submission of learned counsel for the petitioner, and further considering the facts and circumstances on the record, 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 cross-examine P.W.1, subject of course, on payment of a sum of Rs. 5,000/-, being the cost, which shall be deposited before the learned trial Court on the next date.

10. In terms of above, this revision petition stands disposed of.

JUDGE

Comparing Assistant