

GAHC010194212024



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

Case No. : CRP(IO)/360/2024

RAKESH SHARMA AND ANR
S/O- LATE KANCHAN SHARMA, R/O- HOUSE NO. 25, PNG ROAD,
SANTIPUR HILLSIDE, BYE LANE NO. 1, P.O. AND P.S. BHARALUMUKH,
GUWAHATI-09.

2: M/S LAXMI MOTOR WORKS
A PROPRIETORSHIP FIRM REPRESENTED BY ITS PROPRIETOR SHRI
RAKESH SHARMA HAVING ITS OFFICE AND PRINCIPAL PLACE OF
BUSINESS AT A.T. ROAD
SANTIPUR
GUWAHATI-09

VERSUS

SWARAJ CHOUDHURY AND 2 ORS.
S/O- SHRI NAGESHWAR CHOUDHURY, R/O- REHABARI HOUSE NO. 65,
ANNAPURNA ENCLAVE, P.S. PALTANBAZAR, GUWAHATI-08.

2:VEENA CHOUDHURY
W/O- SHRI NAGESHWAR CHOUDHURY
R/O- HOUSE NO. 65
ANNAPURNA ENCLAVE
P.S. PALTANBAZAR
GUWAHATI-08.

3:DIGANTA DAS
S/O- LATE BHUNESWAR DAS
R/O- SANTIPUT AT ROAD
P.O. AND P.S. BHARALUMUKH
GUWAHATI-09

Advocate for the Petitioner : MR. S P ROY, JYOTISH DAS,MS. V RAI

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 20.09.2024

- 1.** Heard Mr. S. P. Roy, learned senior counsel assisted by Ms. V. Rai, learned counsel for the petitioners.
- 2.** This is an application filed under Article 227 of the Constitution has been filed by the petitioners, namely, 1. *Shri Rakesh Sharma* and 2. *M/S Laxmi Motor Works* impugning the order dated 09.09.2024 passed in Misc.(J) Case No. 232/2024 arising out of Title Suit No. 42/2024 pending before the Court of learned Civil Judge (Junior Division) No. 1, Kamrup(M), fixing 20.09.2024 for hearing/necessary orders.
- 3.** The learned senior counsel for the petitioners has submitted that the defendant No. 1 has filed an application before the Trial Court under Section 151 of the Code of Civil Procedure, 1908 whereby a prayer was made for early hearing in Misc.(J) Case No. 232/2024 for ends of justice.
- 4.** The learned senior counsel for the petitioners has also submitted that the petition filed by the defendant No. 1 was allowed by the Trial Court on the basis of mutual consent of both the sides including the present petitioners and the case was fixed for hearing on 09.09.2024 on mutual consent.
- 5.** The only point of contention raised by the petitioners in this revision petition is that on 09.09.2024, the Presiding Officer was on leave and on that day the Sheristadar passed an order to the effect fixing the Misc.(J) Case No. 232/2024 for hearing/necessary orders on 20.09.2024.

6. The learned senior counsel for the petitioners has submitted that the only grievance of the present petitioners in this revision petition is that the Sheristadar not being a judicial officer and is not authorized to pass an order fixing the case for hearing and the said order could have passed only by a Judicial Officer. In support of his submission, learned senior counsel for the petitioners has cited a ruling of Division Bench of this Court in the case of "*Raja Bhairabendra Narayan Deb Vs. Kumar Punyenara Narayan Deb*" reported in "*AIR (37) 1950 Assam 447*".

7. On perusal of the judgment cited by the learned senior counsel for the petitioners, it appears that in the said judgment which has been observed by the Court is as follows:-

"The next question is whether there was any valid ground for the review of the order. It is obvious that the order was passed by some oversight. The learned Judge may not have noticed that the previous order was passed by his Sheristadar. He may not have realised that it had no binding force in law, as the order is patently illegal. The illegality may well be regarded as a mistake or error apparent on the face of the record".

8. It appears that an order fixing a case for hearing may not be passed by Sheristadar though he can pass an order fixing the case for necessary orders in the absence of the Presiding Officer. Hence, apparently it appears that the order passed by the Sheristadar on 09.09.2024 to the extent of fixing the matter for hearing is patently illegal.

9. In view of the above, this Court is inclined to dispose of revision petition without issuing notice to the respondents.

10. The impugned order dated 09.09.2024 passed by the Sheristadar of learned Civil Judge (Junior Division) No. 1, Kamrup(M), is set aside to the extent of fixing the case for "hearing" today on 20.09.2024, i.e., today.

11. The Trial Court may fix a date for hearing with consent of both the sides today itself.

12. The learned senior counsel for the petitioners has assured this Court to inform the Trial Court about the order passed by this Court today orally as it would take some time to get the certified copy of this order.

13. This revision petition is accordingly disposed of.

JUDGE

Comparing Assistant