

GAHC010197012024



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

Case No. : CRP(IO)/365/2024

MAMPI GOGOI
W/O- LATE TRIDIP GOGOI,
PROPRIETOR OF M/S ARADHYA BUILDERS AND DEVELOPERS,
H.NO-5, JONAKI PATH, S.K BARUAH ROAD, RUKMINI NAGAR,
P.S- DISPUR, GHY-06, DIST- KAMRUP (M), ASSAM,

R/O- ARADHYA APARTMENT , BLOCK NO-1, 5TH FLOOR, FLAT NO-5B,
SAMSHAN ROAD, NEAR TORAJAN MANDIR, JORHAT, PIN-785001

VERSUS

NARUTTAM SONOWAL
S/O- AMBIKA SONOWAL, R/O- H.NO-5, KACHARI BASTI, PANCHABORO
PATH, BYE LANE NO-6, DISPUR, GANESHGURI, GUWAHATI-06, DIST-
KAMRUP (M), ASSAM

Advocate for the Petitioner : MR. S P SHARMA, MR. A KASHYAP, K AHMED

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 23.09.2024

Heard Mr. S.P. Sharma, 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 03.05.2024, passed by the learned Civil Judge (Senior Division), Jorhat, in Title Suit No. 03/2024.

3. It is to be noted here that vide impugned order dated 03.05.2024, the learned trial Court has rejected the petition, being Petition No. 1017/2024, filed by the petitioner for accepting the written statement and directed thereafter to proceed ex-parte against the petitioner.

4. Mr. Sharma, learned counsel for the petitioner submits that during pendency of the Title Suit No. 03/2024, the husband of the petitioner suffered demise and on account of death of her husband, she could not obtain the relevant documents to file the written statement and on such count, she could not file the written statement before the learned trial Court within a period of 90 days. Mr. Sharma referring to the decisions of Hon'ble Supreme Court in the cases of **Kailash vs. Nankhu**, reported in (2005) 4 SCC 480 and **Salem Advocate Bar Association, Tamil Nadu vs. Union of India**, reported in (2005) 6 SCC 344, submits that filing of written statement within a period of 90 days is not mandatory, but directory and if sufficient cause is being shown, then it can be extended beyond 90 days, and since the petitioner herein has sufficiently explained the cause of delay, the learned trial Court ought to have allowed the petitioner to file written statement before the learned trial Court, otherwise she would not be able to defend her case properly and therefore, it is contended to allow the petition to file her written statement.

5. Having heard the submission of Mr. Sharma, 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 03.05.2024 and the

decisions of Hon'ble Supreme Court referred by Mr. Sharma.

6. It appears that the learned trial Court has dismissed the petition filed by the petitioner for allowing her to file written statement beyond the period of 90 days and thereafter, directed to proceed the case ex-parte against the petitioner.

7. It is well settled that the period of 90 days in filing the written statement is not mandatory, but directory in nature and the same has been settled by Hon'ble Supreme Court in a catena of decisions including the decisions in **Kailash (supra)** and **Salem Advocate Bar Association, Tamil Nadu (supra)**, so referred by Mr. Sharma, learned counsel for the petitioner.

8. Since the petitioner here in this case has shown sufficient ground for failing to file the written statement within a period of 90 days, this Court is of the view that the impugned order dated 03.05.2024, so passed by the learned trial Court, fails to withstand its legal scrutiny and accordingly, the same stands set aside.

9. It is provided that the learned trial Court shall accept the written statement filed by the petitioner along with the Petition No. 1017/2024, and thereafter, proceed to hear and dispose of the suit in accordance with law.

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

JUDGE

Comparing Assistant