

GAHC010199672024



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

Case No. : CRP(IO)/386/2024

RAJA THAPA AND ANR
S/O- LATE UTTAM THAPA, R/O- VILL.- NOKHROY GAON, P.O. BORGURI,
P.S. GUIJAN OUT POST, DIST. TINSUKIA, ASSAM, PIN- 786126.

2: SMTI. KARUNA THAPA
S/O- LATE PAHALWAN THAPA
R/O- VILL.- NOKHROY GAON
P.O. BORGURI
P.S. GUIJAN OUT POST
DIST. TINSUKIA
ASSAM
PIN- 786126

VERSUS

ABINASH THAPA AND 2 ORS
S/O- LATE RATAN THAPA, R/O- VILL.- NOKHROY GAON, P.O. BORGURI, P.S.
GUIJAN OUT POST, DIST. TINSUKIA, ASSAM

2:BISHNU THAPA
S/O- LATE RATAN THAPA
R/O- VILL.- NOKHROY GAON
P.O. BORGURI
P.S. GUIJAN OUT POST
DIST. TINSUKIA
ASSAM

3:SMTI KUMARI THAPA
MOTHER AND WIFE OF LATE RATAN THAPA
S/O- LATE RATAN THAPA
R/O- VILL.- NOKHROY GAON
P.O. BORGURI
P.S. GUIJAN OUT POST
DIST. TINSUKIA

ASSA

Advocate for the Petitioner : MR. R K TALUKDAR, MS TINLUNG

Advocate for the Respondent : ,

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

30.09.2024

Heard Mr. M.K. Sharma, learned counsel for the petitioners.

2. This petition under Article 227 of the Constitution of India, read with Section 115 and 151 of the Code of Civil Procedure, 1908, the petitioners, namely, Shri Raja Thapa and Smt. Karuna Thapa, have put to challenge the correctness or otherwise of the order dated 08.07.2024, passed by the learned Civil Judge (Senior Division), Tinsukia, in Title Suit No.58/2023.

3. It is to be noted here that vide impugned order dated 08.07.2024, the learned Trial Court had allowed the respondents/plaintiffs to file their written statement to the counter claim jointly filed by the present petitioners, as defendant Nos.3 and 10, after elapse of 90 days.

4. Mr. Sharma, learned counsel for the petitioners, referring to the order dated 08.07.2024, submits that the learned Trial Court vide said order had allowed the respondents to file their written statement to the counter claim jointly filed by the present petitioners beyond 90 days by holding that the respondents have received the copy of counter claim filed by the petitioners/defendants on 02.04.2024. But, referring to the order dated 15.12.2023, Mr. Sharma submits that vide order dated 15.12.2023, the learned Trial Court has received the written statement along with copy to the plaintiffs

and as such, there is no question of receiving the same on 02.04.2024 by the respondents/plaintiffs arises.

5. Further, Mr. Sharma submits that even if it is accepted that the same were received on 02.04.2024, then also, the learned Trial Court has extended the time to file the written statement against the counter claim to the respondents herein without there being an application filed for extension of time and extension of time suo-moto without there being an application is contrary to the provision of Order 8 Rule 1 of the CPC. Referring to a decision of High Court of Madras in **Ramesh Flowers Private Limited v. Mr. Sumit Srima1 [CRP(MD) Nos.1853 & 1854/2024 and CMP(MD) Nos.10508 & 10512/2024]**, Mr. Sharma submits that request for extension of time for filing written statement after expiry of 30 days, has to be in writing with good reasons and after expiry of 30 days written statement can be accepted only upon condonation of delay in filing the same. Since, in the case in hand, the learned Trial Court has suo-moto extended the time and since no application was filed by the respondents herein for extension of time showing the cause of delay in filing the written statement, Mr. Sharma submits that the impugned order, dated 08.07.2024, fails to withstand the legal scrutiny and therefore, it is contended to set it aside.

6. Having heard the submission of learned counsel for the petitioners, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 08.07.2024.

7. It appears that the Trial Court has observed that the written statement with counter claim filed by the present petitioners was received by the respondents on 02.04.2024. But, thereafter also till 08.07.2024, more than 95 days had elapsed. Since the aforesaid extension of time was not granted on the basis of a written request made by the respondents, in view of the provision under Order 8 Rule 1 of the CPC, the impugned order dated 08.07.2024 appears to be illegal and arbitrary and as such, the same failed to

withstand the legal scrutiny and liable to be set aside. Accordingly, the impugned order dated 08.07.2024 stands set aside.

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

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant