

GAHC010203292024



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

Case No. : CRP(IO)/438/2024

SUJATA BHATTACHARJEE
D/O- LATE SARBA RANJAN BHATTACHARJEE AND LATE CHANDI RANI
BHATTACHARJEE,
W/O- SRI PRAGYANANDA BHATTACHARJEE,
E/O- PANDAVNAGAR, BORIPARA,
MALIGAON, GUWAHATI-21,
DISTRICT OF KAMRUP(METRO),
ASSAM.

VERSUS

SUNANDA SHARMA
D/O- LATE SARBA RANJAN BHATTACHARJEE AND LATE CHANDI RANI
BHATTACHARJEE,
PRESENT ADD- BABA NAGAR, KATIGANHALLI,
YELAHANKA, NEAR BHARTI PUBLIC SCHOOL,
BANGALORE, KARNATAKA- 560063.

Advocate for the Petitioner : MR. B BORAH, MR P DEKA,MR. S. DEY

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

08.11.2024

Heard Mr. B. Borah, 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 22.08.2024, passed by the learned Civil Judge (Senior Division) No. 1, Kamrup (M) at Guwahati in Title Suit No. 222/2023.

3. It is to be noted here that vide impugned order dated 22.08.2024, the learned Civil Judge (Senior Division) No. 1, Kamrup (M) at Guwahati has dismissed the Petition No. 2212/2024, filed under Section 151 of the C.P.C. seeking acceptance of her written statement.

4. Mr. Borah, learned counsel for the petitioner submits that the petitioner was suffering from several ailments and her husband is a wheel chair bound person and they were undergoing treatment outside the State. Mr. Borah further submits that the medical documents along with the air tickets were also enclosed with the Petition No. 2212/2024, showing the ground for which the written statement could not be filed in time, with a prayer to accept the same. Mr. Borah further submits that the petitioner had engaged another set of counsel, who had also prayed for time for filing written statement, but failed to do the same on account of absence of the petitioner, as she, along with her husband, was undergoing treatment outside the State. Mr. Borah also submits that the matter is between two sisters and another proceeding is also pending between them, i.e. Title Suit No. 222/2023, in which the Petition No. 2212/2024 was filed, which is pending for service report, as some of the respondents/defendants are yet to enter appearance and as such, no prejudice will be caused to the other sides. Therefore, Mr. Borah has fervently appealed to allow this petition.

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 including the medical documents and the air tickets and also perused the impugned order dated 22.08.2024, passed by the learned Civil Judge (Senior

Divison) No. 1, Kamrup (M) at Guwahati in Title Suit No. 222/2023.

6. It appears that the learned trial court had dismissed the petition, as there was delay near about 5 months in submitting the written statement and that the ground of medical treatment of the petitioner was not taken up previously by the former set of counsel in the earlier application which shows that the petitioner did not approach the court with clean hand and therefore, the learned trial court had dismissed the petition.

7. Admittedly, the medical documents which is enclosed with the Petition No. 2212/2024 was not enclosed with the earlier petition and Mr. Borah, learned counsel for the petitioner submits that as the petitioner was undergoing treatment outside the State said documents could not be furnished to the earlier set of counsel.

8. But, having gone through the documents placed on record, I find that it is a fact that the petitioner was suffering from ailments and she was undergoing treatment along with her husband, who is a wheel chair bound person. Further, it appears that the case is pending at the stage of service report as some of the respondents/defendants are yet to enter appearance.

9. It is well settled in the catena of decisions of Hon'ble Supreme Court in the case of **Salem Advocate Bar Association, T.N. vs. Union of India**, reported in **(2005) 6 SCC 344** and **Kailash vs. Nanhku & Others**, reported in **(2005) 4 SCC 480** that the court can accept the written statement beyond the period of 90 days, if sufficient cause is shown.

10. Here in this case, in view of the medical documents produced by the petitioner and also in view of the submission of learned counsel for the petitioner, this court is of the view that the petitioner has assigned ground for failing to file written statement and the same appears to be sufficient ground.

11. Under such circumstances, this court is inclined to allow this petition. Consequently, the learned trial court is directed to accept the written statement filed by the petitioner herein, however, subject to payment of Rs. 5,000/- being the cost. The amount shall be deposited before the learned trial court on the next date, so as to hand over the same to the respondents/defendants.

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

Comparing Assistant

JUDGE