

GAHC010208072022



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

Case No. : CRP(IO)/244/2022

RUSHMAT AHMED CHOUDHURY
S/O LATE ABDUL MANNAN CHOUDHURY, R/O VILL- BOTORASHI, P.O.-
TILLABAZAR, P.S.-KARIMGANJ, DIST- KARIMGANJ, ASSAM, PIN-788709

VERSUS

MD. ABDUL GONI AND 8 ORS
S/O LATE ABDUL SALAM, R/O VILL- BOTORASHI, P.O.-TILLABAZAR, P.S.-
KARIMGANJ, DIST- KARIMGANJ, ASSAM, PIN-788709

2:MD. ABDUL KHALIQUE
S/O LATE ABDUL SALAM
R/O VILL- BOTORASHI
P.O.-TILLABAZAR
P.S.-KARIMGANJ
DIST- KARIMGANJ
ASSAM
PIN-788709

3:MD. MOIN UDDIN
S/O LATE ABDUL SALAM
R/O VILL- BOTORASHI
P.O.-TILLABAZAR
P.S.-KARIMGANJ
DIST- KARIMGANJ
ASSAM
PIN-788709

4:ABDUL DAIYAN CHOUDHURY
S/O LATE ABDUL HANNAN CHOUDHURY
R/O VILL- BOTORASHI
P.O.-TILLABAZAR

P.S.-KARIMGANJ
DIST- KARIMGANJ
ASSAM
PIN-788709

5:KALIM UDDIN CHOUDHURY @ FAHAD CHOUDHURY
S/O LATE ABDUL KHALIQUE CHOUDHURY
R/O VILL- BOTORASHI
P.O.-TILLABAZAR
P.S.-KARIMGANJ
DIST- KARIMGANJ
ASSAM
PIN-788709

6:THE STATE OF ASSAM
REPRESENTED BY ITS PRINCIPAL SECRETARY
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
DISPUR
GUWAHATI-781006

7:THE DEPUTY COMMISSIONER
KARIMGANJ
P.O. AND P.S.-KARIMGANJ
DIST-KARIMGANJ
ASSAM
PIN-788710

8:THE CIRCLE OFFICER
KARIMGANJ REVENUE CIRCLE OFFICE
P.O. AND P.S.-KARIMGANJ
DIST-KARIMGANJ
ASSAM
PIN-788710

9:THE SENIOR SUB-REGISTRAR
KARIMGANJ
P.O. AND P.S.-KARIMGANJ
DIST-KARIMGANJ
ASSAM
PIN-78871

For the Petitioner(s) : Mr. H. Rohman, Advocate

For the Respondent(s) : Mrs. R. Choudhury, Advocate
: Mr. T. R. Gogoi, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 11.03.2024

1. The instant application has been filed under Article 227 of the Constitution challenging the order dated 13.07.2022 whereby the learned Court of the Munsiff No.3 Karimganj had rejected the written statement so filed by the Petitioner on the ground that there was delay in filing the written statement.
2. This Court has duly taken note of that the written statement was filed on 13.07.2022 along with a petition being Petition No.741/2015 praying that the said written statement be accepted. The learned Trial Court had rejected the said written statement on the ground to be not persuasive.
3. This Court has duly taken note of that the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 is directory in nature. Be that as it may, it is also well settled that though the provisions of Order VIII Rule 1 of the Code is directory in nature but then also, the defendant has to show good reasons for the purpose of accepting the written statement, if filed beyond the period of 90 days.
4. This Court also taken note of the reason assigned is that defendant No.3 who was the Petitioner was suffering from chronic fever for which the defendant No.3 could not file the written statement. This Court had also taken note of that the written statement had already been filed for which this Court is of the opinion that the said written statement ought to have been accepted by the learned Trial Court.
5. In that view of the matter, this Court interferes with the order dated

13.07.2022 thereby directing the learned Trial Court to accept the written statement filed by the defendant No.3.

6. It has also been submitted during the course of the hearing that the defendant No.3 has also filed a counter claim in the said proceedings. Taking into account the judgment of the Supreme Court in the case of ***Ashok Kumar Kalra Vs. Wing CDR. Surendra Agnihotri and Others*** reported in ***(2020) 2 SCC 394*** and further as with acceptance of the written statement, the suit goes back to the stage of filing of the pleadings, the said counter claim ought to be accepted. However, the said observations that the counter claim is required to be accepted shall not prejudice the plaintiffs to challenge the maintainability of the counter claim during the course of the trial.

7. This Court has also taken note of that the plaintiff has also suffered on account of the delay caused by the defendant No.3/Petitioner in not filing the written statement within the time and thereby the suit, as submitted by Mrs. R. Choudhury has proceeded to the stage of evidence.

8. Taking into account the above, this Court is of the opinion that some costs is required to imposed upon the Petitioner/defendant No.3 which this Court quantifies at Rs.10,000/-. In addition to the above, this Court has also taken note of that on 19.10.2022, this Court had stayed the further proceedings in Title Suit No.409/2021. The said interim order stands vacated.

9. As both the parties are duly represented, the said parties are directed to appear before the learned Trial Court on 27.03.2024 and on the very date, the petitioner/defendant No.3 shall deposit the amount of Rs.10,000/- as cost which have been imposed herein before the learned Trial Court which shall be a condition precedent for acceptance of the written statement.

10. This Court further directs that upon depositing the said amount of Rs.10,000/-, the learned Trial Court shall release the said amount to the plaintiff upon an application filed by the plaintiff.

11. With above observations and directions, the instant revision petition stands disposed of.

JUDGE

Comparing Assistant