

GAHC010227372018



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

Case No. : CRP(IO)/392/2018

NABA KUMAR NATH
S/O- DHANIRAM NATH, R/O- VILL- DAHALI, P.O- BATARHAT, P.S-
PALASHBARI, DIST- KAMRUP, ASSAM, PIN- 781122

VERSUS

SUNIL THAKURIA
S/O- LATE ANANDA THAKURIA, R/O- VILL- MIRZA (JAMORTAL), P.O-
MIRZA, P.S- PALASHBARI, DIST- KAMRUP, ASSAM, PIN- 781125

Advocate for the Petitioner : MR. N N JHA

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03.06.2024

Heard Ms. M. Sahu, learned counsel for the petitioner, who has filed this revision petition against an order dated 04.07.2018 passed by the Learned Civil Judge, Kamrup in Money Appeal No. 01/2015. By the aforesaid impugned order, the application filed by the present petitioner under Order 41 Rule 27 of the CPC has been rejected.

Notice was issued by this Court on 30.11.2018. The subsequent order dated 15.11.2019 of this Court would reflect that the petitioner was granted time to take fresh steps on the sole respondent and the further Office Notes would reflect that service is not complete.

The order dated 29.05.2024 of the learned Lawazima Court would reflect that the learned counsel had made a submission that they would not like to proceed with the instant petition and in terms thereof, an Office Note was made on 30.05.2024 whereafter this matter has been listed today.

Ms. Sahu, the learned counsel for the petitioner has however submitted that in spite of the aforesaid submission, the petitioner would like to proceed with this petition.

The impugned order dated 04.07.2018 is in connection with an application filed by the present petitioner under Order 41 Rule 27 of the CPC. The said application however has not been annexed with the present revision petition. Be that as it may, this Court has carefully examined the said order dated 04.07.2018.

The learned Civil Judge, Kamrup after discussing the provisions of law laid down in Order 41 Rule 27 of the CPC has come to a finding that the plaintiff did not exhibit the concerned document which is an agreement dated 03.09.2010 pertaining to money transaction which was the foundation of the claim made in the Money Suit. The learned Court has also observed that the conditions attached to an application under Order 41 Rule 27 of the CPC, mainly not being able to produce a document in spite of exercise of due diligence has not been fulfilled.

The aforesaid provision of Order 41 Rule 27 of the CPC is an exceptional provision in the CPC to adduce production of additional evidence in the appellate Court and the entire objective is to maintain fairness and ensure that interest of justice is served. In the instant case, the pre-conditions attached to the aforesaid provision of law do not appear to have been fulfilled by the petitioner.

Further, the powers to be exercised by this Court under Article 227 of the Constitution of India under which this petition has been presented is a supervisory power with the objective to ensure that the Subordinate Courts do not exceed their jurisdiction. The impugned order dated 04.07.2018 on the other hand appears to be a reasoned order wherein proper grounds have been cited for rejecting the application.

In view of the above, this Court is of the considered opinion that the present is not a fit case wherein any relief can be granted to the petitioner.

Petition accordingly stands dismissed.

JUDGE

Comparing Assistant