

GAHC010228972024



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

Case No. : CRP(IO)/440/2024

MAHESH TALUKDAR
S/O- SRI DINANATH TALUKDAR, ORIGINAL RESIDENT OF VILL.-
SATGAON (KOCHPARA), P.O. UDAYAN VIHAR, P.S. SATGAON, GHY-781071,
DIST. KAMRUP(M), ASSAM. SINCE 2020 TRANSFERRED AND POSTED AT
REMOTE AREA OF TAMENGLONG IN MANIPUR IN CONNECTION WITH
HIS SERVICE IN DEFENCE UNDER ASSAM RIFLES AND SINCE NOVEMBER,
2023 POSTED AT KHONSA, DIST. KHONSA IN ARUNACHAL PRADESH.

VERSUS

DINANATH TALUKDAR
S/O- LATE LOKNATH TALUKDAR, R/O- VILL.- SATGAON (KOCHPARA), P.O.
UDAYAN VIHAR, P.S. SATGAON, GUWAHATI-78171, DIST.- KAMRUP(M),
ASSAM

Advocate for the Petitioner : MR. D NANDI, MS P SARMAH, MR. A NANDI

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

12.11.2024

Heard Mr. D. Nandi, 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 orders dated

30.05.2022 and 14.08.2024, passed by the learned Civil Judge (Junior Division), No. 4, Kamrup (M) at Guwahati, in Title Suit No. 05/2022.

3. It is to be noted here that vide impugned order dated 30.05.2022, the learned Civil Judge (Junior Division), No. 4, Kamrup (M) at Guwahati has refused to grant adjournment and time to file written statement and vide impugned order dated 14.08.2024, the learned Tribunal has refused to condone the delay of 211 days and to accept the written statement filed by the petitioner.

4. Mr. Nandi, learned counsel for the petitioner submits that in the year 2020, the petitioner was serving as a defence personnel of Assam Rifles and he was posted at a remote area of Tamenglong district of Manipur and in the month of November, 2023, he was transferred to Khonsa district of Arunachal Pradesh and due to flood and consequent road and rail blockade, he could not come to Guwahati to file the written statement in the Title Suit No. 05/2022. Mr. Nandi further submits that on 30.05.2022, he had filed a Petition No. 640/2022 for adjournment and allowing him some time to file the written statement. But, the learned trial court vide order dated 30.05.2022, has dismissed the same. Thereafter, the petitioner had filed another Petition No. 1576/2022 for condonation of delay of 211 days in filing the written statement and to accept the same. But, the learned trial court has dismissed the said petition as well. Mr. Nandi further submits that though the petitioner has received the summon from the court, yet, the said summon was not accompanied by any documents of the plaint and the said fact was brought to the notice of the learned trial court. But, despite, the learned trial court had rejected the petition, vide order dated 14.08.2024. Mr. Nandi further submits that the case is pending at the stage of filing evidence by the plaintiffs and that unless the written statement is accepted and the petitioner is allowed to contest the suit, serious prejudice will be caused to him. Mr. Nandi further submits that the rule of filing the written statement within 90 days is not an

inflexible rule and the same may be relaxed and the same is well settled in several decisions by Hon'ble Supreme Court and also by this court, provided sufficient cause is shown and the petitioner has shown good ground and therefore, Mr. Nandi has contended to allow the petition.

5. Having heard the submissions of learned counsel for the petitioner, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned order dated 14.08.2024, passed by the learned Civil Judge (Junior Division), No. 4, Kamrup (M) at Guwahati, in Title Suit No. 05/2022.

6. It appears that in the year 2020, the petitioner was posted in Tamenglong district of Manipur and at that time, there was flood and road and rail blockade, for which he could not come to Guwahati to file the written statement. It further appears that while he received the summon from the court, the same was not accompanied by any documents of the plaint, which also stood in the way of filing the written statement within stipulated time.

7. The ground so assigned by the petitioner for failing to file the written statement within the stipulated period of 90 days, to the considered opinion of this court is 'sufficient ground' and when there exist sufficient grounds, the court may relax the period of 90 days in filing the written statement as provided in Order 8 Rule 1 of the C.P.C. and this is well settled in the case of **Salem Advocate Bar Association, T.N. vs. Union of India**, reported in **(2005) 6 SCC 344** and also in the case of **Kailash vs. Nanhku & Others**, reported in **(2005) 4 SCC 480**.

8. Further, it appears that the case is pending at the stage of filing the evidence by the plaintiff and in that view of the matter, this court is inclined to set aside the impugned orders dated 30.05.2022 & 14.08.2024. Consequently, the learned trial court has to accept the written statement filed by the petitioner and to

proceed with the matter in accordance with law.

9. In terms of above, this petition stands disposed of.

Comparing Assistant

JUDGE