

GAHC010229982024



2024:GAU-AS:12855

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

Case No. : CRP(IO)/526/2024

BIKASH KUMAR DAS
S/O LATE DHIRENDRA NARAYAN DAS AND LATE APARNA DAS, RESIDENT
OF C/O KUNTALA LAHKAR , HOUSE NO. 10 (BHARALU GIRLS PG)
AGMARK BYELANE, KRC ROAD, BHARALUMUKH GUWAHATI ASSAM
781009

VERSUS

RWITTICKA DAS @ RWITTICKA KALITA AND ANR
W/O SRI BHUBANESWAR KALITA,
D/O LATE DHIRENDRA NARAYAN DAS AND LATE APARNA DAS,
RESIDENT OF HOUSE NO. 20, M.G PATH CHRISTIAN BASTI, GS ROAD,
GUWAHATI PS DISPUR DIST KAMRUP M ASSAM 781005

2:SRI CHIRANJIB DAS

S/O LATE DHIRENDRA NARAYAN DAS AND LATE APARNA DAS
RESIDENT OF FLAT NO. 3A
KUWOLEE APARTMENT
KHARGHULI
GUWAHATI ASSAM 78100

Advocate for the Petitioner : MR A BHATRA, MR. B D DEKA, N CHAUDHURY, MR A
DEKA, MR. M DAS

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 17.12.2024

Heard Mr. A. Bhatra, 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 21.09.2024, passed by the learned Additional District & Sessions Judge No. 5, Kamrup (M) at Guwahati in Misc. Probate Case No. 53/2023.

3. It is to be noted here that vide Order dated 21.09.2024, the learned Additional District & Sessions Judge No. 5, Kamrup (M) at Guwahati has rejected the petition filed by the petitioner seeking adjournment of the case and granting further time to file written objection and thereafter, fixed the matter for evidence of the witnesses of the plaintiff.

4. Mr. Bhatra, learned counsel for the petitioner submits that the petitioner is a visually impaired person and on receipt of notice from the court, the petitioner entered appearance before the learned trial court on 22.03.2024 and prayed for time for filing written objection. On some occasions, the learned trial court has granted him time to file written objection. But, ultimately on 21.09.2024, the learned trial court has refused to grant further time to file written objection and fixed the matter for evidence of the witnesses of the plaintiff and as such, the learned trial court has closed his right to file written objection. Mr. Bhatra further submits that as the petitioner is a visually impaired person he was always accompanied by his wife and due to ill health of his mother-in-law, the wife of the petitioner was busy in taking care of her mother and therefore, the petitioner could not instruct his engaged counsel. Mr. Bhatra further submits that unless the

petitioner is allowed to file his written objection, serious prejudice will be caused to him. Therefore, Mr. Bhatra has contended to allow the petitioner to file written objection.

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.

6. It appears that the petitioner is the defendant in the probate case, being Misc. Probate Case No. 53/2023, pending before the learned Additional District & Sessions Judge No. 5, Kamrup (M) at Guwahati and he received notice from the court and entered appearance on 22.03.2024, and prayed for time to file his written objection. Thereafter, due to non-availability of a certified copy of documents, he sought adjournment for filing his written objection on 29.05.2024 and on 01.08.2024. Thereafter, on 11.09.2024, the petitioner through his engaged counsel had again sought for an adjournment for filing his written objections, citing that he is a visually impaired person and that his mother-in-law is seriously ill and his wife is preoccupied with his mother-in-law for her treatment, for which she could not accompanied him to the court to file written objection and also he could not instruct his engaged counsel and therefore, the learned trial court has allowed the prayer and fixed the matter on 21.09.2024. On 21.09.2024, also the petitioner could not file his written objection on the same ground. But, on that day, the learned trial court has dismissed the petition.

7. To a pointed query of this court, Mr. Bhatra, learned counsel for the petitioner submits that he had not enclosed the written objection along with this petition. Further it appears from the documents placed on record that except the OP Cash Bill of Supply, dated 05.09.2024; one prescription dated 05.09.2024; some whatsapp messages; and test reports, nothing has been produced before this court to substantiate that because of ill health of mother-in-law of the petitioner, the

written objection could not be filed in time.

8. Considering the numbers of adjournments already granted to the petitioner by the learned trial court and also considering the facts and circumstances discussed herein above, this court is of the view that the impugned order so passed by the learned trial court suffers from no illegality or infirmity and no jurisdictional error has been committed by the learned trial court requiring any interference of this court.

9. Mr. Bhatra, learned counsel for the petitioner submits that the rule of filing the written objection within 90 days is not inflexible rule and there is also judgment of Hon'ble Supreme Court in this regard. The submission of Mr. Bhatra is taken note of, but, in view of the fact that sufficient opportunity was granted to the petitioner, this Court is of the considered opinion that no interference with the impugned order is warranted.

10. In the result, I find no merit in this petition. Accordingly, the same stands dismissed, at this motion stage itself.

JUDGE

Comparing Assistant