

GAHC010233482023



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

Case No. : CRP(IO)/411/2023

SANJIB BORTHAKUR
S/O LATE ABANI BORTHAKUR, R/O CHAUFFER QUARTER OF HONORABLE
JUSTICE SOUMITRA SAIKIA, GAUHATI HIGH COURT, BAMUNIMAIDAM,
RATNAGIRI PATH, KAMRUP (M), ASSAM

VERSUS

M/S P B ENTERPRISE, SIVASAGAR AND ANR
HAVING ITS REGISTERED OFFICE AT DORIKAPAR NANTIAL PATHAR, P.O.-
SIVASAGAR, P.S.-SIVASAGAR, DIST-SIVASAGAR, ASSAM, PIN-785640

2:PROBIN BURAGOHAIN
S/O LATE UMAKANTA BURAGOHAIN
R/O DORIKAPAR NANTIAL PATHAR
P.O.-SIVASAGAR
P.S.-SIVASAGAR
DIST-SIVASAGAR
ASSAM
PIN-78564

Linked Case : CRP(IO)/409/2023

SANJIB BORTHAKUR
S/O LATE ABANI BORTHAKUR
R/O CHAUFFER QUARTER OF HONORABLE JUSTICE SOUMITRA SAIKIA
GAUHATI HIGH COURT
BAMUNIMAIDAM
RATNAGIRI PATH
KAMRUP (M)
ASSAM

VERSUS

M/S P B ENTERPRISE
SIVASAGAR AND ANR
HAVING ITS REGISTERED OFFICE AT DORIKAPAR NAMTIAL PATHAR
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DIST-SIVASAGAR
ASSAM
PIN-785640

For the petitioner (s) : Mr. A. R. Shome, Advocate

For the respondent (s) : Mr. S. Sahu, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

24.04.2024

Heard Mr. A. R. Shome, the learned counsel for the petitioner and Mr. S. Sahu, the learned counsel appearing on behalf of the respondent Nos.1 & 2.

2. Both the applications under Article 227 of the Constitution are taken up together for disposal taking into account that both the applications arise out of the same suit proceedings.

3. It reveals from the records that the respondents herein had filed the suit being Money Suit No.44/2021 before the Court of the Munsiff No.2 at

Sivasagar wherein the petitioner was arrayed as defendant and his father was arrayed as the proforma defendant. In the said suit, as is apparent from the records, the petitioner appeared on 17.03.2021 and sought for time for filing the written statement on the ground that the copy of the plaint was not furnished to him. Accordingly, the learned Trial Court, i.e. the Court of the Munsiff No.2 at Sivasagar directed the plaintiff to serve copy of the plaint along with the documents, if any, to the counsel appearing on behalf of the defendant/the petitioner herein.

4. The records further reveal that on account of the COVID restrictions and death of the proforma defendant, the proceedings were initiated for substitution of the legal representatives of the proforma defendant for which the suit got delayed. On 23.12.2021 which was the date for filing of the written statement by the defendant/petitioner herein, the defendant did not appear, and consequently, the learned Trial Court proceeded ex-parte against the defendant/the petitioner herein and fixed 21.02.2022 for framing Point for Determination. However, on 21.02.2022, on account of not taking steps for substitution of the legal representatives of late proforma defendant, the suit was stalled thereby directing the plaintiff to take appropriate steps.

5. The records further reveal that steps were duly taken and the legal representatives of the proforma defendant were duly arrayed as parties to the said suit as proforma defendant Nos.1(a) and 1 (b). However, the proforma defendants did not file any written statement for which the suit proceeded ex-parte argument then and it was at the stage of argument when two applications were filed. The first application is an application under Section 5 of the Limitation Act, 1963 for condoning the delay of 622

days and the second application was for the purpose of setting aside the ex-parte order dated 21.02.2022. The learned Trial Court rejected both the applications vide separate orders dated 16.09.2023 and it is on account of that, the instant two revision applications have been filed before this Court.

6. In the backdrop of the above, this Court now finds it relevant to take note of the submissions made by the learned counsels appearing on behalf of the parties. Mr. A. R. Shome, the learned counsel appearing on behalf of the petitioner in both the revision petitions submitted that the petitioner never authorized any counsel to appear on behalf of him and the petitioner even did not receive any summons. It was only at the stage of argument, the petitioner somehow came to learn about the pendency of the said suit for which the petitioner filed those two applications which were rejected by the learned Trial Court and against which the two revision applications have been filed.

7. Mr. S. Sahu, the learned counsel appearing on behalf of the respondents submits that from a perusal of the applications, it would nowhere show that the petitioner has taken any such ground that the petitioner did not authorize his lawyer to appear on 17.03.2021. The learned counsel appearing on behalf of the respondents submits that a perusal of the suit would show that the suit was filed for recovery of money amounting to Rs.5 lakhs which the defendant/the petitioner herein had taken as advance from the plaintiff to sell the land of his father who was the proforma defendant-Late Abani Borthakur. The proforma defendant not only appeared in the said suit proceedings when he was alive, even the substituted legal representatives had also appeared and

did not file any written statement. The learned counsel for the respondent submits that the petitioner very well knew about the entire proceedings throughout and is just making an excuse before this Court for which the instant petitions are liable to be dismissed with exemplary costs for abusing the process of the Court.

8. Upon hearing the learned counsel for the petitioner as well as the learned counsel for the respondents and also on perusal of the materials on record, it reveals that there is no such allegation made in the application seeking vacation of the ex-parte order or in the application for condonation of delay that the petitioner did not authorize the earlier counsel who represented him on 17.03.2021.

9. This Court further finds it relevant to take note of that the father of the petitioner was the proforma defendant in the suit proceedings. After his death, his brother and his sister were arrayed as proforma defendants. It is completely not believable that the petitioner was not aware of the said proceedings, that too when he was duly represented by his counsel. This Court further finds it very pertinent to mention that the order was passed on 23.12.2021 and the petitioner did not take any steps till the suit was fixed for argument. Under such circumstances, this Court having perused the impugned orders passed by the learned Trial Court, i.e. the orders dated 16.09.2023 in Misc.(J) Case No.112/2023 and Misc.(J) Case No.113/2023 and do not find any reason to exercise the jurisdiction under Article 227 of the Constitution in the present facts.

10. Accordingly, both the revision petitions stand dismissed.

11. Be that as it may, before concluding, this Court finds it relevant to

observe that the rejection of the applications so filed vide the impugned order which have not been interfered with by this Court shall not act as a bar on the part of the petitioner to appear before the learned Trial Court in the suit proceedings from the stage as it presently stands.

12. This Court vide the order dated 08.12.2023 in CRP(IO) No.409/2023 and 05.01.2024 in CRP(IO) No.411/2023 stayed the further proceedings in Money Suit No.44/2021 pending before the Court of the Civil Judge (Junior Division) No.2, Sivasagar. Both the orders stand vacated and the parties being duly represented herein are directed to appear before the learned Trial Court on 03.06.2021 for further proceedings of the suit.

JUDGE

Comparing Assistant