

GAHC010234452024



2024:GAU-AS:11279

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

Case No. : CRP(IO)/467/2024

MASHADDAR ALI
S/O LATE SIDDIQUE ALI, R/O RANGMAHAL, P.O.-RANGMAHAL, P.S.-
CHANGSARI, DIST- KAMRUP, ASSAM

VERSUS

ARIF ALI AND ANR
S/O LATE SARUDHAN ALI, R/O RANGMAHAL, P.O.-RANGMAHAL, P.S.-
CHANGSARI, DIST- KAMRUP, ASSAM

2:ALTAF ALI
S/O LATE SARUDHAN ALI
R/O RANGMAHAL
P.O.-RANGMAHAL
P.S.-CHANGSARI
DIST- KAMRUP
ASSA

Advocate for the Petitioner : MR. B PHUKAN, MR. P KR KALITA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

20.11.2024

Heard Mr. B. Phukan, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, read with Section

151 of the C.P.C., the petitioner has put to challenge the correctness or otherwise of the Order dated 05.10.2024, passed by the learned Civil Judge (Senior Division), Kamrup, Amingaon, in Title Suit No. 08/2022.

3. It is to be noted here that vide Order dated 05.10.2024, the learned Civil Judge (Senior Division), Kamrup, Amingaon has rejected the Petition No. 3190/2024, filed by the petitioner, for praying another date for filing the written statement.

4. Mr. Phukan, learned counsel for the petitioner submits that the petitioner has filed one petition, being Petition No. 3190/2024, for extension of time for filing additional written statement in Title Suit No. 08/2022, where he has been arrayed as defendant. But, the learned trial court, vide impugned order dated 05.10.2024, has rejected the said petition, on the ground that 05.10.2024, is the 85th day of filing the written statement and the 90th day will fall on 10.10.2024, which was a holiday. As such, the learned trial court has erroneously rejected the petition filed by the petitioner, ignoring the provision of Section 4 of the Limitation Act, which provides that where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens. Mr. Phukan further submits that the petitioner is ready with the written statement.

5. Having heard the submission of learned counsel for the petitioner and also considering the facts and circumstances on the record, I find substance in the submission of Mr. Phukan, learned counsel for the petitioner.

6. It appears that as per proviso to Rule 1 of Order VIII of the C.P.C., the written statement has to be filed within 90 days and the 90 days is also not inflexible one and can be extended beyond 90 days, if sufficient ground is assigned for failing to file the written statement in time. (see – **Salem Advocate Bar Association, T.N. vs. Union of India**, reported in (2005) 6 SCC 344 and **Kailash vs. Nanhku & Others**, reported in (2005) 4 SCC 480).

7. In the case in hand, before elapse of 90 days, the learned trial court has rejected the petition for extension of time on the ground that the day on which 90 days will be completed is a holiday, ignoring the provision of Section 4 of the Limitation Act.

8. On such count, the impugned order dated 05.10.2024, suffers from illegality and arbitrariness and also is contrary to the provision of Section 4 of the Limitation Act. Accordingly, the impugned order dated 05.10.2024, stands set aside and quashed.

9. It is provided that the petitioner shall submit his written statement within a period of one week from today. Thereafter, the learned trial court shall proceed to hear and dispose of the matter in accordance with law.

10. In terms of above, this civil revision petition stands disposed of, at this motion stage itself.

Comparing Assistant

JUDGE