

GAHC010249012023



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

Case No. : CRP(IO)/349/2023

SAJIDA SAIKIA AND ANR
W/O MD NUR MOHAMMED ALI R/O VILL. KARIA BETKATA MOUZA UPAR
BARBHAG P.S. NALBARI DIST. NALBARI ASSAM

2: MD NUR MAHAMMED ALI
S/O LT. NOZIR ALI R/O VILL. KARIA BETKATA MOUZA UPAR BARBHAG
P.S. NALBARI DIST. NALBARI ASSA

VERSUS

SRI NAYAN MONI DEKA
S/O LT. PHANIDHAR DEKA R/O VILL. KATPUHA MOUZA UPAR BARBHAG
PS NALBARI DIST. NALBARI ASSAM PIN 781347

For the petitioner (s) : Mr. M. A. Sheikh, Advocate

For the respondent (s) : Mr. B. P. Borah, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

17.05.2024

This is an application under Article 227 of the Constitution
challenging the order dated 21.09.2023 passed in petition No.258/21 in

Title Suit No.79/2018 by the learned Court of the Munsiff No.2, Nalbari whereby the application seeking amendment of the plaint was rejected.

2. This Court has duly perused the written statement which was filed by the defendants on 30.03.2019 in the suit. This Court has further perused the application seeking amendment of the written statement. From a perusal of the said application, it reveals that at paragraph No.4, the defendants have stated what are the amendments which have been sought for.

3. This Court has heard Mr. M. A. Sheikh, the learned counsel appearing on behalf of the petitioners who submits that the learned Trial Court ought not to have rejected the said application taking into account that the said amendments which have been sought for amounts to amplification of the defence already taken, and as such, there is nothing new which has been brought in.

4. On the other hand, Mr. B. P. Borah, the learned counsel appearing on behalf of the respondent submits that there are certain amendments which have been sought for by which admissions made in the written statement are sought to be withdrawn which are not permissible as per law.

5. This Court upon a conjoint reading of the said amendment application with the written statement earlier filed finds that the amendment sought for at Sl. Nos.4(a), 4(d),4(g), 4(i) are amendments by which the defendants seek to take away the admissions which have been categorically made in the written statement. In the opinion of this Court, this is not a case where the amendments would change the nature and

character of defence, but herein is a case where the admissions made in the written statement are sought to be withdrawn, more particularly at the paragraphs mentioned herein above. Under such circumstances, in the opinion of this Court, the amendments which have been sought for in paragraph Nos. 4 (a), 4 (d), 4 (g) and 4 (i) cannot be permitted.

6. However, as regards the other amendments at paragraph Nos.4 (b), 4 (c), 4 (e), 4 (f) and 4 (h) in the opinion of this Court would neither change the nature and character of the defence nor amounts to withdrawal of any admissions. Rather, theses amendments amount to amplification of the statements which has already been made in the written statement. In respect to the amendments which have been sought for in 4 (j) which amounts to deletion of the Schedule to the written statement, in the opinion of this Court, the same is essential taking into account that there is no reference to any Schedule in the written statement.

7. Taking into account the above, this Court therefore disposes of the instant petition partly allowing the amendment application to the extent of only paragraph Nos.4 (b), 4 (c), 4 (e), 4 (f), 4 (h) and 4 (j). However, the amendments sought for paragraph Nos. 4 (a), 4 (d), 4 (g) and 4 (i) cannot be permitted, and as such, the amendment application so far as those paragraphs stands rejected.

8. This Court vacates the order dated 06.11.2023 whereby the Title Suit No.79/2018 was stayed and directs both the parties to appear before the learned Trial Court on 15.06.2024. On that date, the amended written statement in terms with the above observations shall be filed by the defendants, else the provision of Order VI Rule 18 of the Code of Civil

Procedure, 1908 shall come into play.

9. With the above, the instant petition stands disposed of.

JUDGE

Comparing Assistant