

GAHC010256742024



2024:GAU-AS:12883

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

Case No. : CRP(IO)/499/2024

ABDUL RAHMAN
S/O- LATE TURAB ALI,
R/O- BENGENA ATI,
P.O.- CHOTA HAIBOR,
P.S.- NAGAON (SADAR),
DISTRICT- NAGAON, ASSAM,
PIN- 782003.

VERSUS

HADAYAT ULLAH
S/O- LATE GIYAS UDDIN,
R/O- BENGENA ATI,
P.O.- CHOTA HAIBOR,
MOUZA- NIZ SAHAR,
P.S.- NAGAON (SADAR),
DISTRICT- NAGAON, ASSAM,
PIN- 782003.

Advocate for the Petitioner : MR. P DEKA, MR A DAS

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 18-12-2024

Heard Mr. P. Deka, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, read with Section 151 of the CPC, the petitioner has put to challenge the correctness or otherwise of the orders dated 20.09.2023, 09.05.2024 and 17.08.2024, passed by the learned Civil Judge (Junior Division) No. 1, Nagaon, in Title Suit No. 208/2021.

3. It is to be noted here that vide impugned order dated 20.09.2023, the learned Civil Judge (Junior Division) No. 1, Nagaon ('trial Court', for short) had dispensed with the cross-examination of the plaintiff's witnesses and fixed the matter for argument and vide impugned order dated 09.05.2024, the learned trial Court had dismissed the petition No. 2300/2023, filed by the petitioner under Section 151 of the CPC, for allowing the defendant/petitioner herein to cross-examine the plaintiff's witnesses and to take part in the hearing of the instant suit, and also vide impugned order dated 17.08.2024, the learned trial Court had dismissed the petition No. 2012/2024, filed by the petitioner, under Section 114, read with Order 47 Rule 1, read with Section 151 of the CPC, for review of the order dated 09.05.2024.

4. Mr. Deka, learned counsel for the petitioner submits that on account of illness of the son of the petitioner since 2022, the petitioner could not be able to keep track of the case and his earlier engaged counsel also withdrew the vakalatnama and thereafter, vide order dated 02.06.2023 (Annexure-VI), the

learned trial Court had issued notice to the petitioner and thereafter, listed the matter on 26.07.2023, and on that day, the learned trial Court had again fixed the matter on 20.09.2023, for appearance/SR of the defendant/petitioner. Thereafter, on 20.09.2023, the learned trial Court, instead of issuing fresh notice, upon seeing the notice returned unserved, had held that the petitioner is duty bound to appear in a trial and thereafter, dispensed with cross-examination of the plaintiff's witnesses, and ordered that the case will proceed in absence of the petitioner. Thereafter, the petitioner had filed a petition, No. 2300/2023, before the learned trial Court under Section 151 of the CPC to allow him to cross-examine the plaintiff's witnesses and to take part in the hearing of the instant suit by producing all the relevant documents. But, the learned trial Court had dismissed the said petition as the case was fixed on 26.07.2022 for cross-examination of the plaintiff's witnesses and the petitioner remained absent and failed to show sufficient cause. Mr. Deka also submits that thereafter, one petition, No. 2012/2024, was filed by the petitioner under Section 114, read with Order 47 Rule 1, read with Section 151 of the CPC, to review the order dated 09.05.2024, but the same also came to be dismissed, and that the impugned orders dated 20.09.2023, 09.05.2024 and 17.08.2024 are illegal and arbitrary and therefore, it is contended to set aside the same and to allow the petitioner to take part in the proceeding and to cross-examine all the plaintiff's witnesses and also to allow the petitioner to adduce his evidence.

5. Having heard the submission of Mr. Deka, learned counsel for the petitioner, I have carefully gone through the petition and the documents placed on record and also perused the impugned orders dated 20.09.2023, 09.05.2024 and 17.08.2024.

6. It appears that that vide impugned order dated 20.09.2023, the learned

trial Court, without notice being served upon the petitioner, had abruptly dispensed with cross-examination of the plaintiff's witnesses and also decided to proceed in absence of the petitioner/defendant. The medical documents enclosed with the petition, however, indicate that the son of the petitioner, namely, Diljar Hussain was suffering from some serious ailments and as the petitioner was preoccupied with the treatment of his son, he could not keep track of the case, and his earlier engaged counsel also withdrew the vakalatnama and as soon as the petitioner enquired about the case, he came to know that vide impugned order dated 20.09.2023, cross-examination of the plaintiff's witnesses had already been closed and the case was fixed for argument.

7. It is also to be noted here that right to cross-examine a witness, apart from being a natural right, is a statutory right. Section 137 of the Indian Evidence Act, 1872 provides for examination-in-chief, cross-examination and re-examination and Section 138 of the said Act confers a right on the adverse party to cross-examine a witness who has been examined-in-chief, subject of course to expression of his desire to the said effect.

8. Having examined the impugned orders in the light of the aforesaid provisions of law, this Court is of the view that the impugned order dated 20.09.2023, is illegal and arbitrary and as such, the same fails to withstand the legal scrutiny and accordingly, the same stands set aside and quashed. Consequently, the impugned orders dated 09.05.2024 and 17.08.2024, also stand set aside and quashed.

9. Accordingly, the learned trial Court is directed to allow the petitioner to participate in the trial and to allow him to cross-examine the plaintiff's witnesses and thereafter, to allow him to adduce his evidence and only thereafter, proceed

to hear argument of both the parties.

10. In terms of above, this revision petition stands disposed of.

JUDGE

Comparing Assistant