

GAHC010260122023



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

Case No. : CRP(IO)/377/2023

BISWAJIT SAIKIA @ MEDINI MOHAN SAIKIA AND ANR
S/O LATE ANESWAR SAIKIA, R/O BISHNU RABHA PATH, PANIGAON,
MAUZA-TOWN, P.S.-SADAR, DIST-NAGAON (ASSAM)

2: SMT GUNAMAI SAIKIA
W/O LATE ANESWAR SAIKIA
R/O BISHNU RABHA PATH
PANIGAON
MAUZA-TOWN
P.S.-SADAR
DIST-NAGAON (ASSAM)

VERSUS

DEBOJIT SAIKIA @ INDRA MOHAN SAIKI
S/O LATE ANESWAR SAIKIA, R/O BISHNU RABHA PATH, PANIGAON,
MAUZA-TOWN, P.S.-SADAR, DIST-NAGAON (ASSAM), PIN-782002

For the appellant (s) : Mr. R. Goswami, Advocate

For the respondent (s) : Mr. R. K. Bhuyan, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

01.05.2024

This is an application under Article 227 of the Constitution challenging
the order dated 27.07.2023 passed in Title Suit No.508/2021 whereby the

learned Trial Court, i.e. the Court of the Munsiff No.2, Nagaon has allowed the application seeking withdrawal of the suit with liberty to file a fresh suit.

2. It appears from a perusal of Order XXIII Rule 1 (3) of the Code of Civil Procedure, 1908 (for short, 'the Code') that an application for withdrawal of a suit with permission to institute a fresh suit can be allowed only when the Court is satisfied that the suit must fail by reason of some formal defects or that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or a part of the claim, and that too, on such terms as it thinks fit.

3. A perusal of the impugned order dated 27.07.2023 would show that the suit was withdrawn with a liberty to institute a fresh suit without recording any of the satisfactions which is mandatorily required in terms with Order XXIII Rule 1 (3) of the Code. The impugned order clearly shows that the learned Trial Court did not apply its mind to the facts of the case as well as to the provisions of law and resultantly the said impugned order was passed.

4. Consequently, the impugned order dated 27.07.2023 is set aside and quashed.

5. This Court directs the learned Trial Court to again de novo consider the application filed for withdrawal of the suit with liberty to file afresh, i.e. petition No.1375/2022 by giving due opportunity to the defendants to file an objection.

6. This Court also takes note of that already the defendants were given adequate time to file their objection. In that view of the matter, this Court,

for the ends of justice, grants the liberty to the petitioners herein who are the defendants in the suit to file objection on the next date so fixed by this Court.

7. Taking into account that both the parties are duly represented, this Court fixes the matter before the learned Trial Court on 27.05.2024 on which date the petitioners who are the defendants in the suit would be at liberty to file their objection. Failure to file the objection on the part of the defendants/petitioners herein on the next date so fixed by this Court, the learned Trial Court shall pass appropriate order on the application seeking withdrawal of the suit with liberty to file afresh by duly applying the yardsticks as stipulated in Order XXIII Rule 1 (3) of the Code.

8. The instant proceedings accordingly stands disposed of.

JUDGE

Comparing Assistant