GAHC010260332023

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

Case No. : CRP(IO)/403/2023

THE BODOLAND TERRITORIAL REGION (BTR) AND 2 ORS
ERSTWHILE BODOLAND TERRITORIAL COUNCIL REPRESENTED BY THE PRINCIPAL SECRETARY, KOKRAJHAR, P.O., P.S. AND DIST- KOKRAJHAR, BTR, PIN-783370

2: THE COUNCIL HEAD OF DEPARTMENT (IRRIGATION)
KOKRAJHAR
P.O.
P.S. AND DIST- KOKRAJHAR
BTR
PIN-783370

3: THE EXECUTIVE ENGINEER
IRRIGATION DEPARTMENT
KOKRAJHAR DIVISION
P.O.
P.S. AND DIST- KOKRAJHAR
BTR
ASSAM
PIN-78337

VERSUS

JACOB NARZARY AND ANR
S/O LATE LOTIA NARZARY, R/O VILL-GWJWNPURI, P.O.-CHAPAGURI, P.S.-DHALIGAON, DIST-CHIRANG, BTR, ASSAM

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
DISPUR
GUWAHATI-78100

For the Petitioner(s) : Mr. R. K. Mushahary, Advocate

For the Respondent(s) : Mr. B. J. Mukherjee, Advocate
: Mr. A. Chaliha, Standing Counsel

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 10.05.2024

1. This is an application under Article 227 of the Constitution challenging the order dated 29.08.2023 passed in Misc. (J) Case No.22/2023 arising out of Money Suit No.5/2021 whereby the Court of the learned Civil Judge, Chirang at Kajalgaon (hereinafter referred to as the learned Trial Court) had rejected the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short "the Code") filed by the Defendant Nos. 2, 3 and 4 seeking amendment of the written statement.

2. For deciding the legality and validity of the said impugned order dated 29.08.2023, this Court finds it relevant to take note of certain relevant facts leading to the filing of the instant proceedings.

3. The Respondent herein as plaintiff had instituted suit being Money Suit No.5/2021 for realization of money on account of the contractual obligations; for recovery of the security deposit along with interest. In the said suit, the Defendant Nos. 2, 3 and 4 who are the Petitioners herein filed a written statement. Thereupon, an application was filed under Order VI Rule 17 of the Code seeking amendment of the written statement which was registered and numbered as Misc. (J) Case No.22/2023. To the said application, the plaintiff

who is the Respondent No.1 herein filed objections on the ground of maintainability as well as that the amendment will bring a new and contradictory plea in the suit and the very nature and character of the suit may be changed, if allowed.

4. The learned Trial Court i.e. the Court of the learned Civil Judge, Chirang at Kajalgaon vide order dated 29.08.2023 rejected the said amendment application primarily on the ground that in absence of any proposed amendment, the ground shown by the Defendants are not sufficient to allow any amendment in the written statement as there is no new facts or change circumstances which needs to be introduced before the Court. It was also observed that the amendment may divest the plaintiff of an advantage which it had secured as a result of an admission by the party seeking amendment. It was also observed that the amendment sought by the Petitioners on the ground of "original sanction orders issued by the Government of India and other grants are fake and does not exist" is not necessary for the purpose of determining the real controversy between the parties as the defendants have already pointed out the detection of malpractice by their officials in their written statement and admitted the work done by the plaintiff. The learned Trial Court further observed that the plaintiff should not be the victim for malpractice of their officials if the plaintiff otherwise have acted bona fidely. It was also observed that the amendment may cause injustice to the other side as it seeks to withdraw clear admissions made by the petitioners in the earlier pleadings. Being aggrieved, the instant proceedings have been instituted by the Defendant nos. 2, 3 and 4 by the Petitioners.

5. I have heard Mr. R. K. Mushahary, the learned counsel appearing on behalf of the Petitioners and Mr. B. J. Mukherjee, the learned counsel appearing on

behalf of the Respondent No.1 as well as Mr. A. Chaliha, the learned Standing counsel for the Finance Department of the Government of Assam who is the defendant No.1 and have duly taken note of their respective submissions.

6. Order VI Rule 17 of the Code is the provision by which any party to the suit at any stage of the proceedings may seek alteration or amendment of his pleadings in such manner and on such terms as may be just and all such amendment shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. However, for the purpose of carrying out the alteration or amendment of the pleadings, the Court has to grant the permission. There is a proviso to the said provision which stipulates that no application for amendment shall be allowed after the trial had commended unless the Court comes to a conclusion that in spite of the due diligence, the party could not have raised the matter before the commencement of the trial.

7. In the backdrop of the above, if this Court takes note of the application which have been filed by the Petitioners seeking amendment of the written statement, it would be seen that the said application is bereft of any particulars as to what amendment has been sought for as there is no mention in the said application as to what are the paragraphs in the written statement which the defendants would require to be substituted or any paragraphs to be inserted. Under such circumstances, the said application on the face of it was not maintainable inasmuch as from the said application, no person could arrive at a conclusion as to what the defendants wants to insert or amend or alter in their written statement.

8. At this stage, it may be very pertinent to observe that though reasons have been mentioned as to why the amendment was necessary but there is no

mention as to what amendments were sought for. Under such circumstances, the said amendment application ought to have been rejected at the threshold. In fact, the learned Trial Court was therefore justified in rejecting the amendment application.

9. Be that as it may, it also very pertinent to observe that when the said amendment application did not contain what was to be amended or altered in the pleadings, there was no necessity on the part of the learned Trial Court to observe that if such amendment would have been allowed, it would divest the plaintiff of the advantage which it had secured as a result of admission by the party seeking amendment or for that matter, it would amount to withdrawal of any clear admission made by the defendants in their written statement.

10. Under such circumstances, this Court therefore is of the opinion that the impugned order does not call for any interference under Article 227 of the Constitution insofar as the rejection of the application under Order VI Rule 17 of the Code inasmuch as the said application on the face of it was not maintainable. However, taking into account that what was sought to be amended having not been mentioned in the application, the observation so made by the learned Trial Court to the effect that if amendment is allowed, it may divest the opposite party of any advantage or for that matter the amendment may withdraw clear admission which was not at all warranted and for which these observations stands interfered with.

11. The interim order dated 08.12.2023 passed by this Court stands vacated and the parties herein who are duly represented before this Court are directed to appear before the learned Trial Court on 22.05.2024 for further proceedings of the suit.

12. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant