

GAHC010269102024



2024:GAU-AS:12857

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

Case No. : CRP(IO)/527/2024

GYANMATI DEVI JAIN AND ANR
W/O LATE NEMICHAND GANGWAL,
RESIDENT OF MALIGAON GATE NO. 1, MALIGAON, GUWAHATI 781011,
DIST KAMRUP M ASSAM

2: SRI NAVEEN KUMAR JAIN

S/O LATE NEMICHAND GANGWAL

RESIDENT OF MALIGAON GATE NO. 1
MALIGAON
GUWAHATI 781011
DIST KAMRUP M ASSA

VERSUS

SURESH KUMAR JAIN AND 7 ORS
S/O MISRILAI BAKLIWAL,
C.O SURESH KUMAR JAIN AND CO. T.R PHOOKAN ROAD, FANCY
BAZAAR, PO GUWAHATI DIST. KAMRUP M ASSAM 781001

2:SMTI SUSHILA JAIN
W/O BINOD BARJATYA

D/O LATE NEMICHAND GANGWAL

RESIDENT OF 399
MAHAVEER NAGAR I TONK ROAD
ADARSH BLOCK
JAIPUR RAJASTHAN
302018

3:SAKUNTALA JAIN
W/O SUNIL GODHA

D/O LATE NEMICHAND GANGWAL

RESIDENT OF F1
C-335
SIDHARTA NAGAR
OPP. GOLDEN SANS HOTEL
JAWAHAR CIRCLE
JAIPUR
RAJASTHAN
302017

4: BABITA JAIN
W/O NITESH KUMAR JAIN AND D/O LATE NEMICHAND GANGWAL
RESIDENT OF MANISH APARTMENT
PLOT NO. 17 PATEL NAGAR
ISKON ROAD OPP. GANESH BAGH
MARRIAGE GARDEN
MANSAROVAR
JAIPUR
RAJASTHAN
202020

5: MAMTA JAIN
W/O KAMAL KUMAR JAIN AND D/O LATE NEMICHAND GANGWAL
RESIDENT OF 58B
VIJAY NAGAR
BEHIND LAWRENCE PUBLIC SCHOOL
OPP. V.T ROAD
NEW SANGANER ROAD MANSAROVER
JAIPUR RAJASTHAN
302020

6: NISHA JAIN
W/O RAJEEV LUHADIA AND D/O LATE NEMICHAND GANGWAL
RESIDENT OF 92/48 DURGA PATH PATEL MARG
MANSAROVER
JAIPUR
302020
RAJASTHAN

7: SEEMA SETHI
W/O SHAILENDRA SETHI AND D/O LATE NEMICHAND GANGWAL
RESIDENT OF 936
SETHI BHAWAN
BEHIND SBI BANK
CHAURA RASTA
JAIPUR
RAJASTHAN

302003

8:PRABHA JAIN PANDYA
W/O ANURAG JAIN PANDYA
AND D/O LATE NEMICHAND GANGWAL
RESIDENT OF 120 MANGAL VIHAR
OPP. JAIN MANDIR
GOPALPURA
BYE PASS JAIPUR RAJASTHAN
30201

Advocate for the Petitioner : MR. O P BHATI, MR. R BHAGAWATI, S. K. GUPTA, MR. P SARMA, MR T C DAS

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 17.12.2024

Heard Mr. O.P. Bhati, learned counsel for the petitioners.

2. In this petition, under Article 227 of the Constitution of India, the petitioners have put to challenge the correctness or otherwise of the order dated 05.11.2024, passed by the learned Civil Judge (Junior Division) No. 1, Kamrup(M), Guwahati, in Title Suit No. 253/2012.

3. It is to be noted here that vide impugned order dated 05.11.2024, the learned Civil Judge (Junior Division) No. 1, Kamrup(M), Guwahati ('trial Court', for short) had dismissed the petition No. 3392/2024, filed by the petitioners, under Section 151 of the CPC, to recall the order dated 19.06.2024 and to direct the office of the said Court to produce all the N.J. case records as called for by the petitioners herein or in alternative, to bar the plaintiff/respondent herein from putting the question to the defendants' witnesses in relation to tender of

rent to the plaintiff, payment of process fee, filing of notice etc. during cross-examination.

4. Mr. Bhati, learned counsel for the petitioners submits that the petitioners are defendants in Title No. 253/2012, instituted by the respondent herein and during the course of trial, vide order dated 19.06.2024, the learned trial Court had passed an order debarring the defendants side from calling the N.J. case records, N.J. case register, process register etc. Mr. Bhati further submits that the petitioners took several steps for calling the N.J. case records on several dates, but, the said N.J. case records could not be produced by the office of the learned trial Court on account of the same being old one and untraceable, and that the learned trial Court had dismissed the petition on the ground that Rule 312(3) of the Civil Court Rules and Orders deals with miscellaneous N.J. cases and Rule 396 specifically mentions that the period of retention of such N.J. cases is only up to three years, and since the N.J. cases are very old records, the same might have been destroyed due to elapse of time or have become untraceable with time, and that sufficient time had been granted to the petitioners and if the petition is allowed, then it will cause delay in disposal of the case. Mr. Bhati further submits that unless the records of the N.J. case are produced before the learned trial Court, the petitioners herein would not be able to establish their case as the respondent herein instituted the case for evicting the petitioners on the ground of defaulter, and that the petitioners have been depositing the rent regularly in the Court and in order to establish their case under Section 5(4) of the Assam Urban Areas Rent Control Act, 1972, the records are very much necessary and therefore, it is contended to set aside the impugned order dated 05.11.2024 and to stay the further proceeding of Title Suit No. 253/2012, pending before the learned trial Court.

5. Having heard the submission of Mr. Bhati, learned counsel for the petitioners, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 05.11.2024.

6. It appears that the petitioners herein are the defendants in Title Suit No. 253/2012, which was instituted by the respondent herein for evicting the petitioners on the ground of default. It also appears that during the course of trial, the petitioners herein had filed a petition before the learned trial Court on 19.06.2024, to call for the N.J. case records, N.J. case register, process register etc. But, the learned trial Court, vide order dated 19.06.2024, had dismissed the said petition.

7. Unfortunately, the order dated 19.06.2024, has not been placed on record by the petitioners herein.

8. However, perusal of the impugned order dated 05.11.2024, indicates that the records of N.J. cases could not be produced by the office of the learned trial Court as the same were untraceable and vide orders dated 04.10.2018 and 02.07.2019, the learned trial Court had allowed the petitioners herein to adduce credit certificates, N.J. Case Register, Process Register etc. But, the petitioners having found the same insufficient to prove their case, had sought for an alternative remedy that the plaintiff/respondent shall be debarred from cross-examining the defendants' witnesses with regard to the tender of rent, payment of the process fee, filing notice etc. Thereafter, considering the fact that the petitioners had been given ample opportunity to call for N.J. case records and alternatively, granted an opportunity to submit credit certificates, N.J. Case Register, Process Register etc. in support of their case, they failed to take steps, for which the learned trial Court had rejected the petition.

9. It is not in dispute that the suit was instituted in the year 2012, and since then more than 12 years elapsed and the N.J. cases being very old, are untraceable in the office and as such, no purpose will be served if again the petitioners are allowed to call for the N.J. case records.

10. It appears that the petitioners have been granted alternative remedy to call for credit certificates, N.J. Case Register, Process Register etc., but the petitioners had failed to take any steps.

11. Under the aforementioned facts and circumstances, and also considering the delay of disposal of the case and also examining the impugned order dated 05.11.2024, in the light of the given facts and circumstances on the record, this Court is of the view that no case for interference with the impugned order is made out.

12. Accordingly, this revision petition stands dismissed at this motion stage itself.

13. However, alternative remedy, as suggested by the learned trial Court in the impugned order dated 05.11.2024, may be availed by the petitioners by filing appropriate application before the learned trial Court.

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

JUDGE

Comparing Assistant