

GAHC010269582017



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

Case No. : CRP(IO)/126/2017

KAMAL KISHOR KUMAR
S/O. LT. RAM CHARIT KOHAR, R/O. JAPORIGOG, CHRISTIAN BASTI, P.O.
DISPUR, DIST. KAMRUPMETRO, GUWAHATI, ASSAM, PIN-781006.

VERSUS

PANKAJ BARMAN and 4 ORS.
S/O. CHANDRA BARMAN, R/O. AMBIKAGIRI NAGAR, GEETANAGAR,
GUWAHATI, KAMRUP METRO, ASSAM, PIN-781024

2:UTPAL JYOTI KALITA

S/O. DR. M.K. KALITA
R/O. SAURAV NAGAR
BELTOLA
P.O. BELTOLA
P.S. BELTOLA
GUWAHATI
DIST. KAMRUPMETRO
PIN-781029.

3:NANDESWAR ROY

S/O. LT. NAREN ROY
R/O. HENGRABARI
P.O. DISPUR
P.S. DISPUR
GUWAHATI
DIST. KAMRUPMETRO
ASSAM
PIN-781006.

4:SMTI. BHUKULI DEVI

W/O. LT. CHARIT KOHAR
R/O. JAPORIGOG
CHRISTIAN BASTI
P.O. DISPUR
P.S. DISPUR
DIST. KAMRUPMETRO
GUWAHATI
ASSAM
PIN-781006.

5:SAMBHU KUMAR

S/O. LT. CHARIT KOHAR
R/O. JAPORIGOG
CHRISTIAN BASTI
P.O. DISPUR
P.S. DISPUR
DIST. KAMRUPMETRO
GUWAHATI
ASSAM
PIN-781006

For the Petitioner(s) : None appears.

For the Respondent(s) : Mr. D. Choudhury, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 29.05.2024

None appears on behalf of the Petitioner on call. Mr. D. Choudhury, the learned counsel appearing on behalf of the Respondents.

2. This is an application under Article 227 of the Constitution challenging the order dated 24.03.2017 passed by the Court of the learned Civil Judge No.1, Kamrup (M) at Guwahati in Title Suit No.148/2010 whereby an application was

filed under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 for recalling the Plaintiff Witness No.1 whose evidence have been closed was rejected.

3. This Court has perused the order dated 24.03.2017 which has been impugned in the instant proceedings. From a perusal of the said order as well the application which was filed by the Petitioner, it is seen that on 06.04.2016, the case was fixed for cross-examination of PW-1. The counsel for the Defendant had duly submitted the Hajira but at the time when the counsel for the defendant had gone out of the Court, the evidence of the PW-1 was closed on the ground that the counsel of the Defendant was not present for cross-examination of PW-1. It is under such circumstances, an application was filed for recalling the order dated 06.04.2016 thereby permitting the cross-examination of the PW-1.

4. This Court further takes note of that the learned Trial Court observed that recalling of the said order can only be done when there is a mistake committed by the Court and as there was no mistake so committed by the Court, the learned Trial Court rejected the said application vide the impugned order dated 24.03.2017. It is under such circumstances, the present petition has been filed.

5. This Court has also taken note of that on the earlier occasions, the plaintiffs were granted various opportunities and on 06.04.2016, the counsel for the Defendant had duly submitted the Hajira. This Court also finds it very pertinent to take note of that in the learned Trial Court, the matters are not taken up on the basis of a serial list but are taken out of their turn whenever the said matters are put up before the learned Court. Under such circumstances, there could have been a circumstance where the Defendant's counsel may not have been present when the file was put up before the Court. The order which has been passed thereby closing the evidence of PW-1 in the opinion of this Court

seriously prejudices the Defendant for no fault of the Defendant and at best some fault of the counsel. Under such circumstances, this Court therefore interferes with the order dated 24.03.2017 and directs the learned Trial Court to fix a date as per the business of the Court for cross-examination of the PW-1.

6. This Court also takes note of that vide an order dated 09.06.2017, the further proceedings of Title Suit No.148/2010 was stayed. The said stay order stands vacated and the parties are directed to appear before the Court of the learned Civil Judge No.1, Kamrup (M) at Guwahati on 15.07.2024. On that date, the learned Trial Court shall fix such date as per its business for cross-examination of the PW-1.

7. It is however made clear that taking into account that the Petitioner is not represented in the instant proceedings today, the learned Trial Court shall also issue due notice to the Petitioner before further proceeding with the suit.

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

JUDGE

Comparing Assistant