

GAHC010290562023



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

Case No. : CRP(IO)/436/2023

NARAYAN CHANDRA DAS
S/O- LATE NITYANANDA DAS ,
PROPRIETOR OF M/S POPULAR STORE,
ASWINI MART, NEAR SILPUKHURI MARKET,
GNB ROAD, SILPUKHURI, GUWAHATI-03, KAMRUP (M), ASSAM

VERSUS

BIJAN CHAKRABORTY AND 8 ORS
S/O- LATE GOPAL CHAKRABORTY

2:PRANAB CHAKRABORTY
S/O- LATE GOPAL CHAKRABORTY

ON THE DEATH OF LATE PRADIP CHAKRABORTY
HIS LEGAL HEIRS

3:RITU CHAKRABORTY
(WIFE)
3.(B) SUBHAM CHAKRABORTY (SON)

4:TAPAN CHAKRABORTY
S/O- LATE GOPAL CHAKRABORTY

5:RAJA CHAKRABORTY
S/O- LATE GOPAL CHAKRABORTY

6:DILIP CHAKRABORTY
S/O- LATE BISWANATH CHAKRABORTY

7:SANJAY CHAKRABORTY
S/O- LATE MANIK CHAKRABORTY

8:SANTANU CHAKRABORTY
S/O- LATE MANIK CHAKRABORTY

9:JHARNA CHAKRABORTY
S/O- LATE MANIK CHAKRABORTY

ALL ARE RESIDENTS OF H.NO-211 (B)
WEST SILPUKHURI LANE
SILPUKHURI
GUWAHATI-03
KAMRUP (M)
ASSA

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : MR. N BHARALI

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

05.03.2024

This is an application under Article 227 of the Constitution challenging the order dated 15.12.2023 passed by the Court of learned Civil Judge Senior Division No.1 Kamrup (M) at Guwahati in Title Appeal No.6/2023 whereby the application seeking adjournment to file an application to file the relevant NJ Case records was rejected.

2. A perusal of the materials on record reveals that the petitioner herein was a defendant in Title Suit No.334/2014. The said suit was filed for eviction of the petitioner (defendant) and for recovery of arrear rent. The said suit was decreed

by the judgment and decree dated 30.11.2022 holding, *inter alia*, that the petitioner/defendant was a defaulter in payment of rent as well as also holding that the plaintiff had a *bona fide* requirement of the suit premises. Being aggrieved by the judgment and decree dated 30.11.2022, the petitioner as appellant preferred an appeal before the Court of the learned Civil Judge Senior Division No.1 Kamrup (M) Guwahati and the appeal was registered as Title Appeal No.6/2023. It is relevant herein to take note of that along with the said appeal, the petitioner did not file any application under Order XLI Rule 27 of the Code for adducing additional evidence. Thereupon, the Appeal proceeded for hearing and the respondent herein who were also the respondents in the said Appeal proceeding had completed the hearing and also submitted their written arguments. Thereupon, it further reveals from the order sheets, which is enclosed to the petition as Annexure-III series, that even during the time of hearing of the respondents, no application was filed under Order XLI Rule 27 of the Code, rather, when the matter was fixed for further arguments, an application was filed on 15.12.2023 that the appellant i.e. the petitioner herein would be filing an appropriate application for calling the NJ cases. It is under such circumstances, the learned 1st appellate court rejected the said application and fixed 19.01.2024 for judgment. Thereupon, the petitioner had approached this Court and this Court had issued notice vide order dated 21.12.2023 and also stayed the further proceedings of Title Appeal No.6/2023 till the next date.

3. In the backdrop of the above facts, this Court has also heard Mr. GN Sahewala, the learned senior counsel for the petitioner as well as Mr. PK Roy, the learned counsel for the respondent and has duly noted their arguments. This Court has also perused the judgment of the learned trial court dated

30.11.2022 and, more particularly, to the cross-examination of the petitioner, who was the DW-1 in the said proceeding. During cross examination, he submitted that he as the Defendant witness No.1 had exhibited certain challans, but did not call for the NJ records. It is also stated at the Bar that after completion of all evidences, an application was filed before the learned Trial court calling for the NJ records which was rejected and it is on the basis thereof, grounds P & Q were taken in the Memo of appeal. Under such circumstances, a question arises, if the petitioner/appellant was aggrieved with the application for NJ Records being rejected, the petitioner who was the Appellant ought to have along with the Memo of Appeal filed an application under Order XLI Rule 27 of the Code for adducing the additional evidence which was never done. The laches on the part of the petitioner does not end there. Even as on the date of passing of the impugned order, there was no application filed. Under such circumstances, this Court while exercising the jurisdiction under Article 227 of the Constitution, finds no ground to interfere with the order dated 15.12.2023 for which the instant proceeding, therefore, fails.

4. However, before parting with the records, this Court finds it relevant to observe that taking into account that the petitioner herein had not advanced his arguments, in the Appeal proceedings, it is the opinion of this Court that the interest of justice would be met, if the petitioner herein, who is the appellant in Title Appeal No.6/2023 be given an opportunity to make his submissions in the said appeal.

5. Accordingly, this Court fixes the matter on 20.03.2024 before the learned

1st appellate court, on which date both the parties shall appear. Thereupon a date may be fixed by the learned 1st appellate court as per its convenience for hearing of the appellant and the Respondents.

6. This Court also finds it relevant to observe that while disposing of the said appeal, the learned 1st appellate court shall not be influenced by the order dated 15.12.2023 as well as the observations made herein.

7. With the above observations and directions, this revision petition stands dismissed.

8. Consequently, the interim order passed earlier stands vacated.

JUDGE

Comparing Assistant