

GAHC010295162023



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

**Case No. : CRP(IO)/440/2023**

TANUSHREE DEVI AND 3 ORS  
D/O- SURENDRA KUMAR NATH, R/O- SWARAJ ROAD, GOALPARA TOWN,  
P.S- GOALPARA, DIST- GOALPARA, ASSAM

2: SURENDRA KUMAR NATH  
S/O- DHIRENDRA CH NATH  
R/O- SWARAJ ROAD  
GOALPARA TOWN  
P.S- GOALPARA  
DIST- GOALPARA  
ASSAM

3: RUNU DEVI  
W/O- SURENDRA KUMAR NATH  
R/O- SWARAJ ROAD  
GOALPARA TOWN  
P.S- GOALPARA  
DIST- GOALPARA  
ASSAM

4: URMI DEVI  
D/O- SURENDRA KUMAR NATH  
R/O- SWARAJ ROAD  
GOALPARA TOWN  
P.S- GOALPARA  
DIST- GOALPARA  
ASSA

VERSUS

SAURAV KR NATH  
S/O- SURENDRA KR NATH, R/O- BIHU FIELD, P.S- GOALPARA, DIST-  
GOALPARA, ASSAM

**Advocate for the Petitioner** : MR S DEWRI, MR A DEKA,MR P SONOWAL

**Advocate for the Respondent** : MR. A N I HUSSAIN, MS N B KAYASTHA,MR. R DUBEY,MS. A B KAYASTHA

**BEFORE**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**Date : 22.08.2024**

Heard Mr. S. Dewri, learned counsel for the petitioners and Mr. R. Dubey, learned counsel for the respondent.

2. Correctness or otherwise of the order dated 22.11.2023, passed by the learned Civil Judge (Senior Division), Goalpara, in Title Suit No. 47/2023, is challenged in this petition filed under Article 227 of the Constitution of India.

3. It is to be noted here that the respondent herein this petition, namely, Saurav Kr. Nath has instituted Title Suit No. 47/2023, before the Court of learned Civil Judge (Senior Division), Goalpara ('trial Court', for short) and in the said title suit, the present petitioners have received summon on 21.06.2023. Thereafter, they have appeared before the learned trial Court on 05.07.2023 and filed a petition for extension of time to submit written statement and to also issue direction to the respondent/opposite party to furnish copies of the documents, and the said documents were furnished to the petitioners on 08.11.2023. But, thereafter, vide impugned order 22.11.2023, the learned trial Court has decided to proceed the case ex-parte as in view of the decisions of Hon'ble Supreme Court in **Salem Advocate Bar Association vs. Union of India**, reported in **AIR 2005 SCC 3353** and in **Kailash vs. Nanhku**, reported in **AIR 2005 SCC 2441**, has refused to grant extension of time as no

valid reason has been shown to file written statement beyond the stipulated period.

4. Mr. Dewri, learned counsel for the petitioner submits that though the petitioners have received summon on 21.06.2023, yet the summon was not accompanied with the relevant documents, for which the written statement could not be prepared and filed before the learned trial Court and as such, the petition was filed before the learned trial Court on 05.07.2023, and in the said petition, the learned trial Court has ordered the respondent for furnishing the documents to the petitioners. Thereafter, the said documents were furnished to the petitioners on 08.11.2023, and in view of the decision of a Coordinate Bench of this Court in **Sreenivas Basudev (M/s) vs. Vineet Kumar Kothari**, reported in **2006 (3) GLT 118**, the period of 90 days for filing written statement has to be counted from the date of furnishing the copies of the documents to the petitioners, but, the learned trial Court, vide order dated 22.11.2023, has debarred the petitioners from filing written statement and decided to proceed ex-parte and as such, the impugned order suffers from illegality and therefore, it is contended to set aside the same.

5. Mr. Dubey, learned counsel for the respondent fairly submits that since the petitioners have received the copies of the documents on 08.11.2023, the period of 90 days has to be counted from that day for filing the written statement and from that stand point, debarring the petitioners from filing written statement, vide order dated 22.11.2023, fails to withstand the legal scrutiny. Mr. Dubey has also referred to a decision of Hon'ble Supreme Court in the case of **M/s Nahar Enterprises vs. M/s Hyderabad Allwyn Ltd. and Anr.**, reported in **(2007) 9 SCC 466**.

6. Having heard the submission of learned Advocates of both sides, I have

carefully gone through the petition and the documents placed on record and also gone through the impugned order dated 22.11.2023, and the decisions referred by Mr. Dewri and Mr. Dubey.

7. I find sufficient force in the submission of Mr. Dewri and Mr. Dubey. It appears that the documents were furnished to the petitioners on 08.11.2023, and in view of the decisions of a Coordinate Bench of this Court in **Sreenivas Basudev (M/s) (supra)** and Hon'ble Supreme Court in **M/s Nahar Enterprises (supra)**, the period of 90 days has to be counted from the date of furnishing copies of documents i.e. 08.11.2023. In that view of the matter, it cannot be said that the impugned order dated 22.11.2023, withstands the legal scrutiny and accordingly, the same stands set aside and quashed.

8. It is provided that on or before 09.09.2024, the petitioners shall appear before the learned trial Court and furnish written statement and thereafter, the learned trial Court shall take the same onboard and proceed to hear and dispose of the suit in accordance with law.

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

**JUDGE**

**Comparing Assistant**