GAHC010043882026

2026:GAU-AS:3359

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

Case No. : CRP(IO)/66/2026

SMTI USHA MAHESWARI
WIDOW OF LATE SITARAM MAHESWARI, R/O JAMUGURI CENTRE, P.O.- JAMUGURI, P.S.- JAMUGURI- 784180, DIST- SONITPUR, ASSAM

VERSUS

PREM SAGAR JHA
S/O LATE MAKSUDAN JHA, R/O JAMUGURI CENTRE, P.O.- JAMUGURI, P.S.- JAMUGURI-784180, DIST- SONITPUR, ASSAM

Advocate for the Petitioner : MR A K MAHESWARI,

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 06-03-2026

Heard Mr. A.K. Maheshwari, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, the petitioner has challenged the order dated 02.01.2026, passed by the learned Civil Judge (Junior Division) No. 1, Sonitpur at Tezpur (trial court hereinafter), in Petition No. 760/2024, arising out of Title Suit No. 121/2019.

3. It is to be noted here that vide impugned order dated 02.01.2026, the learned trial court had dismissed the Petition No. 760/24, dated 18.04.2024, filed in

Title Suit No. 121/2019, for accepting the counter claim under Order 8 Rule 6A of the CPC.

4. Mr. Maheshwari, learned counsel for the petitioner submits that the respondent herein, as plaintiff, had instituted one title suit, being Title Suit No. 121/2019, for declaration of right, title and interest by virtue of adverse possession. In the said suit, the petitioner herein, as defendant, had filed written statement and the same was accepted by the learned trial court on 16.02.2024. Thereafter, on 18.04.2024, the petitioner herein had filed a petition, being Petition No. 760/2024, for acceptance of the counter claim. But, the learned trial court had rejected the same on the ground that the petitioner herein could not file the counter claim along with written statement and also on the ground that in the counter claim prayer has been made for ejectment/eviction and recovery of arrear and current rent and as such, the same cannot be tried with a prayer made by the plaintiff for declaration of right, title and interest by virtue of adverse possession and the counter claim will fundamentally change the nature of the suit.

4.1. Mr. Maheshwari further submits that by the aforementioned observation, the learned trial court had misdirected itself and that counter claim can be filed even after filing of the written statement and the same has been well settled in a catena of decisions of Hon'ble Supreme Court in the case of **Vijay Prakash Jarath vs. Tej Prakash Jarath**, reported in **(2016) 11 SCC 800** and **Ashok Kumar Kalra vs. Surendra Agnihotri**, reported in **(2020) 2 SCC 394** and also in the decisions of this Court in the case of **Aman Jindal and Others vs. M/S Dayal Enterprises and Others**, reported in **2023 (6) GLJ 718** and **Vinod Kumar Kedia vs. M/s J.N. Agency and Others**, reported in **2024 (1) GLJ 48**.

4.2. Mr. Maheshwari also submits that on the next date of filing the written statement, i.e. on 18.04.2024, the counter claim has been filed and that in the

petition, at paragraph Nos. 3 & 4, it has been clearly stated that the petitioner had submitted her written statement along with the counter claim to the engaged counsel, but the said counsel had filed only the written statement. Mr. Maheshwari further submits that on account of the fault of the Advocate, the petitioner should not suffer and under such circumstances, he has contended to allow this petition.

5. Having heard the submission of learned counsel for the petitioner, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned order dated 02.01.2026 and also the decisions relied upon by him.

6. It is well settled proposition of law that counter claim can be filed even after filing of the written statement, however, within the stipulated period of limitation and if it is beyond the period of limitation, then the reason for such delay has to be explained. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **Rohit Singh v. State of Bihar,** reported in **(2006) 12 SCC 734,** wherein it has been held that a counterclaim, no doubt, could be filed even after the written statement is filed, but that does not mean that a counterclaim can be raised after issues are framed and the evidence is closed.

6.1. Again in the case of **Vijay Prakash Jarath (supra)** Hon'ble Supreme Court has held that filing of counter claim was allowed after almost two and half years of framing of framing of issues as no serious prejudice or irreparable loss could be caused to the respondent-plaintiff before the trial court, if the counterclaim was to be adjudicated upon, along with the main suit.

7. In the instant case, the learned trial court had dismissed the petition only on the ground that the counter claim was not filed with the written statement and no reason has been offered for the same and that the suit for declaration of right, title and interest by virtue of adverse possession and counter claim for

ejectment/eviction and recovery of arrear and current rent cannot be tried together, as the counter claim will fundamentally change the nature of the suit.

8. The ground so assigned by the learned trial court, appears to be not based on sound principle of law and failed to mandate acceptance of this Court, as the counter claim can be filed even after filing of written statement.

9. Notably, it is the contention of the petitioner that she had handed over the written statement and counterclaim together to her counsel, who, in turn, had filed only the written statement in the trial court. Further it appears that the written statement was filed on 16.02.2024 and the counter claim, along with the petition was filed on 18.04.2024, on the very next date of the case. Further, from the impugned order dated 02.01.2026, it appears that the issues have not yet been settled and the next date is fixed of 12.03.2026. In view of the given factual backdrop, and also in view of the well settled proposition of law, as discussed above, this court is of the considered opinion that the impugned order dated 02.01.2026, failed to withstand legal scrutiny and on such count the same warrants interference of this court.

10. In the result, this court finds sufficient merit in the petition and accordingly the same stands allowed. The impugned order, dated 02.01.2026, stands set aside and quashed.

11. Consequent upon, setting aside of the impugned order dated 02.01.2026, the learned trial court shall accept the counterclaim of the petitioner herein and thereafter, it shall proceed with the case in accordance with law.

12. In terms of above, this petition stands disposed of.

JUDGE

Comparing Assistant