

GAHC010060322024



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

Case No. : CRP/47/2024

BHAGABAN BHARALI
S/O- LATE BHAGIRATH BHARALI,
R/O- BHARALI BHAWAN (BHAGAWAN HOTEL),
G.S ROAD, OPP. BORA SERVICES,
ULUBARI, GUWAHATI-07,
DIST- KAMRUP (M), ASSAM

VERSUS

AMIYA BHARALI AND ANR
W/O- LATE SABIN BHARALI,
R/O- H.NO-82, NEW GUWAHATI TINIALI,
GANESH MANDIR PATH,
P.S- NOONMATI, GUWAHATI-20,
DIST- KAMRUP (M), ASSAM

2:GITIKA DAS
W/O- JYOTIKESH DAS

D/O- LATE SABIN BHARALI

R/O- METUAKUCHI

P.O AND P.S-BARPETA

DIST- BARPETA
ASSAM
PIN-78130

Advocate for the petitioner(s): Mr. P Kataki
Mr. D Chakraborty

Advocate for the respondent(s): Mr. R Ali

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

01.05.2024

This is an application under Article 227 of the Constitution challenging the order dated 08.02.2024 passed by the Court of the learned Civil Judge (Senior Division) No.2 Kamrup(M) at Guwahati in Title Suit No.07/2022 whereby the Petition No.4071/2022 filed by the defendant No.1 in the suit was rejected, thereby rejecting the written statement which was filed by the defendant No.1 on 01.12.2022.

2. This Court finds it relevant to take note of certain relevant facts which led to the passing of the instant order.

The respondents herein as plaintiffs had instituted a suit seeking declaration that the plaintiffs and the defendants are co-owners of the suit land; preliminary decree for partition of the schedule land in equal 1/8th share amongst the

plaintiffs and the defendants; for realization of equal $1/8^{\text{th}}$ share of the house rent @ Rs.3,75,000/- per month with 18% interest from January 2019 till realization; Issuance of precept to the concerned Circle Officer and other officials for determination of separate $1/8^{\text{th}}$ share of the plaintiffs and defendants out of the schedule land and houses; final decree for partition; permanent injunction etc. The suit was registered and numbered as Title Suit No.07/2022.

3. Pursuant to the order passed by this Court on 29.04.2024, in the instant proceedings, the learned counsel appearing on behalf of the petitioner had produced certified copies of the entire order sheets of Title Suit No.07/2022. The same are kept on record and marked with the letter 'X'.

4. From a perusal of the said order sheets, it reveals that the suit upon being filed, summons were issued on 05.01.2022 thereby fixing 11.03.2022 for SR/WS. On 11.03.2022, the defendant No.1, who is the petitioner herein entered appearance and filed an application that the defendant No.1 did not receive the copies of the documents. The learned Trial Court directed the plaintiffs to provide the copies and the copies were duly provided on the said date in the records of the case, which is evident from the order dated 11.03.2022. The learned Court vide the said order dated 11.03.2022 fixed 22.04.2022 for SR/WS of the defendant No.1, 10, and 17. However, on the said date i.e. on 22.04.2022 there being a local holiday, on account of the Civic Poll, the matter stood adjourned and was taken up on 25.04.2022, thereby fixing 08.07.2022 for filing of the written statement by the defendant Nos.1, 10, and

17. The record further reveals that the counsel for the defendant No.1 received the documents on 08.07.2022, although, the said documents were duly supplied on 11.03.2022, as was recorded in the order by the learned Trial Court. It is relevant to mention that on 08.07.2022, the counsel for the defendant No.1 did not seek time for filing the written statement by assigning any reason. The learned Trial Court taking into account that the documents were duly received on 11.03.2022 and on account of the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 (for short, 'the Code') and as the period of 90 days had already expired, passed the order on 08.07.2022 to proceed with the suit ex-parte against the defendant No.1. It is also relevant to take note of that as regards the defendant Nos.10 and 17 also, the Court passed an order in view of the fact that the period of 90 days had elapsed and no written statement was filed. The Court thereupon fixed the matter again on 09.09.2022 for SR of the defendant Nos.3 to 5 and 29 to 31.

5. On 09.09.2022, the counsel appearing on behalf of the defendant No.1 filed a petition praying that he may be permitted to file an application for vacating the ex-parte order and the learned Trial Court granted the liberty to file such application as per law, thereby fixing 01.12.2022 for SR/appearance. On 01.12.22, two applications were filed by the defendant No.1. In addition to that the defendant No.1 also submitted the written statement. Of the two applications, Petition No.4071/2022 was an application filed for vacating the ex-parte order, whereas the Petition No.4072/2022 was an application filed under Section 21 of the CPC questioning the jurisdiction of the Court. The learned Trial Court thereupon fixed the matter on 22.02.2023 for hearing on those applications filed by the defendant No.1.

6. After almost a lapse of 15 months i.e. on 08.02.2024, the learned Trial Court rejected the petition filed by the defendant No.1 i.e. Petition No.4071/2022 on the ground that as the defendant No.1 failed to submit the written statement within the stipulated period as mandated under Order VIII Rule 1 and there was no petition seeking time for filing the written statement on medical grounds, the order dated 08.07.2022 of proceeding ex-parte against the defendant No.1 required no interference. However, the defendant No.1 was allowed to participate in the suit proceedings by way of cross examination of the plaintiff witnesses etc. The learned Court below further fixed the matter on 12.04.2024 for hearing on the Petition No.4072/2022 which was the application filed challenging the jurisdiction of the Court to entertain the dispute.

7. It is against this order dated 08.02.2024, the present proceeding has been filed.

8. Mr. P Katak, the learned counsel appearing on behalf of the petitioner submits that on 11.03.2022, the documents though were supplied, but the counsel representing the petitioner before the learned Trial Court did not receive those copies. He further submitted that on 08.07.2022 also, there was no application filed by the counsel for the defendant No.1 on the presumption that as the documents were only received on 08.07.2022, the question of filing of the written statement by the defendant No.1 did not arise. He further submitted that as the suit pertains to a partition suit amongst the family members, for the ends of justice, the defendant No.1 whose written statement had already been

filed on 01.12.2022 be allowed to be accepted subject to such terms and conditions as this Court may deem fit.

9. On the other hand, Mr. R Ali, the learned counsel appearing on behalf of the respondent Nos.1 and 2 submits that there is no infirmity in the order passed by the learned Trial Court on 08.07.2022 as well as in the order dated 08.02.2024 and as such, the question of interference by this Court under Article 227 of the Constitution do not arise. He further submitted that interference with such an order would render the mandate of the provisions under Order VIII Rule 1 of the Code nugatory.

10. The submissions made on behalf of the parties have been duly noted.

11. From the records as already mentioned in the previous segments of the instant order, it appears that on 11.03.2022, the defendant No.1 duly appeared and submitted an application that the documents were not received. On that very date, the documents were duly submitted by the plaintiffs, which is duly recorded in the order dated 11.03.2022. No doubt, the defendant No.1 was not present, in person, but the defendant No.1 was duly represented by the counsel. However, the counsel for the defendant No.1 did not receive the documents. It is also seen that the counsel for the defendant No.1 only received the documents from the records on 08.07.2022 and for reasons best known did not file any application on 08.07.2022 assigning any reasons why the defendant No.1 could not file the written statement. It is under such circumstances, the defendant No.1 was proceeded ex-parte by the learned Trial Court and rightly

so. The said act(s) on the part of the counsel for the defendant No.1 clearly shows complete dereliction of the trust reposed upon him by the defendant No.1 and touches on the code of ethics that is required to be maintained by the counsel for the defendant No.1.

12. This Court, however, finds it pertinent to note that one cannot, forget a very pertinent aspect of the matter that it was absolutely on account of the fault and negligent manner of conducting the case by the counsel for the defendant No.1, which had resulted in the passing of the order dated 08.07.2022.

13. This Court had also taken note of that on 01.12.2022, the written statement was filed by the defendant No.1. One cannot also be unmindful of the fact that the dispute before the learned Trial Court is a partition suit amongst the family members and taking into account that a partition proceeding are not to be considered adversely, it is the opinion of this Court that the ends of justice would be met, if the written statement of the defendant No.1 is permitted to be taken on record. Accordingly, this Court directs the learned Trial Court to take on record the written statement filed by the defendant No.1 on 01.12.2022.

14. Be that as it may, the suit had been delayed on account of the conduct of the counsel for the defendant No.1, it is the opinion of this Court that such negligent conduct on the part of the counsel for the defendant No.1 cannot be encouraged inasmuch as, not only difficulties have been faced by the petitioner, who is the defendant No.1, but also had led to delay of the suit for almost two years. The conduct of the counsel for the defendant No.1 is deprecated and if

no costs is imposed, it would send a wrong signal.

15. Accordingly, this Court imposes a cost of Rs.25,000/- upon Mr. D Chakraborty, the learned counsel appearing on behalf of the defendant No.1 who is also the counsel for the petitioner herein to be deposited before the learned Trial Court on the next date fixed i.e. 05.07.2024. Upon such deposit being made, the learned Trial Court shall accept the written statement so filed by the defendant No.1. It is further made clear that in the circumstances, the said counsel does not deposit the said amount, the defendant No.1 shall deposit the same before the learned Trial Court on 05.07.2024 and adjust/realize the same from the counsel for the defendant No.1. The plaintiffs would be at liberty to file application for release of the said amount and the learned Trial Court shall pass appropriate orders on the said application.

16. With the above, this revision petition stands disposed of.

JUDGE

Comparing Assistant