

GAHC010006742014



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

Case No. : CRP/68/2014

PRANAB KUMAR DAS and ANR.

S/O LT. DHARMESWARI DAS, R/O JAPORIGOG, HENGRABARI, MAUZA-BELTOLA, P.S. DISPUR, GUWAHATI, DIST- KAMRUP METRO, ASSAM

2: ALPANA DAS
D/O LT. DHARMESWARI DAS
R/O LICHU BAGAN
NIZARAPAR
HENGRABARI
P.S. DISPUR
GUWAHATI
DIST- KAMRUP METRO
ASSA

VERSUS

SMT. CHARU BALA DAS and 13 ORS
W/O LT. KAMAKHYA CHARAN DAS

For the Petitioner(s) : Mr. S. J. Sharma, Advocate

For the Respondent(s) : Mr. R. K. Bhuyan, Advocate

Date of Hearing : **21.05.2024**

Date of Judgment : **21.05.2024**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. J. Sharma, the learned counsel appearing on behalf of the Petitioners and Mr. R. K. Bhuyan, the learned counsel appearing on behalf of the Respondents.

2. This is a classic case wherein an unscrupulous litigant has taken this Court for a ride thereby grossly abusing the process of the Court as would appear from the narration of the facts stated herein under.

3. The Petitioners herein are the substituted plaintiffs in a suit filed in the year 2000 which was registered and numbered as Title Suit No.229/2000. Subsequently, the said suit was re-numbered as Title Suit No.979/2006 upon being transferred to the Court of the Munsiff No.2, Kamrup at Guwahati in view of the change in the pecuniary jurisdiction of the Court.

4. On 30.11.2005, an order was passed by the Court of the learned Civil Judge (Senior Division) No.3, Kamrup at Guwahati, wherein Title Suit No.229/2000 was pending thereby rejecting various applications filed by the plaintiff. This order dated 30.11.2005 was sought to be reviewed by the original plaintiff by filing a review application on 04.01.2006. While the said review application was pending, the original plaintiff filed an application under Article 227 of the Constitution challenging the order dated 30.11.2005 which was registered and numbered as CRP No.33/2006. The said CRP No.33/2006 was dismissed for default vide an order dated 08.09.2010 for 2 (two) reasons. Firstly, the Petitioner had not appeared and secondly, the

Petitioner did not take steps for service of notice upon the remaining Respondents. It is noteworthy to mention that the one of the counsels for the Petitioner of the said proceedings was Mr. S. J. Sharma, the learned Advocate who is also the counsel for the Petitioners in the instant proceedings.

5. The fact as regards the dismissal of the CRP No.33/2006 vide the order dated 08.09.2010 was not informed to the learned Trial Court. This aspect of the matter is apparent from the order dated 24.05.2013. It is interesting to take note of that the order dated 24.05.2013 categorically observes that the review petition was not brought to the attention of the learned Trial Court in the year 2007 when the suit was transferred and it was only on 03.04.2013 that the review petition was brought to the notice of the learned Trial Court. It is also apparent from the said order dated 24.05.2013 that one of the grounds for rejection of the review petition was that the civil revision petition was pending before this Court and as such the question of reviewing the order dated 30.11.2005 did not arise. It is not known as to why the Petitioners did not inform the learned Trial Court about the dismissal of the CRP No.33/2006 vide the order dated 08.09.2010. However, it was informed during the course of the hearing by Mr. S. J. Sharma, the learned counsel that it was not within the knowledge of the counsel that the CRP No.33/2006 was dismissed on 08.09.2010. Be that as it may, if the said issue was duly pending before the High Court, the review petition ought to have been not pressed but it seems otherwise inasmuch as the Petitioners herein pressed for a decision on the review petition. It was under such circumstances, the order dated 24.05.2013 was passed. This order dated 24.05.2013 was put to

challenge by filing the present revision petition on 10.01.2014. It is also relevant to mention that in the present petition, the Petitioners again impugn the order dated 30.11.2005 in addition to the order dated 24.05.2013.

6. This Court further finds it relevant to take note of the manner in which the instant proceedings have been conducted and how it came to the notice of this Court about the perpetuation of the abuse of the process of the Court by the Petitioners.

7. The record reveals that though the revision application was filed as far back as on 10.01.2014, it was lying defective till 01.03.2014 when the defects were cured. On 05.03.2014, when the matter was listed, this Court questioned on the maintainability of the revision petition on the ground as to whether the order sought to be reviewed by the learned Trial Court had merged with the order dismissing the revision petition. Accordingly, this Court fixed the matter on 10.03.2014. However, on 10.03.2014, this Court issued notice making it returnable by 19.05.2014 and stayed the suit proceedings of Title Suit No.979/2006.

8. The orders dated 19.05.2014 and 03.10.2018 of this Court read along with the Office Notings dated 15.05.2014, 23.05.2014 and 11.09.2014 and the orders of the Lawazima Court dated 19.09.2014, 21.11.2014, 04.03.2015 and 14.05.2015 clearly shows that the Petitioners after obtaining the stay of the suit proceedings did not take steps or for that matter gave wrong addresses of some of the Respondents for which the service could not be affected. In this process, the Petitioners were successful in stalling the suit proceedings for more than 4 (four) years as would be apparent from the

Office Note dated 01.09.2018 and thereafter the order passed by this Court on 03.10.2018.

9. It is further seen that only on 08.11.2018, correct addresses were provided and necessary corrections were made by the counsel for the Petitioners. However, the Petitioners then also did not take any steps for which the matter was listed before this Court on 19.11.2018 when this Court came down heavily upon the Petitioners and observed that if the Petitioners did not take steps by 20.11.2018, adverse consequential orders would be passed.

10. The Office Note dated 22.01.2019 shows that the Petitioners took steps on 20.11.2018 on some of the Respondents only. It was under such circumstances notice could be issued upon the Respondent Nos. 1(a) to 1(d), 2, 3(a) to 3(g), 4(a) to 4(d), 5, 6, 7(a) to 7(g), 8, 9 and 10. However, it also appears from the said Office Note dated 22.01.2019 that no steps were received insofar as the Respondent Nos. 11 to 14.

11. The record further shows that on 28.11.2019, an Office Note was put up wherein it was mentioned inter alia that the Respondent Nos. 1(a), 4(a), 7(a) and 8 had expired. In respect to the Respondent No.2, it was mentioned as "not known". On the basis of the said Office Note, the matter was again listed on 10.01.2020 when the counsel for the Petitioners submitted that in view of the Office Note dated 28.11.2019, three weeks was required to obtain instructions. It was under such circumstances, this Court fixed the matter on 05.02.2020. In the meantime, it is worth mentioning that the suit continued to remain stayed in view of the various orders being

passed by this Court.

12. On 05.02.2020, when the matter was again listed, it was informed by the counsel for the petitioners that the Respondent No.7(a) would be required to be substituted inasmuch as the other Respondent Nos. 1(a), 4(a) and 8 were duly represented by the Respondents already in the revision application. It is however very interesting to take note of that the legal heirs of the Respondent No.8 were Respondent Nos. 13 and 14 against whom the Petitioners however did not take any steps as would be apparent from the Office Noting dated 22.01.2019. This Court on the basis of the said submissions made by the learned counsel for the Petitioners fixed the matter after 4 (four) weeks. As regards the Service upon the Respondent No.2, the Petitioners were directed to take steps within 5 (five) days. It is pertinent to take note of that the Petitioners thereupon did not file any application for substitution of the Respondent No.7(a) nor steps were taken against the Respondent No.2. Thereupon, after 2 (two) years when the matter was listed on 03.01.2022, none had appeared for the Petitioners and this Court noticing that the steps were not taken even after the order dated 05.02.2020, upon the Respondent No.2, directed the Petitioners to take steps within 7 (seven) days.

13. The instant petition thereupon was again listed after more than 8 (eight) months i.e. on 22.08.2022 when the counsel for the Petitioners submitted that the steps could not be taken upon the Respondent No.2 as the Respondent No.2 had already expired. Under such circumstances, this Court granted 2 (two) weeks time to file necessary applications. It was only

on 31.08.2022 that three applications were filed being I.A.(Civil) No.2683/2022, I.A.(Civil) No.3494/2022 and I.A.(Civil) No.3495/2022 for the purpose of condonation of delay, setting aside the abatement and for substitution of legal representatives of the Respondent No.2. It is however very apposite to take note of that a perusal of those applications show that the Respondent No.2 expired on 25.06.2013 much prior to the filing of the instant revision application meaning thereby that the instant revision application was filed against a person who was dead.

14. The said applications though were filed on 31.08.2022 and were listed on various occasions but on 18.01.2023 notice was issued thereby directing the Petitioners to take steps by way of Registered Post with A/D. On 20.05.2024, when the matter was listed before this Court, it was noticed that the Petitioners admittedly did not take steps as directed and the counsel for the Petitioners sought for a week's time for taking steps.

15. Taking into account that the manner in which the Petitioners have been conducting the instant proceedings and in that process have stayed a suit which have been pending since the year 2000 and almost 24 years have passed by, this Court passed the order dated 20.05.2024 thereby fixing the instant proceedings today and also in view of the apparent unscrupulous conduct of the Petitioners, one of the Petitioners were directed to appear in person.

16. I have heard Mr. S. J. Sharma, the learned counsel for the Petitioners and Mr. R. K. Bhuyan, the learned counsel appearing on behalf of some of the Respondents.

17. Mr. S. J. Sharma, the learned counsel appearing on behalf of the Petitioners submitted that the second revision application under Article 227 of the Constitution was maintainable against the order dated 30.11.2005 inasmuch as the earlier revision application under Article 227 of the Constitution was dismissed for default. He further submitted that the order dated 30.11.2005 was illegal and as such the said order ought to be interfered with by this Court in exercise of supervisory jurisdiction of this Court.

18. On the other hand, Mr. R. K. Bhuyan, the learned counsel appearing on behalf of some of the Respondents submitted that the filing of the instant petition is a gross abuse of the process of the Court. He further submitted that during the pendency of the instant proceedings, the Petitioners have also filed an application for restoration of the CRP No.33/2006 by filing a Misc. Case which was registered and numbered as Misc. Case No.640/2014. He submitted that the said application was also dismissed for non-prosecution. The learned counsel submitted that the illegalities perpetuated by the Petitioners is writ large inasmuch as the Petitioners even did not care to disclose before this Court for the last 10 (ten) years, when the instant proceedings have been pending that an attempt was made to restore CRP No.33/2006 by filing a Misc. Case No.640/2014 and the same was dismissed for non-prosecution. He further submitted that this is a case that the suit so filed was a suit for specific performance in the year 2000 in respect to an agreement dated 01.12.1987 and the delay in the disposal of the said suit amounts to continuous harassment of the defendants not to speak the fact that it clearly shows that the Petitioners are not willing to abide by the

contract as would be apparent from their conduct. He further submitted that the Respondent No.7(a) had expired and no steps were taken for substitution. In addition to that, as regards the Respondent No.2, the said person had expired even prior to the filing of the instant proceedings and as such the question of any substitution of a person who was not alive at the time of initiation of the instant proceedings does not arise.

19. From the above facts narrated, it is clear that the Title Suit No.979/2006 (Title Suit No.229/2000) have been stalled pursuant to the order dated 30.11.2005 i.e. for almost 19 years. It is a well settled principle of law that when the review petition is dismissed, it confirms the main order inasmuch as there is no question of any merger and the aggrieved person has to challenge the main order and not the order dismissing the review petition.

20. The Supreme Court in the case of ***DSR Steel (Private) Ltd. Vs. State of Rajasthan reported in (2012) 6 SCC 782*** observed in paragraph Nos.25, 25.1, 25.2 and 25.3 the different situations which may arise in relation to a review petition filed before a Court or Tribunal. It was categorically observed that when a review petition is dismissed, the main order stands affirmed and anyone aggrieved has to challenge the main order and not the order dismissing the review petition. Paragraph No.25, 25.1, 25.2 and 25.3 of the said judgment being relevant are reproduced herein below:

“25. Different situations may arise in relation to review petitions filed before a court or tribunal.

25.1. One of the situations could be where the review application is allowed,

the decree or order passed by the court or tribunal is vacated and the appeal/proceedings in which the same is made are reheard and a fresh decree or order passed in the same. It is manifest that in such a situation the subsequent decree alone is appealable not because it is an order in review but because it is a decree that is passed in a proceeding after the earlier decree passed in the very same proceedings has been vacated by the court hearing the review petition.

25.2. *The second situation that one can conceive of is where a court or tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review is reversed or modified. Such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law.*

25.3. *The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition."*

21. Therefore, in view of the above proposition of law, the challenge in the instant proceedings is actually to the order dated 30.11.2005 and in fact a perusal of the relief(s) claimed in the instant proceedings shows that the Petitioners again challenged the order dated 30.11.2005 and also sought the relief that the Petition Nos. 1937/05, 2228/05 and 2227/05 should not be allowed. The challenge to the review order dated 24.05.2013 in the instant proceedings was nothing but to create an illusion to actually challenge the order dated 30.11.2005 which clearly shows the fraud being played upon this Court.

22. Now, let this Court test the submission made to the effect that after a petition has already been dismissed for default, there is no bar to file another application under Article 227 of the Constitution challenging the same order which was the subject matter of the earlier revision application. In the opinion of this Court, the said submission is totally misconceived inasmuch as it would lead to a situation of chaos and abuse of the process of the Court more so in a case where the supervisory jurisdiction of this Court is invoked. If such a submission which have been made by the learned counsel for the Petitioners is to be accepted, it may lead to Bench hunting which is another facet of abuse of the process of the Court. For example, an unscrupulous litigant knowingly fully well that the application would get dismissed or may not get favourable orders from a particular Court may resort to the tactics of getting the application dismissed for default and again file another petition challenging the same order before another Bench. This is one of such instances amongst the many which would result in unscrupulous litigants being permitted to take the process of the Court for a

ride. Under such circumstances, the said contention so forwarded is not only misconceived but also preposterous.

23. The next question which arises is what orders are called for in the present proceedings. For the last almost 19 (nineteen) years, the proceedings of Title Suit have not proceeded. The challenge so made by filing a second revision application under Article 227 of the Constitution as stated above is not only misconceived but apparently shows that an attempt was made to play fraud upon this Court.

24. Taking into account the above, this Court dismisses the instant proceedings with costs of an amount of Rs.50,000/- to be deposited by the Petitioners before the learned Trial Court on the next date as fixed by this Court herein below. This Court observes that if the costs is not imposed, it would send a wrong signal to the unscrupulous litigants like the present ones to the effect that they can get away by playing fraud upon the Court as well as abusing the process of this Court.

25. This Court has duly taken note of that this Court had stayed the further proceedings of Title Suit No.979/2006 pending before the Court of the Munsiff No.2, Kamrup (M). The said stay order stands vacated and the parties are directed to appear before the learned Trial Court on 14.06.2024 on which date the Petitioners herein shall deposit the said cost of Rs.50,000/-. Failure to deposit the said costs would entail consequences as mandated under law as well as would amount to willful disobedience to this Court.

26. The Respondents shall be at liberty to file an application before the learned Trial Court for release of the said amount and the learned Trial Court shall pass appropriate orders in that regard.

27. Personal appearance of the Petitioner is hereby dispensed with.

28. With above observations and directions, the instant petition stands dismissed with costs as stated above.

JUDGE

Comparing Assistant