

CRP 60/2004

BEFORE

HON'BLE THE CHIEF JUSTICE MR MADAN B. LOKUR

The petitioner is aggrieved by an order dated 25-9-03 passed by the learned Civil Judge, Sr Division, Barpeta in Money Suit No.28/99 whereby the suit of the petitioner was dismissed for non prosecution.

On a perusal of the impugned order it is clear that proceedings against the defendants in the suit were ex parte. The witness of the plaintiff/petitioner was present in court but since the original documents (which were seized by the police of Barpeta Road Police Station in connection with Barpeta Road PS Case No.142/99) were not available the witness could not be examined.

The learned trial court noted that the matter had been adjourned from time to time and it was only on the 6th day fixed for evidence that the plaintiff/petitioner submitted that evidence could not be adduced because the original documents were not available. In view of the silence of the petitioner on several earlier dates of hearing and its failure to requisition the records, the learned trial court was prompted to dismiss the suit filed by the plaintiff/petitioner.

During the pendency of the revision petition in this court, defendant No .2 (respondent No.2 herein) has passed away and his legal representatives have been brought on record. There is no appearance on behalf of any respondent. There is, therefore, no contest to this petition.

Even otherwise, I am of the view that it is not as if the plaintiff/petitioner was delaying the proceedings. It is true that 5/6 adjournments had been taken by the plaintiff/petitioner. But, it appears from the record that the witness of the plaintiff/petitioner was present on the given date but the original records were seized by the police and so were not available. For this, the plaintiff/petitioner could be said to be guilty of a lapse in prosecuting the suit, but it would have been more appropriate for the learned trial court to have imposed costs on the plaintiff/petitioner rather than dismissing the suit.

Under the circumstances, I am of the opinion that the interest of justice would be met if the suit is restored to its original number subject to the plaintiff/petitioner depositing costs of Rs.7500/- with the Assam State Legal Services Authority within four weeks.

Upon deposit of this amount and on production of a receipt of deposit the learned Civil Judge, Sr Division, Barpeta will restore the Money Suit No.28/99 to its original number.

The plaintiff/petitioner will appear before the learned trial court on 14-12-2010.

Since the respondents (original defendants) have been served in this court it would be appropriate for the learned Civil Judge to issue summons to the defendants/their legal representatives before proceeding further in the matter.

The revision petition is disposed of. Send back the lower court records immediately.