

GAHC010011732018



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

Case No. : FAO 3/2018

1:AZHARUL ALAM
PERMANENT R/O- VILL- GUNAIBORI, P.O. LUCHANABORI, P.S.
MOIRABARI, DIST- MORIGAON, ASSAM PRESENTLY RESIDING AT VILL-
SATGAON KOCHPARA, P.O. UDYAN VIHAR, P.S. SATGAON, DIST- KAMRUP
(M), ASSAM, PROPRIETOR OF RHINO DHABA

VERSUS

1:UNION OF INDIA
REPRESENTED BY MINISTRY OF DEFENCE SOUTH BLOCK,
NEW DELHI-110011

2:GOC 51 SUB-AREA NARANGI
GHY-27 KAMRUP

3:THE STATION COMMANDER
HQ 51 SUB AREA NARANGI

4:THE ADMINISTRATIVE COMMANDANT
STATION CELL H Q 51 SUB AREA NARANGI ARMY CANT
GHY-27 ASSAM

5:SSO (STATION STAFF OFFICER)
STATION CELL H Q 51 SUB AREA NARANGI ARMY CANT
GHY-27 ASSAM

Advocate for the Petitioner : J ROY

Advocate for the Respondent : ASSTT.S.G.I.

Linked Case : I.A.(Civil) 145/2018

1:AZHARUL ALAM
PERMANENT R/O- VILL- GUNAIBORI P.O. LUCHANABORI P.S. MOIRABARI
DIST- MORIGAON ASSAM PRESENTLY RESIDING AT VILL- SATGAON

KOCHPARA P.O. UDYAN VIHAR P.S. SATGAON DIST- KAMRUP (M)
ASSAM PROPRIETOR OF RHINO DHABA

VERSUS

1:UNION OF INDIA
REP. BY MINISTRY OF DEFENCE
SOUTH BLOCK NEW DELHI-110011

2:GOC, 51 SUB-AREA
NARANGI GHY-27 KAMRUP

3:THE STATION COMMANDER
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5:SSO (STATION STAFF OFFICER)
STATION CELL H Q 51 SUB AREA NARANGI ARMY CANT
GHY-27 ASSAM

Advocate for the Petitioner : J ROY
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE ARUP KUMAR GOSWAMI

ORDER

Date : 31-01-2018

Heard Mr. J. Roy, learned counsel for the appellant. Also heard Mr. M. Phukan, learned Central Government counsel appearing for the respondents.

This appeal under Order 43 Rule 1(r) read with Section 104 of CPC is preferred against the order dated 19.01.2018 passed by the learned Civil Judge No.3, Kamrup (M) at Guwahati in Misc. (J) Case No.987/2017, arising out of Title Suit No.489/2017, whereby Misc. (J) Case No.987/2017, registered on an application under Order 39 Rules 1 & 2 read with Section 151 CPC, was rejected.

IA(C) No.145/2018 is an application under Order 39 Rules 1 & 2 read with Section 151 CPC for grant of temporary injunction.

The appellant herein is a tenant in respect of shop premises being shop Nos.32 & 33 (old shop Nos.5 & 6) under the opposite parties/ respondent Nos.3, 4 & 5. A

written agreement for lease was executed on 01.02.2017 for the period up to 31.12.2017. The lease contained a clause for extension and it is stipulated that in case the lessee intends to seek renewal of the lease, he has to make a request before 45(forty-five) days of the expiry of the lease. While on 07.11.2017, the appellant requested the respondents for renewal of extension of the lease, on that very date, a letter was issued by the authorities asking the appellant to vacate the shop premises on completion of the term of the lease on 31.12.2017. The prayer for extension of the lease was also rejected by the authorities by a communication dated 09.11.2017.

The aforesaid events prompted the appellant to file the suit.

As the learned counsel appearing for the parties have come to an agreement that the order dated 19.01.2018 is required to be interfered with, with certain directions, which they have also explicitly spelt out, it is not considered necessary to narrate the facts in detail.

The learned trial Court had earlier passed an order dated 22.12.2017 in the aforesaid Misc. (J) Case No.987/2017 fixing 03.01.2018 for passing necessary order to dispose of the injunction application. The aforesaid order was assailed by the appellant by filing an appeal before this Court, registered as FAO No.17/2017. By an order dated 27.12.2017, the said FAO was disposed of observing as follows:-

“Having considered the submissions made by the learned counsel for the appellant and also the respondent and taking note of the whole gamut of the matter, I am of the view that when the matter has been rightly appreciated to be urgent one, learned Trial Court ought not to have left the matter without passing an effective order and thereby, for all practical purposes pushing the parties to uncertainty. Be that as it may, since the learned Trial Court has not passed any order on the matter of injunction and fixed a date for passing order, I am of the view, that it will be in the fitness of the matter to remand back the case to the learned Trial Court to decide the prayer for injunction on merit within a stipulated time and till then, status-quo in respect of the suit properties should be maintained. Accordingly, the appeal is allowed. Let the matter be remitted back to the learned Trial Court for deciding the application for injunction. Parties shall appear before the learned

Trial Court on 03.01.2018 and the learned Trial Court shall dispose of the injunction matter within one month from 03.01.2018. Till then status-quo in respect of the suit premises shall be maintained.

The appeal is accordingly disposed of."

It is to be noticed that when the injunction petition was heard on 22.12.2017, the respondents had not filed any objection to the injunction petition.

A perusal of the order dated 27.12.2017 passed by this Court would go to show that the parties were directed to appear before the learned trial Court on 03.01.2018 with a direction to the learned trial Court to dispose of the injunction matter within a period of 1(one) month from 03.01.2018, with the further observation that till then, *status quo* in respect of the suit premises shall be maintained. It is, however, noticed that in the said order, this Court did not specifically say that the parties should again be heard but nevertheless, the parties were directed to appear on 03.01.2018.

When the parties appeared on 03.01.2018, the learned trial Court fixed 08.01.2018 for necessary order. It is apparent that parties were not heard again after passing of the order of this Court dated 27.12.2017. As the order could not be prepared on 08.01.2018, case was fixed on 12.01.2018 and again, by an order passed on 12.01.2018, case was fixed on 19.01.2018 for necessary order. Eventually, the order giving rise to filing of this appeal came to be passed on 19.01.2018.

An important aspect now will have to be noted, which is, filing of the written statement by the defendants on 19.01.2018 itself. A perusal of the order dated 19.01.2018 goes to show that the learned trial Court, while disposing of the injunction application, relied on the averments made in the written statement. This is precisely the reason for which the learned Central Government Counsel has agreed that the order cannot be sustained, as without granting opportunity to the plaintiffs to address on the same, the written statement had been considered.

Mr. Phukan has submitted that 10(ten) days time from today ought to be granted to the respondents to file objection to the injunction petition to which there is no objection by Mr. Roy. Similarly, with regard to the submission of Mr. Roy that after filing of the objection by the respondents, 10(ten) days time ought to be granted to the appellant for filing reply to the objection, Mr. Phukan has no objection.

The learned counsel appearing for the parties submit that within a period of 3(three) weeks from the date of filing of the reply to the objection, the injunction petition may be disposed of and till such time, the order of *status quo* may be continued.

Accordingly, the following consent order is passed:

The impugned order dated 19.01.2018 passed by the learned Civil Judge No.3, Kamrup (M) at Guwahati in Misc. (J) Case No.987/2017, arising out of Title Suit No.489/2017 is set aside. The respondents may file their objection on or before **10th February, 2018**. The appellant will be permitted to file reply to the objection within a period of 10(ten) days from the date of filing of the objection. The learned trial Court will dispose of the injunction application within a period of 3(three) weeks from the date of filing of the reply to the objection by giving opportunity to the parties to address argument. For the period above mentioned, *status quo*, as on today, shall be maintained.

Both the parties shall appear before the learned Court below on **5th February, 2018** for further orders.

The appeal as well as the interlocutory application stand disposed of. No cost.

JUDGE

M. Sharma_

Comparing Assistant