

GAHC010119902018



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

Case No. : CRP(I/O) 186/2018

1:TIBBAT KR. NATH AND 2 ORS.
S/O- LATE JATINDRA NATH, R/O- LALA TOWN, WARD NO. 10, PS- LALA

2: SRI SAMAR NATH
S/O- LATE JATINDRA NATH
R/O- LALA TOWN
WARD NO. 10
PS- LALA

3: SRI SAJAL NATH
S/O- LATE JATINDRA NATH
R/O- LALA TOWN
WARD NO. 10
PS- LAL

VERSUS

1:SMT. SITHI RANI NATH AND 2 ORS. (C)
W/O- LATE PANKAJ NATH, R/O- HAILAKANDI TOWN, WARD NO. 2 LAL
BAHADUR SHASTRI LANE, PO AND PS-HAILAKANDI

2:SRI PALLAB NATH
S/O- LATE HORMOHAN NATH
R/O- HAILAKANDI TOWN
WARD NO. 2 LAL BAHADUR SHASTRI LANE
PO AND PS-HAILAKANDI

3:SRI BIPLAB NATH
S/O- LATE HORMOHAN NATH
R/O- HAILAKANDI TOWN
WARD NO. 2 LAL BAHADUR SHASTRI LANE

PO AND PS-HAILAKAND

Advocate for the Petitioner : MR. M H RAJBARBHUIYAN

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 31-10-2018

Heard Mr. M. H. Rajbarbhuiya, learned counsel appearing for the petitioners. None appears for the respondents.

In this revision petition, the orders dated 05/01/2018 and 19/03/2018 passed by the Court of Learned Civil Judge, Hailakandi in connection with Title Suit No. 41/2017 have been put to challenge. The revision petitioners are the defendants in the aforesaid suit and are aggrieved by the rejection of their prayer for taking the written statement filed by them on record.

Mr. Rajbarbhuiya submits that the summons in connection with the suit was received by the petitioners on 14/09/2017 and, therefore, they had time till 13/12/2017 to file the written statement. However, in the present case the written statement of defense on behalf of the petitioners/defendants could be brought on record only 10/01/2018. The delay had occurred on account of the fact that certain vital documents required for preparing the written statement were not readily available with the petitioners and due to the intervening puja holidays of the Court, the process of preparation of the written statement got further delayed.

It appears for the records that on 05/01/2018, the learned Civil Judge had passed an order refusing to grant further time to the petitioners for filing the written statement. Subsequently, although the petitioners had filed written statement on 10/01/2018, yet, the learned trial Court had refused to take the same on record by issuing the impugned order dated 19/03/2018. From a perusal of the impugned order dated 19/03/2018, it appears that the learned court below had also taken strong exception to the fact that despite the order dated 05/01/2018, the petitioners went ahead with the swearing of the affidavit of the written statement, thereby defying the order of the Court.

It is to be noted herein that although a maximum period of 90 days is prescribed under the statute for a defendant to file written statement, yet, it has been held by the Supreme Court in the case of *Kailash Vs. Nankhu and others* reported in (2005) 4 SCC 480 that the same is not mandatory provision and the

Courts would have the power to enlarge the time on furnishing sufficient reasons. In the present case, from the materials on record, it appears that there was a genuine reason for which the written statement could be filed by the petitioners after a delay of 27 days from the expiry of the 90 days period. Moreover, even if the request for further extension of time for filing written statement was refused by the court below, the petitioners were not precluded from submitting the written statement along with a prayer to take the same on record by vacating the order of exparte proceeding, which was done in this case. As such, I am of the opinion that the learned Court below was not correct in observing that the swearing of the affidavit before the Civil Sherestadar was in defiance of the order of the Court.

For the reasons stated herein above and taking note of the explanation furnished by the petitioners, I am of the view that it is a fit case where the petitioners should be granted one more chance to contest the suit on the basis of their written statement.

In view of the above, the revision petition stands allowed. The orders dated 05/01/2018 and 19/03/2018 stand set aside. The written statement filed by the petitioners be taken on record. The learned court below may thereafter, proceed with the suit in accordance with law.

There would be no order as to costs.

JUDGE

Sukhamay

Comparing Assistant