

GAHC010270502017



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

Case No. : CRP(I/O)/302/2017

ABDUL JABBAR ANSARI
S/O- LATE PHUL MUHAMMAD ANSARI, R/O- J N ROAD, RANGAPARA,
WARD NO.1, DIST- SONITPUR, ASSAM, PIN- 784505

VERSUS

MD. HUSSAIN ANSARI AND 3 ORS
S/O- LATE HASIB ANSARI, PRESIDENT, MOTI MASJID COMMITTEE, MOTI
MASJID, RANGAPARA WARD NO.1, DIST- SONITPUR, ASSAM, PIN- 784505

2:TAHIR ANSARI
S/O- LATE MD. TAYEB ALI
SECRETARY
MOTI MASJID COMMITTEE
MOTI MASJID
RANGAPARA
WARD NO. 1
DIST- SONITPUR
ASSAM
PIN- 784505

3:ABDUL ANSARI
S/O- LATE SATTAR ANSARI
CASHIER
MOTI MASJID COMMITTEE
MOTI MASJID
RANGAPARA
WARD NO.1
DIST- SONITPUR
ASSAM
PIN- 784505

4:SHAH NAWAJ ANSARI
S/O- LATE SAMAD ANSARI
R/O- WARD NO. 1
RANGAPARA
NEAR MOTI MASJID
DIST- SONITPUR
ASSAM
PIN- 78450

Advocate for the Petitioner : MR B PUSHILAL

Advocate for the Respondent : MS.J DAS R- 2,3and4

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 29-01-2021

Heard Mr. B. Pushilal, learned counsel for the petitioner and Mr. S. Sahu, learned counsel for the respondents.

2) By filing this application under Article 227 of the Constitution of India, the petitioner- plaintiff has assailed the orders dated 21.07.2017 and 03.08.2017, passed by the learned Civil Judge, Sonitpu, Tezpur in M.S. No. 12/2016.

3) At the stage of plaintiff's evidence, the petitioner had availed adjournments on 08.03.2017, 04.04.2017, 04.04.2017, 04.05.2017, 31.05.2017, 20.06.2017, 14.07.2017 to file evidence- on- affidavit of plaintiff's witnesses. On 21.07.2017, the petitioner had filed evidence- on- affidavit of PW-1 and filed petition no. 1158/17, seeking time to file evidence- on- affidavit of further plaintiff's witnesses. The said petition for adjournment was rejected and the suit was fixed on 02.08.2017 for cross examination of PW-1.

4) On 02.08.2017, the petitioner filed a petition for adjournment on the ground

that there was a *bundh* call given for which the petitioner could not be present in Court. The respondents' side also filed a petition for adjournment to cross examine PW-1 as they had received the copy of evidence- on- affidavit of PW-1 on that day. The suit was adjourned to 21.08.2017 for cross examination of PW-1 and for report of the Advocate Commissioner. Later on, at around 2.45 pm., the petitioner submitted petition no. 1236/17, seeking liberty to file evidence of other PWs. The learned counsel for the petitioner was heard and the suit was fixed on 03.08.2017 for necessary orders. By order dated 03.08.2017, the learned trial Court had refused to show leniency and rejected the petition as there was no justifiable ground.

5) The learned counsel for the petitioner has submitted that this was a suit for seeking compensation for defamation and if the petitioner is not allowed to adduce evidence, he would suffer irreparable prejudice. It is submitted that from 31.03.2017 to 04.05.2017, the petitioner was compelled to seek adjournment as his learned counsel had suffered a heart attack and was hospitalized and had been advised a long rest with no stress. Thereafter on 31.05.2017, the respondents approached the petitioner with an offer to amicably settle the matter and due to bona fide belief that the matter would be settled, there was some laxity in not promptly filing evidence- on- affidavit of all PWs. It is submitted that without any opportunity being given to prove his case, the petitioner would suffer irreparable prejudice and it is submitted that the respondents, being the defendants have not suffered any prejudice and that even if the respondents had suffered any loss, they can be compensated in terms of money.

6) The learned counsel for the respondent has submitted that the learned trial Court had given a last chance to the petitioner vide order dated 14.07.2017 to file evidence- on- affidavit by plaintiff's witnesses, as such, the learned trial Court did not commit any jurisdictional error in rejecting the prayer for adjournment made on 21.07.2017. On 21.07.2017, adjournment was sought for on the ground that the witnesses were ill and as the said petition was not supported by any medical document, the prayer for adjournment was rejected.

7) Perused the materials on record. There is no doubt that the petitioner has been negligent in seeking repeated adjournments to file evidence- on- affidavit of PWs. It is seen that vide adjournment petition filed on 20.06.2017, it was represented by the petitioner that evidence of the plaintiff's side has been prepared, but could not be filed as the petitioner was ailing and confined to bed and the case was fixed on 14.07.2017 and that on 14.07.2017, the learned trial Court had granted one last opportunity to the petitioner to submit evidence- on- affidavit of PWs on 21.07.2017. Therefore, it is not that the learned trial Court had not put the petitioner to notice of adverse situation that he may face if PWs were not produced on the next date. Therefore, when as per petition dated 20.06.2017, the evidence- on- affidavits of PWs were prepared, there was no conceivable reason not to file the same on 21.07.2017, and avail the last opportunity as granted by the learned trial Court. Therefore, the order dated 21.07.2017 suffers from no jurisdictional error.

8) It is seen that in petition filed on 02.08.2017, the petitioner claims that he has a right to examine his witnesses. None disputes the said legal position. However, while asserting his right, the petitioner has failed to appreciate that proviso to Clause (1) of Rule 1 of Order XVII CPC prescribes that no adjournment shall be granted for more than three times to a party during hearing of the suits. In this case, at the stage of PWs, the petitioner has availed adjournments on 08.03.2017, 04.04.2017, 04.04.2017, 04.05.2017, 31.05.2017, 20.06.2017, 14.07.2017 to file evidence- on- affidavit of plaintiff's witnesses. Therefore, the Court is of the considered opinion that the order dated 03.08.2017, refusing to recall the order dated 21.07.2017 is fully justified and the same does not suffer from any jurisdictional error.

9) However, procedural law is considered to be handmaid of justice and should not be allowed to defeat substantive justice. Therefore, without finding any fault with the orders impugned herein, for ends of justice, it is provided that on the condition of payment of cost of Rs.20,000/- towards cost for availing plentiful adjournments availed at the stage of

hearing as well as towards cost to compensate the respondents to participate in the present litigation, one further opportunity be granted to the petitioner to file the evidence- on- affidavit of all listed PWs before the learned trial Court on or before 20.02.2021, irrespective of the date which may be fixed by the learned trial Court.

10) This order is subject to five stringent following conditions:-

- a. It is made clear that in the event the petitioner- plaintiff fails to file the evidence- on- affidavit of all listed PWs within the time allowed, the opportunity to file evidence- on- affidavit of remaining listed PWs as granted by this order shall stand lapsed by efflux of time and lost to the petitioner.
- b. It is further clarified that if the cost of Rs.20,000/- is not deposited by the petitioner along with the evidence- on- affidavit of remaining listed PWs, the opportunity to file evidence- on- affidavit of remaining listed PWs as granted by this order shall stand lapsed by default on part of the petitioner.
- c. In both eventualities, the trial Court would not have power to accept the evidence- on- affidavit of remaining listed PWs.
- d. This order shall not be construed as if the Court has permitted unlisted witnesses to be examined by the petitioner- plaintiff.
- e. The petitioner shall ensure that all his PWs are present on the date so fixed by the Court for their cross- examination. The learned trial Court shall be at liberty to either record the cross examination in Court, or order such cross- examination to be done by appointing Advocate Commissioner. In the event of making a further default in presenting all PWs for cross- examination, it would be open to the learned trial Court to pass such appropriate orders as it may deem fit and proper.

11) The parties are directed to appear before the Court of the learned Civil Judge, Sonitpu, Tezpur in the proceedings of M.S. No. 12/2016 on 15.02.2021 and on the said date, the petitioner shall produce a certified copy of this order and seek further instructions from

the said learned Court.

12) This application stands disposed of on terms as indicated above.

13) This order has been passed on the unique facts of this case, as such, this order is not intended to be cited as a precedent.

JUDGE

Comparing Assistant