

GAHC010065512025



2025:GAU-AS:3642

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

Case No. : CRP(IO)/113/2025

SMT SWAPNA MANDAL
W/O SRI SUJIT KUMAR MANDAL, R/O WARD NO. 1, DHUBRI TOWN, P.O.
AND DIST- DHUBRI, ASSAM, PIN-783301

VERSUS

SUSHIL MAZUMDAR
S/O LATE JATINDRA NATH MAZUMDAR, R/O A.C. DASGUPTA ROAD,
WARD NO. 2, P.O. AND DIST- DHUBRI, ASSAM, PIN-783301

Advocate for the Petitioner : MR. A C SARMA, MR B DEORI, MR G BHARADWAJ

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

28.03.2025

Heard Mr. A.C. Sarma, learned senior counsel assisted by Mr. G. Bharadwaj, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, the petitioner has challenged the correctness or otherwise of the order dated 07.03.2025, passed by the learned Civil Judge (Junior Division) No. 1, Dhubri, in Misc. (J) Case No. 36/2023, arising out of Title Execution Case No. 01/2021.

3. Mr. Sarma, learned senior counsel for the petitioner submits that the petitioner, as plaintiff, had instituted a suit against the respondent/defendant for a decree for eviction and recovery of rent and in the said suit, the respondent/defendant did not contest the suit in spite of receipt of summon and as such, the suit proceeded ex-parte. Thereafter, the learned trial court decreed the suit and also put the decree for execution. Thereafter, the respondent/defendant filed petition for setting aside the ex-parte order for non-service of summon and the petitioner filed objection. Thereafter, the respondent, to establish his case, filed evidence-on-affidavit of himself as P.W.1 and examined the process servers as P.W.2 and P.W.3. But, the learned trial during cross-examination of P.W.3 dispensed with the further cross-examination and fixed the matter for order.

3.1. Mr. Sarma further submits that the said order is illegal inasmuch as the learned trial court ought not to have fixed the matter for order without completion of the evidence of both the parties. And as such, according to Mr. Sarma, the impugned order is illegal and arbitrary and therefore, it is contended to set it aside and to direct the learned trial court to complete the cross-examination of P.W.3 and thereafter, to pass necessary order in accordance with law.

4. Having heard the submission of learned counsel for the petitioner, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned order dated 07.03.2025, passed by the learned Civil Judge (Junior Division) No. 1, Dhubri, in Misc. (J) Case No. 36/2023, arising out of Title Execution Case No. 01/2021.

5. It appears from the deposition of P.W.3, which is enclosed with the petition as Annexure No. 8, at Page No. 52, the learned trial court after allowing

the counsel of the petitioner/plaintiff to partly cross-examination of P.W.3 and thereafter dispensed with further cross-examination. It further appears from the order dated 07.03.2025, that, thereafter, the learned trial court fixed the matter on 26.03.2025, for order. However, as submitted by Mr. Sharma, on 26.03.2025, the learned trial court did not pass any order as the learned Presiding Judge was under the order of transfer.

5.1. It is to be noted here that a right to cross-examine a witness, apart from being a natural right, is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But, indisputably such an opportunity is to be granted. (See- **Jayendra Vishnu Thakur v. State of Maharashtra**, reported in (2009) 7 SCC 104).

6. In the instant case, the learned trial court ought not to have fixed the matter for order without allowing the petitioner to complete the cross-examination of P.W.3. Therefore, the right of the petitioner to cross-examine the P.W.3 stands violated. The impugned order, dated 07.03.2025, on such count, appears to be arbitrary and illegal and as such it failed to withstand the legal scrutiny.

7. Thus, taking note of the submission of learned counsel for the petitioner and also considering the facts and circumstances on the record, I find sufficient merit in this petition. Accordingly, the same stands allowed. The impugned order dated 07.03.2025, passed by the learned Civil Judge (Junior Division) No. 1, Dhubri, in Misc. (J) Case No. 36/2023, arising out of Title Execution Case No.

01/2021, stands set aside and quashed.

8. The learned trial court is directed to allow the petitioner to complete the cross-examination of P.W.3 and thereafter, to pass a reasoned order in accordance with law.

9. In terms of above, this petition stands disposed of at the motion stage itself.

Comparing Assistant

JUDGE