



GAHC010159862018

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

**Case No. : CRP(I/O)/320/2018**

ANIMA SONOWAL  
W/O. LT. JAYANTA SONOWAL, R/O. VILL. KUTUHA GAON AND P.O.  
KUTUHA, P.S. BORBORUAH, DIST. DIBRUGARH, ASSAM.

VERSUS

DINESWARI MECH  
W/O. LT. TUKHESWAR MECH, R/O. KUTUHA GAON, P.S. BORBORUAH,  
DIST. DIBRUGARH, ASSAM-786003.

**Advocate for the Petitioner : MR. A K GUPTA**

**Advocate for the Respondent :**

**BEFORE**  
**HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

**JUDGMENT & ORDER (ORAL)**

Date of hearing & Judgment : **09.09.2021**

Heard Shri R.S. Mishra, learned counsel for the petitioner, who has put to challenge an order dated 16.05.2018 passed by the learned Munsiff No.2, Dibrugarh. By the said order, while rejecting the application filed by the petitioner, who is the defendant under Order VII



Rule 11 CPC, the learned Court has suo moto exercise powers and directed striking out a portion of the plaint relating to Zirat money. It is this part of the order, which is the subject matter of challenge.

2. The learned counsel has drawn the attention of this Court to an order dated 08.01.2021 passed by the learned Lawazima Court whereby it has been held that the service upon the sole respondent is complete. In fact, subsequently this Court vide order dated 19.01.2021 has held the service to be complete.

3. Shri Mishra, the learned counsel for the petitioner by drawing the attention of this Court to the provisions of Order VI Rule 16 CPC submits that such powers can be exercised on the application made by a party to the proceedings. He submits that a party to a proceeding may make an application under the aforesaid section to strike out pleadings, which may fall within the three subject headings and after giving the contesting party a chance, such a power can be exercised. The learned counsel submits that in absence of specific reference enabling suo moto exercise of powers, the learned Court cannot exercise the same.

4. In support of his submission, the learned counsel has placed a reliance upon a case of the Hon'ble Supreme Court reported in **(2013) 9 SCC 349 (S. Malla Reddy Vs. Future Builders Cooperative Housing Society and others)**. Reliance has also been made to a decision of the Hon'ble Madras High Court dated 01.11.2017 rendered in **C.R.P.(PD) No. 116 of 2014 and M.P. No. 1 of 2014 (R. Dasappan Vs. Thangavelu)** in which the High Court has relied on the decision of the Hon'ble Supreme Court in the case of *S. Malla Reddy (Supra)*. The Hon'ble Court has come to a categorical finding that a reading of the provision of Order VI Rule 16 reveals that there is no suo moto powers conferred upon the Court to strike off pleadings.

5. For ready reference, Order VI Rule 16 CPC is quoted hereinbelow-

**“16. Striking out pleadings.-** *The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-*

- (a) *which may be unnecessary, scandalous, frivolous or vexatious, or*
- (b) *which may tend to prejudice, embarrass or delay the fair trial of the suit, or*

(c) *which is otherwise an abuse of the process of the Court.”*

6. The purpose and object of the said enactment appears to be maintained sanctity and the dignity of the Court and ensure that the environment while conducting the proceedings is a dignified one. The legislature has contemplated three broad situations.

- i. Pleadings, which may be unnecessary, scandalous, frivolous or vexatious.
- ii. Pleadings, which may tend to prejudice, embarrass or delay the fair trial of the suit,  
**and**
- iii. Pleadings, which otherwise appear to the Court to be an abuse of the process.

7. A minute reading of the said provision of law reveals that there is no indication that such powers can be exercised in a suo moto manner. In absence of any such indication, this Court is in humble agreement with the conclusion reached by the Hon'ble Madras High Court in the case of *R. Dasappan (Supra)* wherein it has been held that there is no suo moto powers conferred upon the Court under the said provisions of law. Such powers can be exercised only when a party to the proceedings files an application to strike off the pleadings, in which case an opportunity is required to be given to the contesting parties. The relevant extracts of the said Judgment is quoted hereinbelow-

*“9. A reading of the provision reveals that there is no suo moto power conferred on the Court under this provision to strike off the pleadings. The Court can exercise this power only when a party files an application to strike off the pleadings. This Court must give an opportunity to other party to rebut the contentions raised in the application. Only when the Court comes to the conclusion that the pleadings of the party is liable to be struck off for any of the grounds mentioned in Order VI Rule 16 CPC, the Court can strike off the pleadings at any stage of the suit.”*

8. In view of the aforesaid facts and circumstances, this Court is of the opinion that while the learned Court of the Munsiff No.2, Dibrugarh had passed an order dated 16.05.2018 rejecting the petition No. 1582/2017 filed in Title Suit No. 146/2017 wherein the present petitioner, who is the defendant had prayed for rejecting the plaint under the provisions of Order VII Rule 11 CPC, the learned Court could not have suo moto directed for striking out the part of the plaint relating to the Zirat money.

9. Accordingly, this Court interferes with that part of the order dated 16.05.2018 of the



learned Munsiff No.2, Dibrugarh by which the observations have been made by suo moto exercise of powers under Order VI Rule 16 CPC.

10. In view of such direction, the interim order staying the proceedings is vacated and the learned Court is directed to continue with the proceedings in accordance with law and as in the manner indicated above.

11. This petition stands allowed.

**JUDGE**

**Comparing Assistant**