



GAHC010160822023

Page No.# 1/5



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

Case No. : CRP(IO)/222/2023

ANIL KUMAR TODI
S/O NIRNJAN LAL TODI R/O NO. 2 QUEENS PARK BALLYGUNGE
P.S BALLYGUNGE KOLKATTA 700019 WEST BENGAL

VERSUS

M/S D N ENTERPRISE AND 3 ORS.
REP. BY ITS PROPRIETORS PABITA KUMAR HIRA R/O WARD NO.
10 BHEBARGAHT P.O. AND P.S. MANGALDOI DIS DARRANG
784125 ASSAM

2:M/S KHAZANA AGRICULTURAL EQUIPMENT LTD.
HAVING ITS OFFICE AT APARNA BUSINESS CENTRE 5 CLIVE
HOUSE STRAND ROAD KOLKATA 700001 WEST BENGAL

3:M/S SHIVA DURGA FINANCE AND INVESTMENT PVT LTD.
HAVING ITS REGISTERED OFFICE AT APARNA BUSINES
CENTRE 5 CLIVE HOUSE STRAND ROAD KOLKATTA 700001
WEST BENGAL

4:PRANAB KUMAR SARKAR
S/O LT. PRABHAT KUMAR SARKAR R/O 5 CLIVE HOUSE
STRAND ROAD KOLKATA 700001 WEST BENGAL



B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocate for the petitioner : Shri S. Khound, Advocate

Advocate for the respondent : Shri D. Goswami, Advocate for
respondent no.1

Date of hearing : 26.07.2023

Date of judgment : 26.07.2023

1. Heard Shri S. Khound, learned counsel for the petitioner. Also heard Shri G. Goswami, learned counsel for the respondent no. 1 who has entered appearance on the strength of a caveat.

2. The petitioner is the defendant in the connected Money Suit No. 4/2019 and this petition under Article 227 of the Constitution of India has been filed against an order dated 09.05.2023 passed in the said M.S. 04/2019 by the learned Civil Judge, Darrang, Mangaldai.

3. Shri Khound, the learned counsel by drawing the attention of this Court to the impugned order dated 09.05.2023 has submitted that the prayer for adjournment of the petitioner has been rejected whereby the petitioner has been deprived of an opportunity to contest the case properly as he would not be

able to cross examine the plaintiff witness no.1 and plaintiff witness no. 2. He submits that though the examination in chief was filed by way of an affidavit and copies of the said affidavits were furnished, the documents accompanying the affidavits were not furnished. It is submitted that the PW1 in the said examination has exhibited 20 nos. of documents whereas the Pw2 had exhibited 5 nos. of documents and those being voluminous in nature, the petitioner was under the impression that copies of the same would be furnished and therefore, he would be in a better position to conduct the cross examination.

4. He accordingly submits that the order dated 09.05.2023 is to be interfered with.

5. *Per contra*, Shri Goswami, the learned counsel for the respondent no.1 has submitted that there is no error at all in the impugned order dated 09.05.2023. He submits that after filing of the examination in chief, the matter had come up before the learned Court on two occasions namely 21.03.2023 and 06.04.2023 and also on three occasions before the learned Commissioner before whom the cross examination was to be done and the petitioner had failed to take any steps for procuring the documents or to inspect the same in accordance with law.

6. He accordingly submits that the instant petition is liable to be rejected.

7. Order 18 Rule 4 of the CPC is with regard to recording of evidence. The relevant part of the same read as follows:

“4. Recording of evidence

(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

8. The obligation as per the statute is to serve copies of the affidavit which has been filed as chief examination and so far as documents are concerned, there is no requirement in law to serve copies. The only requirement is that where the documents are filed and relied upon, the proof and admissibility of such documents would be subject to the orders of the Court. It is a different matter altogether that a party may choose to serve copies of the documents which have been exhibited and annexed in the chief examination. However, the same cannot be held to be a mandatory requirement and therefore this Court is of the opinion that the order impugned in this case does not suffer from any infirmity which requires interference by a Revisional Court. This Court also finds force in the submission made on behalf of the respondent no.1 that there was plenty of opportunities from the date of filing of the chief examination till the impugned order dated 09.05.2023 when the documents would have been procured which have not been done.

9. In view of the above, this Court is of the opinion that the order dated 09.05.2023 passed by the learned Court of the Civil Judge, Darrang, Mangaldai



does not call for any interference. However, in the interest of justice, this Court is of the opinion that while the impugned order is not interfered with, the petitioner may be allowed one last opportunity to either inspect the documents or procure the same in accordance with law for which a period of 2 (two) weeks from today is granted.

10. The learned court may accordingly fix a date after 2 (two) weeks giving an opportunity to the defendants to cross examine both the PW1 and PW2 in accordance with law.

11. This Court is also of the opinion that since the suit is pending since the year 2019, the petitioner is liable to pay cost of Rs. 2000/- (Rupees Two Thousand only) to the respondent no.1.

12. Ordered accordingly.

13. The petition accordingly stands disposed of.

JUDGE

Comparing Assistant