

HIGH COURT FORM NO.(J) 2
HEADING OF JUDGMENT ON ORIGINAL APPEAL

IN THE COURT OF CIVIL JUDGE, SONITPUR : : AT TEZPUR

Present: **Dr. C. Khanikar**
Civil Judge
Sonitpur, Tezpur

10th November 2022

Misc. APPEAL NO. 07/2022

Smti. Niru Probha Devi

W/o Lt. Padmeswar Nath
Resident of Swahid Bakori, Mazgaon
Mouza- Bhairabpad
PO. Ketekibari & PS - Tezpur
Dist- Sonitpur, Assam

----- Appellant/Defendant

-Versus-

(1) Smti. Nijara Devi

W/o Lt. Bolindra Kumar Bhattacharjee

(2) Smti. Pankhi Krishnatriya

D/o Lt. Bolindra Kumar Bhattacharjee

(3) Sri Prafulla Bhattacharjee

S/o Lt. Bolindra Kumar Bhattacharjee

All are Resident of Swahid Bakori, Mazgaon
Mouza- Bhairabpad
PO. Ketekibari & PS - Tezpur
Dist- Sonitpur, Assam

----- Respondents/Plaintiffs

Advocate for the Appellant: - Mr. F. Haque

Advocate for the Respondents:- Mr. N. Sarma

Date of Argument : 28-09-2022

Date of Judgment : 10-11-2022

J U D G M E N T

1. This is an appeal preferred under order XLIII r. 1(r) r/w section 104 of CPC against the order dated 12-07-2022 passed by Learned Munsiff No.2 Sonitpur, Tezpur, whereby Ld. Munsiff No. 2 has rejected the adjournment petition bearing No. 1326/2022 filed by the appellant/defendant in T.S No.20/2014.

2. According to the appellant/defendant, the appellant/defendant Smti. Niru Probha Devi is a widow of 59 years of age having a girl child. The appellant/defendant is a tenant of the plaintiffs since 01-04-2010. She was paying Rs. 200/- to the plaintiffs as monthly rent of the tenanted premises on verbal agreement and also was paying electricity bills. But from January, 2014, the plaintiff demanded Rs. 2700/- p.m as the rent of the said tenanted premises. When the appellant/defendant refused to pay such an unreasonable, exorbitant enhanced rent, the plaintiff filed the T.S No. 20/2014. The appellant/defendant contested the said suit by filing W/S. The appellant/defendant has also submitted her evidence in affidavit and the date 12-07-2022 was fixed for cross-examination of the appellant/defendant. But unfortunately the appellant/defendant became ill and she has to visit Kanaklata Civil Hospital, Tezpur on that day and could not appear before the court of the Munsiff No. 2. Therefore, along with medical certificate dated 28-11-2016, an adjournment petition was filed by the appellant/defendant

praying for another date. But Ld. Trial Court after going through the petition and the medical certificate has rejected the prayer for adjournment.

3. Having been highly aggrieved by the said order dated 12-07-2022, the appellant/defendant preferred this appeal on the grounds enumerated in the Memorandum of Appeal.

4. At the end of the trial both sides have adduced oral arguments in support of their case.

5. Having considered the ground assigned by the appellant, I have formulated the following point for determination in this appeal:

POINT FOR DETERMINATION :

"Whether the impugned order dated 12-07-2022 passed by Learned Munsiff No. 2, Sonitpur, Tezpur in T.S Case No. 20/2014 is perverse, illegal and unsustainable in law and fact, making it liable to be interfered with by this court in appeal?"

DECISION AND REASONS THEREOF

6. I have gone through the order dated 12-07-2022 passed by Id. Munsiff No. 2 in T.S No. 20/2014. In the said order Id. Munsiff No. 2 has observed that the said suit "is a long pending case and stuck on cross-examination of DWs since 17-01-2020 and the defendant side continuously filed

adjournment petition. The defendant side has already got ample time to present and face cross-examination.”

7. In my opinion, it is seen that although the said suit was pending at the stage of cross of DWs since 17-01-2020, that period cannot be counted from 17-01-2020, because most of the time from 17-01-2020 to the beginning of the year 2022, were passed under various restrictions of covid pandemic. I have also seen the prescription in the name of the appellant/defendant dated 12-07-2022, issued from Kanaklata Civil Hospital, Tezpur. Thus, it appears that the appellant/defendant could not appear on date fixed due to her illness. However, it is not explained why she did not appear before the trial Court for her cross-examination on the dates fixed prior to 12-07-2022 from the beginning of the year 2022. Thus, it appears that Id. Trial Court has rightly observed that the defendant has already got ample time to present and face cross-examination. But, in the interest of justice and for complete adjudication of the matter, I am of the opinion that the appellant/defendant may be given one more chance to face the cross-examination on payment of cost to the plaintiff side, as her absence on 12-07-2022 was supported by reasonable ground. Hence, the appeal is allowed. The appellant/defendant is granted one more chance to face the cross-examination subject to payment of cost of Rs. 2,000/- to the plaintiff.

8. The order of the Id. Trial Court dated 12-07-2022, whereby cross-examination of DW was closed, is hereby **set aside**. The appellant/defendant **is allowed** to face the cross-examination in T.S No. 20/2014 subject to payment of cost of Rs. 2,000/- to the plaintiff.

9. Parties are directed to appear before the Trial Court on 12-12-2022 and the appellant/defendant is to deposit the costs at the Trial Court.

ORDER

10. The Misc. appeal is **allowed on contest with cost**.

11. **The order of the Id. Trial Court dated 12-07-2022, whereby cross-examination of DW was closed, is hereby set aside. The appellant/defendant is allowed to face the cross-examination in T.S No. 20/2014 subject to payment of cost of Rs. 2,000/-. On payment, the cost be handed over to the plaintiff.**

12. Parties are directed to appear before the Trial Court on 12-12-2022 and the appellant/defendant is to deposit the costs at the Trial Court.

13. Let the case record of TS No.20/2014 of the Court of Ld. Munsiff No. 2, Sonitpur, Tezpur be send back along with a copy of this judgment and order.

Given under my hand and seal of this court on this the 10th day of November, 2022.

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur

Dictated and corrected by me.

(C. Khanikar)
Civil Judge
Sonitpur, Tezpur