

ASKM010014402020



Present : Shri R. Duarah,
District Judge, Kamrup (M), Guwahati

**IN THE COURT OF THE DISTRICT JUDGE, KAMRUP (M),
GUWAHATI**

Misc (Probate) Case No. 18/2020

Date	Order	Signature
12.11.24	1. Parties are represented. 2. Seen petition No. 911/2024 filed by the opposite party no. 2 under Order IX Rule 7 CPC, to vacate the order dated 17.07.2023 passed by this court by which the matter was fixed for evidence and the prayer for adjournment to file written statement on behalf of the opposite party no. 2 was rejected. It is stated that the opposite party no. 2 came to know that his earlier engaged learned counsel withdrew Vakalatnama without taking proper steps in the proceedings for which the order dated 17.07.2023 was passed. It is further stated that due to lack of information, he could not	

take proper steps for which he lost his opportunity to file written statement. In such premises, it is prayed that the order may be reviewed by allowing the opposite party no. 2 to file his written statement.

3. The petitioner has objected to the said prayer by filing written objection stating that the grounds shown in the petition are not sufficient. It is further stated that sufficient opportunities were provided to the opposite party no. 2 to file written statement and he did not take any steps. It is the contention of the petitioner that the opposite party did not make any personal enquiry and has put the entire blame on his learned counsel, which is not sufficient a reason to review the order dated 17.07.2023.
4. Heard learned counsel for the parties. Also perused the records.
5. It is seen that the order dated 17.07.2023 is prayed to be reviewed by the instant petition which has been filed on 10.07.2024. Although the petition ought to have been filed within 30 (thirty) days of passing the order dated 17.07.2023, same was filed time barred without any application to condone the delay in terms of Section 5 of the

Limitation Act, 1963. On that count itself, the petition deserves to be dismissed. However, this court has taken into consideration the reason cited by the opposite party no. 2 to the effect that he came to know about the withdrawal of the Vakalatnama lately and he was not aware that the earlier engaged counsel was not taking proper steps in the instant proceedings. This court is not satisfied with the reasons cited by the opposite party no. 2 for the reason that there is hardly any whisper in the petition as to what steps he was taking for last 4 (four) years after filing Vakalatnama. It is seen that the opposite party no. 2 was granted several dates by this court to file Vakalatnama and after filing the Vakalatnama from his appearance on 09.09.2021 till 11.05.2022. This court vide order dated 11.05.2022 allowed the opposite party no. 2 to file written statement which was not filed till 17.07.2023, i.e. for 1 (one) year. On 17.07.2024 the opposite party again prayed for time to file written statement which was rejected by this court, and the same is now sought to be reviewed.

6. Having heard the learned counsel for the

parties, and upon perusal of the records, this court is of the considered view that the ground set forth in the petition are not sufficient . There is no whisper in the petition that the opposite party no. 2 resides at Hyderabad and he was unable to take steps although the learned counsel for the opposite party no. 2 has submitted so. There is no averment to the effect as to on which dates and in what manner he was following the instant case through his learned counsel. From the averments made in the petition, it cannot be at all perceived that he was diligently taking steps in the case; rather it transpires that he was negligent in taking steps for which the case has been lingering for last 4 (four) years without any fruit.

7. Taking into consideration the entire aspects of the matter and the fact that the petition has been filed time barred, the petition stands dismissed and disposed of.

8. However, since the opposite party no. 2 has already appeared, he is entitled to cross-examine the plaintiff witnesses and participate in the hearing.

9. Opposite party no. 2 vide petition no. 1481/24 has prayed for rejecting the

adjournment petition filed by the petitioner since the petitioner took time on earlier two days for filing written objection against petition no. 911/24.

10. However, since the objection has already been filed and the petition no. 911/24 has been decided upon hearing both the parties, the instant petition no. 1481/24 has become redundant, more so, when the petitioner did not file any such application today seeking adjournment.

11. Accordingly petition no. 1481/24 stands dismissed and disposed of.

12. Copies of the evidence-in-affidavit of PW-1 is available in the records. Learned counsel is at liberty to receive the same today itself with due acknowledgment .

13. Fixed on 19.12.2024 for further evidence.