

GAHC010008082026



2026:GAU-AS:7228

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

Case No. : CRP(IO)/14/2026

RANJAN CHAKRABARTY AND ANR
S/O LATE ABALA KANTA CHAKRABARTY, RESIDENT OF WARD NO- 8,
BILASHIPARA, P.O AND P.S -BILASHIPARA, DISTRICT- DHUBRI, ASSAM,
PIN- 783348

2: JAGABANDHU TALUKDAR
S/O- LATE HARENDRA NARAYAN TAKULDAR
RESIDENT OF VILLAGE- RAGHUNANDANPUR PART- 1
P.O- BAITAMARI
P.S -ABHAYAPURI
DISTRICT- BONGAIGAON
ASSAM
PIN-783389

VERSUS

MD. SAMNUR ALI TALUKDAR AND 2 ORS.
S/O MD. SHAHJAHAN ALI TALUKDAR, R/O HOUSE NO. 01, HATIGAON,
NEAR H. M. HOSPITAL, SARUDHAR GOGOI PATH, P.O. AND P.S.-
HATIGAON, GUWAHATI-781038, DIST- KAMRUP (M)

2:MD. SHINAN ALI TALUKDAR
S/O MD. SAMNUR ALI TAALUKDAR
R/O HOUSE NO. 01
HATIGAON
NEAR H. M. HOSPITAL
SARUDHAR GOGOI PATH
P.O. AND P.S.- HATIGAON
GUWAHATI-781038
DIST- KAMRUP (M) (MINOR)

3:MD. SHAYAN ALI TALUKDAR
S/O MD. SAMNUR ALI TAALUKDAR
R/O HOUSE NO. 01

HATIGAON
NEAR H. M. HOSPITAL
SARUDHAR GOGOI PATH
P.O. AND P.S.- HATIGAON
GUWAHATI-781038
DIST- KAMRUP (M) (MINOR)

Advocate for the Petitioner : MR N KALITA, MRS A CHOWDHURY

Advocate for the Respondent : MR. R SARMA(R1,2,3), MR A HUSSAIN(R1,2,3),MR. S K CHOUDHURY(R1,2,3),S DAIMARY(R1,2,3),MR D HAZARIKA(R1,2,3)

Before
Hon'ble Mr. Justice ROBIN PHUKAN

ORDER

25.05.2026

Heard Mr. N. Kalita, learned counsel for the petitioners and also heard Mr. R. Sarma, learned counsel for the respondents.

2. In this petition, under Article 227 of the Constitution of India, the petitioners have challenged the order, dated 19.12.2025, passed by the learned Civil Judge (Sr. Division) No.2, Kamrup(M), Guwahati, in Title Suit No.168/2025. It is to be noted here that vide impugned order dated 19.12.2025, the learned Civil Judge (Sr. Division) No.2, Kamrup(M), Guwahati, (hereinafter the Trial Court) has rejected the petition, being Petition No.6781/2025, dated 19.12.2025, filed by the petitioners, for issuing a direction to the defendant Nos.1—3, the respondents herein, to furnish the copy of the written statement - cum -counter claim, with the relied upon documents, and to fix another date for filing the written statement by the plaintiffs' against the counter claim.

3. Mr. Kalita, learned counsel for the petitioners, submits that the petitioners, as plaintiffs, have instituted a title suit, being Title Suit No.168/2025, before the Court of

learned Trial Court, for declaration of his right, title and interest over the suit land, recovery of possession, cancellation of deeds, etc. The respondents herein, as defendant Nos.1—3, had entered appearance on receipt of summons and filed their written statement-cum-counter claim. But, Mr. Kalita submits that copy of the said written statement-cum-counter claim was not furnished to the plaintiffs, the petitioners herein. Mr. Kalita also submits that the learned Trial Court has directed the respondents herein to furnish copy of the written statement-cum-counter claim to the plaintiffs and the next date was fixed on 23.09.2025, which was subsequently declared as holiday. And therefore, the record was not available to the petitioners to enquire about the service of copy in favour of the petitioners, and the next date was fixed on 19.12.2025, but on the said date, the petition filed by the petitioners to the effect that the copy of the written statement-cum-counter claim has not been received, for which the written statement against the counter claim could not be prepared and therefore, the prayer for issuing direction to the respondents herein, to furnish copy of the written statement-cum-counter claim, and also the prayer for granting another date, for filing written statement was rejected. Mr. Kalita also submits that on that day, after search it was found that the copies of written statement-cum-counter claim have already lying with the case record and alleged to be furnished on 09.07.2025, without any information to the plaintiffs, and the plaintiffs have received the same on 19.12.2025, and prior to that the petitioners herein could not get any opportunity to search the record, as the earlier date was a holiday and that the copies were not furnished till the afternoon of 09.07.2025, and nothing is reflected in the order dated 23.09.2025, about service of the copies.

3.1 Mr. Kalita further submits that the period of 90 days for filing the written statement-cum-counter claim is applicable in case of filing of the written statement against the counter claim filed by the respondents and there is no intentional delay on the part of the petitioners, in filing the written statement against the counter claim of the respondents, and it has been well settled in the case of **Salem Advocate Bar**

Association, Tamil Nadu vs. Union of India, reported in (2005) 6 SCC 344 and also in the case of **Kailash vs. Nanhku & Ors.**, reported in (2005) 4 SCC 480, that the Order 8 Rule 1 of the CPC is directory in nature and on the sufficient ground being shown, written statement can be accepted even after elapse of the period of 90 days. And under such circumstances, Mr. Kalita has contended to allow the petition, giving a chance to the petitioners to file their written statement against the counter claim filed by the respondents herein.

4. Per contra, Mr. Sarma, learned counsel for the respondents has vehemently opposed the petition. Supporting the impugned order dated 19.12.2025, he submits that there was delay of 70 days in filing the written statement and on that day also they have not filed the written statement with the application and that there is serious lapse on the part of the petitioners in collecting the written statement, which was filed in the Court on 09.07.2025 and the negligence on the part of the plaintiffs are writ large on the facts of the record and he further submits that though it has been held in the cases of **Salem Advocate Bar Association (supra)** and **Kailash (supra)**, that the period of filing written statement under Order 8 Rule 1, is not inflexible, yet, only in exceptional circumstances, the same can be extended and it cannot be extended in a routine manner. Under such circumstances, he has contended to dismiss this petition.

5. Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also perused the impugned order, dated 19.12.2025, and also the decisions of Hon'ble Supreme Court in the cases of **Salem Advocate Bar Association (supra)** and **Kailash (supra)**.

6. There is no quarrel at the bar that Order 8 Rule 1 CPC is directory in nature. In paragraph No.21 of the case of **Salem Advocate Bar Association (supra)**, Hon'ble Supreme Court has held that the order extending time to file written

statement cannot be made in routine. It can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the Court to extend the time shall not be so frequently, and routinely, exercised so as to nullify the period fixed by Order 8 Rule 1.

7. Again, in the case of **Kailash (supra)**, Hon'ble Supreme Court also in paragraph No.44 has held that extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief, they may be, by the Court. In no case, shall the defendant be permitted to seek extension of time when the Court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The Court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him. Again, in paragraph No.45, it has been held that however, no straitjacket formula can be laid down, except that the observance of time schedule, as contemplated by Order 8 Rule 1, shall be the rule and departure there from is an exception, made for satisfactory reasons only. Thereafter, it has been held that Order 8 Rule 1, though couched in mandatory form, is directory, being a provision in the domain of procedural law.

8. It is also well settled that procedures are hand-maid of justice. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **Sardar Amarjit Singh Kalra (Dead) by Lrs. and others v. Pramod Gupta (Smt) (Dead) by Lrs. & others.**, reported in (2003) 3 SCC 272 12, wherein it was observed as under:-

“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid

of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.....”

8.1. A three Judge Bench of Hon’ble Supreme Court in a subsequent judgment reported as *Kailash (supra)* has held that all rules of procedure are handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent but the object of prescribing procedure is to advance the cause of justice. The Court held as under:

“28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen v. State of Bihar* [(1975) 1 SCC 774] are pertinent: (SCC p. 777, paras 5-6)

“The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to 11 (2005) 4 SCC 480 13 act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence – processual, as much as substantive.”

8.2. In *State of Punjab and Anr. v. Shamlal Murari and Anr.*, reported in

(1976) 1 SCC 719, the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that: (SCC p. 720)

“Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.” In Ghanshyam Dass v. Dominion of India [(1984) 3 SCC 46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.”

9. In the instant case, the learned Trial Court, in the impugned order, dated 19.12.2025, has held that though the petitioners in the Petition No.6781/2025, have prayed for an adjournment for filing a written statement –cum- counter claim contending that they have not received the copy of the written statement-cum-counter claim, the same is received by the learned counsel for the plaintiffs today on acknowledgement. However, such copy of the written statement-cum-counter claim was submitted by the defendants on 09.07.2025 itself, which the plaintiffs ought to have received on 09.07.2025, and since the statutory period of 90 days for filing the written statement starts from 09.07.2025, the period for filing the written statement is already over and as such, no adjournment can be granted beyond the period of limitation.

10. However, it appears from the Annexure-II of the petition, the order dated 09.07.2025, that the respondents herein, being defendant Nos.1—3, have submitted a written statement-cum-counter claim and then the next date was fixed on 23.09.2025, for service report upon the respondent No.4 and the written statement by the petitioners herein as plaintiffs against the counter claim. However, the case was posted on 23.09.2025, which was declared as holiday. Then the next date was fixed

on 19.12.2025, and according to the petitioners on the said date, the copy of the written statement filed by the respondents has been received. Mr. Kalita, learned counsel for the petitioner, has pointed this out at the time of hearing and he also submitted that it was not possible to file written statement against the counter claim on the same date and therefore, the petition was filed. It is also the contention of the petitioners that the copies of the written statement-cum-counter claim were not furnished to the petitioners till the afternoon of 19.12.2025 and thereafter, the petitioners got no opportunity to go through the record and to collect the copy of the written statement.

11. Thus, having examined the aforesaid facts and circumstances in the light of the decisions of Hon'ble Supreme Court in the cases of **Salem Advocate Bar Association (supra)** and **Kailash (supra)**, **Sardar Amarjit Singh Kalra (Dead) by Lrs. (supra)** and **Shamlal Murari (supra)** this Court is of the view that though there appears to be some laxity or negligence, the same cannot be termed as gross negligence and the explanation, so forthcoming, appears to be justified and as such, a case for interference with the impugned order, is made out.

12. Accordingly, this Court finds sufficient merit in this petition and the same stands allowed, subject however, to the payment of a cost of Rs.5,000/-, which shall be deposited before the learned Trial Court before the next date of hearing and on such deposit being made by the petitioners, the same shall be given to the respondents herein.

13. In terms of above, this revision petition stands disposed of.

JUDGE

Comparing Assistant