

GAHC010072282026



2026:GAU-AS:5540

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

Case No. : CRP(IO)/131/2026

MAHESH KUMAR RATHI
S/O LATE MEGHARAJ RATHI, CHAMBER ROAD, P.O. AND P.S. AND
DISTRICT- JORHAT, PIN- 785001, ASSAM.

VERSUS

RAJESH KUMAR PINCHA
S/O LATE SOHAN LAL PINCHA, R/O CHAMBER ROAD, P.O. AND P.S. AND
DISTRICT- JORHAT, PIN- 785630, ASSAM.

Advocate for the Petitioner : MR. S C KEYAL, KAUSHIK JAIN, MS. R HUSSAIN, P
UPADHAYA, MS. NITUMA KAKATI, M DEKA

Advocate for the Respondent : MR. A K SAHEWALLA (FOR CAVEATOR), MR. W SHARMA
(FOR CAVEATOR)

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

22.04.2026

Heard Mr. S. C. Keyal, learned counsel for the petitioner and Mr. A. K. Sahewalla, learned counsel for the respondent/caveator.

2. In this petition, under Article 227 of the Constitution of India, read with Sections 115 and 151 of the Code of Civil Procedure, the petitioner has challenged the Order, dated 19.12.2025, passed by the learned Additional District Judge, Jorhat, in Title Appeal No. 11/2025.

3. It is to be noted here that vide impugned order, dated 19.12.2025, the learned Additional District Judge, Jorhat (hereinafter, learned Appellate Court), has admitted the Title Appeal No. 11/2025, for hearing, by imposing a condition that the appellant has to pay arrear rent as well as enhanced rent @10% in every 2 years and cost of the suit, as per judgment of the learned Trial Court, within 19.02.2026.

4. Mr. Keyal, learned counsel for the petitioner submits that the petitioner herein, being aggrieved with the Judgment and Decree, dated 22.08.2025, passed by the learned Civil Judge (Sr. Div.), Jorhat (hereinafter, learned Trial Court), in Title Suit No. 20/2014, has preferred an appeal under Order 41 Rule 1 of the CPC, before the learned Appellate Court and vide impugned order, dated 19.12.2025, the learned Appellate Court has admitted the same for hearing, by imposing a condition that the appellant has to pay arrear rent as well as enhanced rent @10% in every 2 years and cost of the suit, as per judgment of the learned Trial Court, within 19.02.2026.

4.1 Mr. Keyal has also pointed out that the admission of the appeal by imposing a condition is impermissible under the law and as such, the impugned order, dated 19.12.2025, is arbitrary and illegal and on such count, the same is required to be interfered with.

5. Mr. A. K. Sahewalla, learned counsel for the respondent/caveator also fairly submits that the impugned order, so far it relates to imposing of condition in admitting the appeal, is required to be set aside and quashed, as the learned Appellate Court is not clothed with such power.

6. Having heard the submissions advanced by the learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also the impugned order, dated 19.12.2025.

7. It appears that the appeal was preferred under Order 41 Rule 1 of the CPC, against the Judgment and Decree, dated 22.08.2025, passed by the learned Trial Court, in Title Suit No. 20/2014, and being aggrieved with the aforementioned judgment and decree, the petitioner herein has preferred an appeal, being Title Appeal No. 11/2025, before the learned Appellate Court; and while admitting the appeal, the learned Appellate Court has imposed a condition that the appellant has to pay arrear rent as well as enhanced rent @10% in every 2 years and cost of the suit, as per judgment of the learned Trial Court, within 19.02.2026. It is to be noted here that right to appeal (first appeal), is a substantive right and cannot be fettered by such condition, which is not contemplated in the CPC. And admittedly, such a power is not available with the learned Appellate Court, in conditionally admitting the appeal. Of course, had it been a case of staying the Money Decree, then the matter would have been in a different footing. Notably, admission of an appeal and grant of stay of execution

of decree are two different exercises.

8. In that view of the matter and as agreed upon by the learned counsel for both the parties, this Civil Revision Petition stands disposed of at its motion stage itself, by setting aside the condition, so imposed by the learned Appellate Court, in the impugned order, dated 19.12.2025. The matter stands remanded to the learned Appellate Court, with a direction to proceed with the appeal, in accordance with law.

JUDGE

Comparing Assistant