

GAHC010205672023



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

Case No. : CRP(IO)/300/2023

SAJDA TABASUM AND ANR
W/O IRSHAD ALI, R/O NEW COURT ROAD, AZAD COLONY, P.O.-HIJUGURI,
P.S.-TINSUKIA, DIST-TINSUKIA, ASSAM

2: MD. IRSHAD KHAN
S/O LATE KAMRUZAMA KHAN
R/O NEW COURT ROAD
AZAD COLONY
P.O.-HIJUGURI
P.S.-TINSUKIA
DIST-TINSUKIA
ASSA

VERSUS

IMRAN KHAN
S/O LATE ABDUL SUKUR KHAN, R/O AZAD COLONY, P.O.-HIJUGURI, P.S.-
TINSUKIA, DIST-TINSUKIA, ASSAM

Advocate for the Petitioner : MR S PARASHAR

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

18.09.2023

Heard Shri S. Parashar, learned counsel for the petitioner, who has filed this petition under Article 227 of the Constitution of India against an order dated 21.06.2023 passed by the learned Munsiff No. 1, Tinsukia in Title Suit No. 121/2021.

The petitioner is the defendant in the suit which has been filed for eviction in which written statement has been filed. On 09.12.2022, the evidence on affidavit was presented by the PW1 and time was sought for filing the chief examination of the other PWs. On 17.01.2023, the plaintiff had filed an application to have the cross examination of the PW1 and then to present the chief examination of the other PWs. The said application was objected to by the petitioner by filing written objection. However, vide the impugned order dated 21.06.2023, the learned Trial Court had allowed the aforesaid petition. While doing so, recourse has been taken to the Trial Courts and First Appellate Subordinate Courts (under the Gauhati High Court) Case Management Rules, 2007, more particularly, Rule 6 thereof.

The learned counsel for the petitioner has submitted that the interpretation given on the aforesaid Rule 6 is an erroneous interpretation and the same would be against the very essence of holding a fair trial. It is submitted that if the interpretation given is sustained, that will adversely affect a fair trial whereby prejudice would be caused to the adverse party inasmuch as upon cross examination, the case which would be the projection of the adverse party would be exposed giving a chance to fill up the lacuna.

This Court has also noticed that under Section 138 of the Indian Evidence Act, 1872 which lays down 'order of examination', it has been stated that witnesses shall be first examined in chief and then if desired, be cross examined.

Let notice be issued, returnable on 13.10.2023.

Let steps be taken for service of notice upon the respondents by registered post with A/D.

Steps by tomorrow.

Shri Parashar, the learned counsel for the petitioner prays for an interim order.

Considering the facts and circumstances, this Court is of the opinion that interest of justice would be served if further proceedings in the Title Suit No. 121/2021 is stayed. Accordingly, till the next returnable date, further proceedings in Title Suit No. 121/2021 pending before the learned Munsiff No.1, Tinsukia is suspended.

Since this order is passed ex-parte, the respondent would be at liberty to come up for modification/alteration/vacation of the aforesaid interim order.

JUDGE

Comparing Assistant