

By E-mail

THE GAUHATI HIGH COURT AT GUWAHATI

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

No. HC. XIX/140-173/CRP

From: Sri S. Dhar,
Registrar (Judicial),
Gauhati High Court,
Guwahati.

To: The District & Sessions Judge,
Baksa / Bajali / Barpeta / Biswanath / Bongaigaon / Cachar /
Charaideo / Chirang / Darrang / Dhemaji / Dhubri / Dibrugarh / Dima
Hasao / Goalpara / Golaghat / Hailakandi / Hojai / Jorhat / Kamrup (M)
/ Kamrup / Karbi Anglong / Kokrajhar / Lakhimpur / Majuli / Morigaon
/ Nagaon / Nalbari / Sivasagar / Sribhumi / Sonitpur / South Salmara-
Mankachar / Tinsukia / West Karbi Anglong / Udalguri.

Dated: Guwahati, the 27th of January, 2026

Sub.: Judgment and Order dated 24-02-2025 passed by the Hon'ble Gauhati
High Court in CRP (I/O) No. 354/2023.

Sir/Madam,

With reference to the subject cited above, I am directed to forward
herewith a true copy of the judgment and order dated 24-02-2025 passed by the
Hon'ble Gauhati High Court in CRP (I/O) No. 354/2023 which is self-explanatory.

You are, therefore, requested to circulate the same amongst all the
Judicial Officers of your respective district under your jurisdiction for information
and compliance.

With warm regards.

Encl.: As above

Yours faithfully,


REGISTRAR (JUDICIAL)

GAHC010235192023



2025:GAU-AS:1946

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

Case No. : CRP(10)/354/2023

SMT. SUTAPA DHAR
W/O SRI RAHUL DHAR, HOUSE NO. 28, SADHANI PATH, RUKMINI GAON,
GUWAHATI-781022, DIST-KAMRUP (M), ASSAM

VERSUS

DEBAJYOTI DAS CHOUDHURY
S/O LATE DURGESH CHANDRA DAS, HOUSE NO. 28, SADHANI PATH,
RUKMINI GAON, GUWAHATI-781022, DIST-KAMRUP (M), ASSAM

For the Petitioner(s)	: Mr. A. Das, Advocate
For the Respondent(s)	: Mr. D. Nandi, Advocate
Date of Hearing	: 24.02.2025
Date of Judgment	: 24.02.2025

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Heard Mr. A. Das, the learned counsel appearing on behalf of the Petitioner and Mr. D. Nandi, the learned counsel appearing on behalf of the Respondent.

2. This is an application filed under Article 227 of the Constitution

challenging the order dated 05.10.2023 passed by the Court of the learned Civil Judge (Senior Division) No.2, Kamrup (M) at Guwahati in Title Suit No.501/2016 whereby the learned Trial Court had imposed a cost of Rs.5,000/- while granting an adjournment to the defendant at the stage of cross examination of the Defendant No 2.

3. This Court has duly taken note of that the defendant was given the opportunity to adduce her evidence way back on 23.11.2017. Thereupon, for the next 6 (six) years, the defendant had not been able to complete her evidence. It is further seen that the learned Trial Court vide the impugned order dated 05.10.2023 had granted an adjournment by imposing a cost of Rs.5,000/- with a further direction to produce the Defendant witness No.2 to face cross-examination on the next date. It is under such circumstances, the supervisory jurisdiction of this Court is invoked.
4. This Court at the outset expresses its shock at the time taken for adducing of the defendant's evidence. This Court is presently taking up the roster of Civil Bench 1 which deals with matters relating to orders and judgments of the Learned District Judiciary in civil proceedings amongst others. This Court had noticed that huge delays at the stage of evidence in civil litigations which have eventually led to delay in the disposal of the suits. Under such circumstances, before dealing with the case in hand, this Court is of the opinion that certain observations are required to be made in so far as adjournments are concerned at the stage of hearing of a suit.
5. The Code of Civil Procedure, 1908 (for short 'the Code') was amended

with effect from 01.07.2002 in order to streamline the procedures, save judicial time and further to arrest the unnecessary delays in disposal of the suits. Amongst the many, it is relevant to observe the following:

- (i). The time for filing of the written statement was streamlined thereby the maximum permissible period within which the written statement is required to be filed is inserted.
- (ii). The filing of the document(s) which are relied upon, are required to be filed along with the Complaint or the written statement and the consequences for not filing at the proper stage.
- (iii). The power to amend the pleadings have been curtailed after the trial had begun and could only be allowed with proper explanation as regards due diligence.
- (iv). Production of the original documents relied upon at the time of filing the Complaint or the written statement on or before the settlement of Issues and the marking of the said documents.
- (v). Fixing a time line within five days from the date of presenting the list of witness for obtaining the summons on an application filed under Order XVI Rule 1(2) of the Code
- (vi). Limiting the number of adjournments during the hearing of the suits.
- (vii). Mandatory imposition of costs occasioned by the adjournment or such higher costs as the Court deems fit.

(viii). The stage of hearing of the suits have been properly defined to include from the stage of adducing evidence by the parties till arguments are made. Power being conferred upon the learned Trial Courts to fix the duration of the oral arguments.

(ix). The manner of recording evidence have been substantially altered whereby the examination in chief is to be filed by way of affidavit and the cross examination and reexamination would be recorded by the Court or the Commissioner appointed in that regard.

6. As this Court would be dealing with the aspect of adjournments at the stage of hearing of the suits, it is relevant to take note of Order XVII Rule 1(1) of the Code post 01.07.2022. Rule 1(1) of Order XVII of the Code is the same as it stood prior to 01.07.2002. However a proviso was inserted to Rule 1(1) of Order XVII w.e.f. 01.07.2002 whereby a statutory bar is imposed upon the Court not to grant adjournment more than three times to a party during the hearing of the Suits. Now the question arises as to what would come within the meaning of 'hearing of the suits'.

7. Order XVIII of the Code is titled "**Hearing of the suit and examination of witnesses**" Order XVIII Rule 1 deals with the aspect as to who has a right to begin. Order XVIII Rule 2 of the Code is very relevant in as much as the said provision deals with what the term 'Hearing of the Suits' encompass. Though the said Rule is titled 'Statement and production of witness' but a reading of the various Sub Rules of Rule 2 of Order XVIII would shows that it encompasses in itself

the various stages of hearing of the suit i.e. right from adducing evidence to submission of written arguments.

8. Sub-Rule (1) of Rule 2 of Order XVIII of the Code stipulates that on the date fixed for hearing of the suit or on such other date the hearing of the suit is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. In terms with Order XVIII Rule 2(2), the other party shall then state his case and produce his evidence (if any) and then address the Court generally on the whole case. Order XVIII Rule 2(3), stipulates that the party having the right to begin may then reply generally on the whole case. It is apposite to observe that Sub-Rules (3A), (3B), (3C) and (3D) were inserted w.e.f. 01.07.2002 within the ambit of Order XVIII Rule 2 of the Code which specifically deals with arguments. Therefore a reading of the said Rule 2 of Order XVIII of the Code, it would be seen that term 'hearing of the suit' includes the following :

- (i). Stating of the case and adducing the evidence by the party who has a right to begin.
- (ii). Stating of the case by the Other Party and produce his/her evidence and address the Court generally on the whole case.
- (iii). The Party who has the right to begin can reply
- (iv). Oral arguments and written arguments, if any by the parties who intends to make and/or submit.

9. Let this Court now take note of Order XVIII Rule 4 of the Code wherein substantial changes have been made w.e.f. 01.07.2022. Order XVIII Rule 4 of the Code regulates the procedure of recording of evidence. In terms with Rule 4(1) of Order XVIII, the examination-in-chief of the witness shall be on affidavit and copies thereof shall be supplied to the opposite party, by the party who calls the witness. The reason behind permitting examination-in-chief by way of affidavit is not only to save the precious judicial time in recording the examination-in-chief but also make the judicial proceedings convenient and friendly to the witness.

It would be apposite herein to mention that prior to the amendment of the Code w.e.f. 01.07.2022, the examination-in-chief used to be recorded by the Court which was followed by cross examination and if necessary re-examination. The recording of the examination in chief by the Court of the witness/witnesses used to take a lot of judicial time and the witness/witnesses were required to be in the witness box during this period. The cross examination used to be taken up immediately after the examination in chief and if the business of the Court did not permit, it would be taken up on the following day or such other date as the Learned Trial Court may fix, for reasons to be recorded. It is also pertinent to mention that proviso (a) of Order XVII Rule 1(2) of the Code specifically mandates the said procedure which was inserted 01.02.1977. A reading of the said proviso would further show that when the hearing of the suit had commenced, it shall be continued from day to day until all the witnesses in attendance have been examined.

10. Post amendment w.e.f. 01.07.2002, the recording of the examination-in-chief by the Court had been done away with and instead it would be on affidavit to be filed by the party who calls the witness to give evidence and copy thereof is required to be supplied to the opposite party. With this amendment, not only precious judicial time was saved but also the witness/witnesses were saved from the ordeal of being confined to the witness box for long hours when his/their examination in chief is/are recorded. Before proceeding further, this Court finds it relevant to clarify that the Examination-in-Chief of those witnesses who are summoned as per Order XVI Rule 1 of the Code is to be recorded by the Court and thereupon the cross examination and if necessary re-examination is also to be recorded by the Court {see ***Salem Bar Association Vs. Union of India***, reported in ***(2003) 1 SCC 49 paragraph 17 & 18***}.
11. Now coming back to the analysis, it would be seen that neither the Code nor the Civil Court Rules and Orders framed by the Gauhati High Court state that there is requirement for fixing a date for filing the examination in chief by way of an affidavit. Rather the Code specifies that the Trial Court is required to fix a date for hearing of the suit. The reason is apparent from a reading of Order XVIII Rule 4 itself.
12. The legislature had specifically referred in Sub Rule (1) of Rule (4) of Order XVIII that the Examination-in-Chief of a witness shall be on affidavit. The Examination-in-Chief, however, have not been given the status of evidence *inasmuch as*, if it was so given, the legislature would have used the term "*Evidence-in-Chief*" rather than "Examination-in-Chief". However, the legislature in Order XVIII Rule 4(2) specifically uses

the term "*Evidence*" and in doing so includes the terms "cross examination and re-examination" within brackets. In the opinion of this Court, from a reading of Order XVIII Rule 4(1) and 4(2) of the Code, it appears that examination-in-chief though filed by way of affidavit does not attain the status of evidence, till the witness appears before the Court or the Commissioner duly appointed to face the cross examination and re-examination. The intention of the legislature to mention "Cross Examination and Re-examination" within brackets after to the word "*Evidence*" in Sub Rule (2) of Rule 4 further makes it abundantly clear that the affidavit so filed as examination-in-chief upon being subjected to cross examination and re-examination, would attain the status of evidence. For the sake of clarity, this Court find it apt to observe that if the other party does not wish or defaults to cross examine the witness who have filed the affidavit as Examination-in-Chief, the affidavit containing the examination-in-chief attains the status of evidence.

13. This Court at this stage finds it relevant to take note of a disturbing practice followed by the learned Trial Courts in Assam wherein not only date is fixed for filling of the examination in chief on affidavit but three adjournments are granted for filing the examination-in-chief on affidavit and thereafter three adjournments granted to the party filing the examination-in-chief on affidavit to produce the witnesses. This in the opinion of this Court is completely contrary to the procedure laid down in Rule 2 and 4 of Order XVIII of the Code. In fact, the procedure so being followed had rendered the amendment to the Code redundant and counterproductive.

14. In the opinion of this Court, the Learned Trial Courts instead are only required to fix a date for hearing of the Suit. On such date fixed or on such adjourned date, the affidavit(s) containing the examination in chief is/are to be filed and the witness/witnesses are required to be cross examined. If the witness/witnesses is/are not present, the Party who calls the witness/witnesses may seek adjournment which may be allowed by the Learned Trial Court taking into account the sufficiency of the cause assigned for seeking adjournment. It is observed that the adjournment so sought for would come within the permissible three adjournments mandated by law. However, if the witness/witnesses are present, the learned trial Court or the Commissioner so appointed shall proceed for recording the cross examination of the witness/witnesses in the manner stipulated in proviso (a) to Order XVII Rule 1(2) of the Code. This Court further opines that in the circumstance the other party seeks adjournment; the learned Trial Court may grant adjournment by following the mandate of Order XVII Rule 1(2) of the Code. This Court further finds it relevant to take note of Rule 120 of the Civil Court Rules and Orders which mandates that at 10.20 am the list of witnesses in attendance is to be filed before the Court. This Court opines that the affidavit(s) containing the examination in chief and the list of witnesses present to face the cross examination have to be filed in the Court at 10.20 am and the Learned Trial Court can condone the delay in not adhering to the time stated above for sufficient causes.
15. In the previous segments of the instant judgment this Court discussed the provision of Order XVIII Rule 2 of the Code. The stage of hearing of the suit starts from the date fixed for hearing of the suit i.e. the date on

which the party who has a right to begin has to adduce evidence and state his case. It culminates with the oral arguments (as well as written argument) if any of the party wishes to address. Therefore the reading Order XVII Rule (1) with Order XVIII Rule 2 of the Code, the party who has the right to begin as well as the other party cannot be permitted adjournments beyond three times, once the date is fixed for hearing of the suit in terms with Order XVIII Rule 2 of the Code.

16. The above is the scheme of the provisions of Order XVII and XVIII of the Code. Be that as it may, it relevant to observe that the observations made herein above as regards Order XVII (1) of the Code are in the context of interpretation of procedural laws. Under such circumstances, it is the requirement that the said provision is substantially complied with and only in exceptional circumstances for reasons to be recorded, deviation to above can be resorted to subject to imposition of high costs. In this regard, this Court finds it apt to refer to the judgment of the Supreme Court in the case of ***Salem Advocate Bar Assn. (II) v. Union of India*** reported in **(2005) 6 SCC 344** wherein the provision of Order XVII was duly considered. Paragraph Nos. 29 to 31 are reproduced herein below.

“Adjournments

29. Order 17 of the Code relates to grant of adjournments. Two amendments have been made therein. One that adjournment shall not be granted to a party more than three times during hearing of the suit. The other relates to the costs of adjournment. The awarding of costs has been made mandatory. Costs that can be awarded are of two types. First, costs occasioned by the adjournment and second such higher

costs as the court deems fit.

30. While examining the scope of the proviso to Order 17 Rule 1(1) that more than three adjournments shall not be granted, it is to be kept in view that the proviso to Order 17 Rule 1(2) incorporating clauses (a) to (e) by Act 104 of 1976 has been retained. Clause (b) stipulates that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party. The proviso to Order 17 Rule 1(1) and Order 17 Rule 1(2) have to be read together. So read, Order 17 does not forbid grant of adjournment where the circumstances are beyond the control of the party. In such a case, there is no restriction on the number of adjournments to be granted. It cannot be said that even if the circumstances are beyond the control of a party, after having obtained the third adjournment, no further adjournment would be granted. There may be cases beyond the control of a party despite the party having obtained three adjournments. For instance, a party may be suddenly hospitalised on account of some serious ailment or there may be serious accident or some act of God leading to devastation. It cannot be said that though the circumstances may be beyond the control of a party, further adjournment cannot be granted because of the restriction of three adjournments as provided in the proviso to Order 17 Rule 1.

31. In some extreme cases, it may become necessary to grant adjournment despite the fact that three adjournments have already been granted (take the example of the Bhopal gas tragedy, Gujarat earthquake and riots, and devastation on account of the tsunami). Ultimately, it would depend upon the facts and circumstances of each case, on the basis whereof the court would decide to grant or refuse

adjournment. The provision for costs and higher costs has been made because of the practice having been developed to award only nominal costs even when adjournment on payment of costs is granted. Ordinarily, where the costs or higher costs are awarded, the same should be realistic, and as far as possible actual costs that had to be incurred by the other party shall be awarded where the adjournment is found to be avoidable, but is being granted on account of either negligence or casual approach of a party or is being sought to delay the progress of the case or on any such reason. Further, to save the proviso to Order 17 Rule 1(1) from the vice of Article 14 of the Constitution, it is necessary to read it down so as not to take away the discretion of the court in the extreme hard cases noted above. The limitation of three adjournments would not apply where adjournment is to be granted on account of circumstances which are beyond the control of a party. Even in cases which may not strictly come within the category of circumstances beyond the control of a party, the court by resorting to the provision of higher costs which can also include punitive costs in the discretion of the court, adjournment beyond three can be granted having regard to the injustice that may result on refusal thereof, with reference to peculiar facts of a case. We may, however, add that grant of any adjournment, let alone the first, second or third adjournment, is not a right of a party. The grant of adjournment by a court has to be on a party showing special and extraordinary circumstances. It cannot be in routine. While considering the prayer for grant of adjournment, it is necessary to keep in mind the legislative intent to restrict the grant of adjournments.”

17. Now coming back to the facts involved, it would be seen that the

defendant was granted the opportunity to submit her evidence on 23.11.2017. Six years have gone by and till the impugned order was passed on 05.10.2023, the evidence of the defendant is yet to be completed. This in the opinion of this Court is a travesty of the provisions of the Code and more particularly; a result of too much leniency on the part of the learned Trial Court which have resulted in the snail speed progress of the suit. It would not be out of place to observe that delay in disposal of the suits have resulted in people being disinterested in approaching the Civil Courts and as such, the Courts are required to take proactive measures so that the civil litigations are brought to a logical conclusion within a quick span of time in accordance with the procedure prescribed. In this regard, this Court finds it relevant to refer to the judgment of the Supreme Court in the case of ***Ishwarlal Mali Rathod Vs. Gopal & Ors*** reported in ***(2021) 12 SCC 612***. Paragraph Nos. 9 and 10 of the said judgment is reproduced herein below:

“9.Today the judiciary and the justice delivery system is facing acute problem of delay which ultimately affects the right of the litigant to access to justice and the speedy trial. Arrears are mounting because of such delay and dilatory tactics and asking repeated adjournments by the advocates and mechanically and in routine manner granted by the courts. It cannot be disputed that due to delay in access to justice and not getting the timely justice it may shaken the trust and confidence of the litigants in the justice delivery system. Many a time, the task of adjournments is used to kill justice. Repeated adjournments break the back of the litigants. The courts are enjoined upon to perform their duties with the object of strengthening

the confidence of common man in the institution entrusted with the administration of justice. Any effort which weakens the system and shake the faith of the common man in the justice dispensation has to be discouraged. Therefore the courts shall not grant the adjournments in routine manner and mechanically and shall not be a party to cause for delay in dispensing the justice. The courts have to be diligent and take timely action in order to usher in efficient justice dispensation system and maintain faith in rule of law.

10. We are also aware that whenever the trial courts refused to grant unnecessary adjournments many a times they are accused of being strict and they may face displeasure of the Bar. However, the judicial officers shall not worry about that if his conscience is clear and the judicial officer has to bear in mind his duties to the litigants who are before the courts and who have come for justice and for whom the courts are meant and all efforts shall be made by the courts to provide timely justice to the litigants.”

18. This Court further observes in the facts of the instant case that the learned Trial Court was lenient enough to grant a further adjournment by imposition of costs of Rs.5,000/- and thereby fixing another date for appearance of the defendant witness No.2 for cross-examination. The petitioner/defendant instead of paying the costs and producing the witness on the next date fixed, challenged the same by way of the present proceedings. The challenge made herein reminds this Court of the judgment of His Lordship Krishna Iyer J. (as his Lordship then was) in the judgment rendered in the case of **T. Arivandandam Vs. T. V. Satyapal and Another** reported in (1977) 4 SCC 467 wherein His Lordship referred to the remarks of Sir George Bernard Shaw on the

assassination of Mahatma Gandhi-

"It is dangerous to be too good".

19. The instant petition filed by invoking the supervisory jurisdiction under Article 227 of the Constitution is nothing but an absolute abuse of the process of the Court. Such abuse of the process of law if allowed to go scot-free and not reprimanded, it would affect the dispensation of justice and encourage frivolous litigation of the present kind. Consequently, in view of the above analysis, this Court not only dismisses the instant application but imposes a cost of Rs.10,000/- upon the petitioner which would be in addition to the cost of Rs.5,000/- imposed by the learned Trial Court vide the impugned order.
20. The interim order dated 17.11.2023 by which the further proceedings of T.S. No.501/2016 was stayed is hereby vacated and the parties herein are directed to appear before the learned Trial Court i.e. the Court of the learned Civil Judge (Senior Division) No.2, Kamrup (Metro) on 12.03.2025. The petitioner/defendant shall deposit the cost of Rs.10,000/- imposed by this Court along with the amount of Rs.5,000/- imposed by the learned Trial Court on 12.03.2025. The learned Trial Court depending upon the business of the Court, fix a date for appearance of the defendant witness(s) to face cross-examination.
21. The Registry is directed to circulate a copy of this judgment to the learned Trial Courts exercising civil jurisdiction.

sd. Derashio Barmah

JUDGE

Comparing Assistant

TRUE COPY
sd.
17.1.26
Administrative Officer (Judl.)
Civil Revision Section
Gauhati High Court
Guwahati

sd.
22.1.26

