

GAHC010056862022



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

**Case No. : CRP/35/2022**

BIMAL CHANDRA BISWAS

VERSUS

ARUP KARMAKAR

**Advocate for the Petitioner** : MR. R BARUAH  
**Advocate for the Respondent** : MS. R CHOUDHURY

**PRESENT**

**THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

For the Petitioner	:	Mr. A. Ikbal, Advocate.
For the Respondent	:	Ms. R. Choudhury, Advocate.
Date of Hearing	:	14.03.2023.
Date of Judgment	:	16.03.2023.

## **JUDGMENT AND ORDER (CAV)**

Heard Mr. A. Iqbal, learned counsel representing the petitioner as well as Ms. R. Choudhury, learned counsel appearing for the respondent.

**2.** This is an application under Article 227 of the Constitution of India praying for exercising the supervisory jurisdiction of the High Court.

**3.** The factual matrix lies within a very short compass.

**4.** The petitioner filed the Title Suit being T.S. 13/2015 against the respondent. Along with the plaint, a petition under Order 39 Rule 1 and 2 of the CPC was also filed. The said injunction petition was allowed and the present respondent was temporarily restrained from constructing slabs in his RCC building, which protruded over the boundary wall.

**5.** Subsequently, the Title Suit was dismissed. Therefore, the present petitioner preferred an appeal in the court of the District Judge. While filing the appeal, the petitioner again filed a petition under Order 39 Rule 1 and 2 CPC praying for grant of temporary injunction.

**6.** On 23.02.2022, the appeal being Title Appeal No.01/2021 was disposed of by the District Judge remanding the case to the trial court with certain directions.

**7.** Thereafter, on 28.02.2022, the aforesaid injunction petition was also disposed of by the District Judge. In fact, the injunction petition was dismissed.

**8.** Mr. Iqbal submits that with the passing of judgment on 23.02.2022, the appellate court of District Judge became functus officio and therefore, he should not have disposed of the injunction petition five days

later.

**9.** *Per contra*, Ms. R. Choudhury submits that said order dated 28.02.2022, is an appealable order under Order 43(r) of the CPC and therefore, the petitioner should have filed an appeal and in such a situation, this Court is not supposed to exercise the power under Article 227 of the Constitution of India.

**10.** I have given my anxious considerations to the submissions made by the learned counsels of both sides.

**11.** The Title Appeal was disposed of on 23.02.2022 and the connected injunction petition was disposed of 5 days later, i.e. on 28.02.2022. With the delivery of the judgment on 23.02.2022, the first appellate court of the District Judge became functus officio and therefore, the dispose of the injunction petition five days thereto is bad in law. This is a fit case for exercising the supervisory power of the High Court under Article 226 of the Constitution of India. Therefore, the order dated 28.02.2022 passed by the District Judge in Misc. (J) Case No.16/2021 arising out of Title Appeal No.01/2021 is set aside.

**12.** Before parting with the record, this Court holds that the petitioner is at liberty to file a fresh petition under Order 39 Rule 1 and 2 of the CPC in the trial court.

**13.** The Revision Petition stands disposed of accordingly.

**JUDGE**

**Comparing Assistant**