THE DEFENDANT IN A SUIT ORDERED TO BE HEARD EX-PARTE

By
Sri S.M. Deka
Director
North Eastern Judicial Officers' Training Institute (NEJOTI)

In 1952 Bhurey Lal filed an election petition under Section 100 of the Representation of the People Act, 1951. The trial of the Election Petition commenced at Kotah in Rajasthan. An order was passed by the Tribunal that further sitting of the Tribunal would be at Udaipur from the 17th of March to 21st of March, 1953. On the 17th of March neither the Respondent nor his three counsels appeared and the Tribunal after waiting till 1-15 P.M. proceeded ex-parte. Bhurey Lal and two witnesses were examined on that day. Five more witnesses were examined on the 18th and 19th of March. On the 20th of March one of the three counsels of the Respondent appeared but was not allowed to take part in the proceedings because the Tribunal said it was proceeding "ex-parte" at that stage. Three more witnesses were then examined.

In 2006 at Guwahati in Assam in a Suit against Birochan Das and another the Court expunged his evidence on affidavit on behalf of the other defendant as the suit proceeded against him ex-parte and he did not file a written statement.

The above introductory facts from two reported cases highlight the need to read and analyze the relevant law and at the end of the exercise hopefully to understand the true position of the law as regards the procedural rights of the defendant who has been saddled with an order of exparte hearing.

1. THE STATUTORY PROVISIONS :

To cover all aspects of the topic the provisions of Order VI Rule 2, Order VIII Rule 5, Order IX Rule 6(1) (a), Order IX Rule 7, Order XI Rule 21, Order XVI Rule IA and Order XVII rule 2 of the Code of Civil Procedure, 1908 will have to be considered.

Regarding the second and the third of the above provisions in 1976 two significant amendments were made by the Code of Civil Procedure (Amendment) Act, 1976 which came into force on and from the 1st February, 1977. In Order IX Rule 6(1) (a) for the words "the Court may proceed ex-parte" the words "the court may make an order that the

suit be heard ex-parte" were substituted. By the same Act of 1976 original Order VIII Rule 5 had been renumbered as Rule 5(1) and three other sub-Rules were inserted. Going by the Report of the Law Commission and the object and reasons of the these amendments the amendments enact an enabling provision for Courts to pass an exparte decree merely relying on the averments in the plaint not supported by any evidence. This was done to enable speedy disposal of cases when the need arises.

It may be stated here that prevailing view of the original Order VIII Rule 5 starting from the unanimous three Judge decision of the Calcutta High Court in J.B. ROSS & CO. Vs C.R. SCRIVEN, AIR 1917 Calcutta 269 was that in a case where no Written Statement was filed Order VIII Rule 5 was not at all applicable. By the amendment Sub-Rule (2) has been added whereby a discretion is vested in the Court to enable it to use the doctrine of proof by non-traverse provided by the first Sub-Rule of Order VIII Rule 5 even in a case of absence of any Written Statement.

The provision of Order XI Rule 21 had been amended by renumbering Rule 21 as Rule 21(1) and adding Sub-rule (2) barring a fresh suit on the same cause of action if a suit is dismissed under Rule 21(1). A provision for notice to and hearing of the parties also was added.

The provisions of Order VI Rule 2 except for addition of sub-rules 2 and 3 and of Order IX Rule 7 remained unchanged. It will be necessary to have a closer look at these two provisions for a proper analysis of the rights of the defendant set ex-parte.

Order XVI Rule IA inserted with effect from the first of January 1957 by the Code of Civil Procedure (Amendment) Act, 1956 has also undergone some changes with effect from the first of February, 1977 providing for bringing any person to depose without being summoned if the name of such person appears in the list of witnesses mandatorily to be filed under the amended provisions of Rule 1 of Order XVI. However, if the name does not figure in such list leave of court would be necessary to examine such person.

The provisions of Order XVII Rule 2 has remained unaltered except for addition of the Explanation enacting a deeming provision applicable in circumstances described in the explanation.

1.1. ORDER VI RULE 2

At the core of the law of pleadings is the provision of Order VI Rule 2 requiring the parties to plead material facts only and not evidence to succeed on his claim or defence. Succinct variations on the theme of this provision are strewn over the pages of law books and law Reports beginning with the latin secundum allegata et probata (

according to what is alleged and proved) of Roman Law to modern day phrases like "traveling beyond the pleading" and "variance between pleading and proof". With rare exceptions (*see* Four Judge decision of the Supreme Court in BHAGWATI PRASAD Vs CHANDRAMAUL, AIR 1966 S.C. 735) this principle does not permit parties to succeed on a case not pleaded. This is grounded on the need to obviate element of surprise and causing of prejudice. In one sense this is a principle of fair trial as well. At another level this provision also enacts, going by the precedents, a kind of principle of inadmissibility of evidence quite apart from those in the Evidence Act itself. Some samples may add clarity to the statements as above.

SIDDIK MOHMMED SHAH claimed certain lands in his possession as having been gifted to him by the owner Hote Khan. After Hote Khan's death "there was a transference of the lands in question by mutation of names effected on the application of Hote Khan's widow". Story of gift from Hote Khan was not accepted throughout. Basing on the evidence of mutation a second ground of defence proffered was that the lands were gifted by the widow herself. Such a claim was never made in the defence. It was held by the Judicial Committee of the Privy Council thus :-

> **"*Judicial Committee therefore very truly find that no amount of evidence can be looked into upon a plea which was never put forward.*"**

That was in SIDDIK MOHMMED SHAH Vs MT SARAN AND OTHERS, AIR 1930 P.C. 57 (1).

MESSRS TROJAN AND CO. Vs RM. N.N. NAGAPPA CHETTIAR, AIR 1953, S.C. 235 says much the samething though the language is different thus :-

> **"*We are unable to uphold the view taken by the High Court on this point. It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the court was not entitled to grant the relief not asked for and no prayer was even made to amend the plaint so as to incorporate in it an alternative case. The allegations on which the plaintiff claimed relief in respect of these shares are clear and emphatic. There was no suggestion made in the plaint or even when its amendment was sought at one stage that the plaintiff in the alternative was entitled to this amount on the ground of failure of consideration. That being so, we see no valid grounds for entertaining the plaintiff's claim as***

based on failure of consideration on the case pleaded by him."

The same principle was reiterated in BHGAT SINGH AND OTHERS Vs JASWANT SINGH, AIR 1966 S.C. 1861, RAM SARUP Vs BISHUN NARAYAN INTER COLLEGE, AIR 1987 S.C. 1242 and more recently in BONDAR SINGH Vs NIHAL SINGH, AIR 2003 S.C. 1905 and in RAJA GOPAL Vs KISHAN GOPAL, AIR 2003 4319. These precedents on the provisions of Order VI Rule 2 show that where some evidence, even if inadvertently, is let in on a plea not raised in the pleading such evidence has to be ignored. In case of the plaintiff's evidence similarly let in on something not pleaded the same has to be ignored. Such evidence even apart from the provisions of the Evidence Act are irrelevant and inadmissible. The core principle of the provision i.e. secundum allegata et probata thus also is a tool for appreciation of evidence. In a case where no Written Statement is filed can this enunciation of law be stretched to say that no evidence can at all be adduced ? The decisions sampled above are cases where Written Statements are there. The theory of precedents will not permit drawing of inferences from the decisions cited as authority because a precedent is an authority on what it actually decides and not what may be logically deduced from it. Answer to the question whether a defendant not filing a Written Statement is absolutely debarred from adducing any evidence has to wait for the time being. However it may be categorically stated even at this stage that there is no statutory provision either in the Evidence Act or in the Code of Civil Procedure enacting a bar for a defendant set exparte on non filing of Written Statement either at the first hearing or at the later stages of the trial against adducing evidence.

1.2. ORDER IX RULE 7

The provisions of Order IX Rule 7 has been there, earlier in the form of sections, since 1859 when the first Code of Civil Procedure came into existence. There has been a cleavage of opinion among different High Courts as regards implications of setting a defendant ex-parte. One view is that "mere absence on certain days does not make him exparte for the rest of the trial but only exparte for those hearings at which he was absent. He is not prevented from appearing later and proceeding with the case at the stage at which it then is" BHAGWAT PRASAD TEWARI Vs MUHAMMAD SHIBLI, AIR 1922 ALL 110, a Division Bench Judgment of the Allahabad High Court dated the 21st of February 1922 and VENKATASUBBIAH Vs DALIPARTHI LAKSHMI NARASIMHAM, 1925 Madras 1274 are in the forefront of this view. The other view is that without setting aside the exparte order by showing good cause within Order IX Rule 7 a defendant set exparte cannot at all take part in the trial ever. HARIRAM REWACHAND Vs PRIBHDAS MULCHAND, AIR

1945 Sind 98 propounds this view. The conflict has since been resolved by two Three Judge decisions of the Supreme Court in SANGRAM SINGH VS ELECTION TRIBUNAL AND ANOTHER, AIR 1955 S.C. 425 of the 22nd March 1955 and ARJUN SINGH Vs MOHINDRA KUMAR AND OTHERS, AIR 1964 S.C. 993 of the 13th December 1963. In fact Bhurey Lal of the first introductory fact was the Respondent No.2 in SANGRAM SINGH (Supra). The following excerpt from ARJUN SINGH (Supra) seems very apposite :-

> ***"The entirety of the evidence of the plaintiff might not be concluded on the hearing day on which the defendant is absent and something might remain so far as the trial of the suit is concerned for which there might be a hearing on the adjourned date. On the terms of Order IX Rule 7 if the defendant appears on such adjourned date and satisfies the Court by showing good cause for his non appearance on the previous day or days he might have the earlier proceeding recalled – "set the clock back" and have the suit heard in his presence. On the other hand, he might fail in showing good cause. Even in such a case he is not penalized in the sense of being forbidden to take part in the further proceedings of the suit or whatever might still remain of the trial, only he cannot claim to be relegated to the position that he occupied at the commencement of the trial."* (*Underlining supplied*).**

Despite some changes in the law indicated earlier the ratio of these two decisions remained unaffected though some of the observations specially in SANGRAM SINGH (Supra) may be on the wrong side of the amendments effected by Code of Civil Procedure (Amendment) Act 1976. The law, then, is firmly settled that even without filing any application for setting aside the Order of ex-parte hearing or upon failure of such an application within order IX Rule 7 the defendant can participate in what remains of the hearing from the stage he appears at the adjourned hearing. Question that now arises is what is the extent of such participation in the adjourned hearing by a defendant saddled with an order of ex-parte hearing. An answer is being attempted in the next paragraph.

2. ORDERED TO BE HEARED EX-PARTE :

Broadly stated there are two stages in the trial of a suit when an order to hear the suit ex-parte may be passed. The first stage is as described in Rule 6(1) (a) of Order IX. If after satisfying itself of due

service of summons the Court finds that defendant has not appeared on the date fixed for appearance and answering the claim the Court may pass an order that the suit be heard ex-parte. The other stage is when on the adjourned date of hearing the defendant defaults the suit may be ordered to be heard ex-parte. Generally the first stage will cover a case where there is no Written Statement filed by the defendant. The second stage may be after filing of a Written Statement or even without filing the Written Statement. It will therefore be convenient to consider the matter broadly in two parts one for the defendant set ex-parte without filing a Written Statement and other for the defendant defaulting after filing the Written Statement.

There are three components of participation in the rest of the trial by a defendant set ex-parte but appearing on an adjourned date of hearing without recourse to the provisions of Order IX Rule 7 or upon failure of such a recourse. These components are (1) cross-examination of the plaintiff's witnesses being examined on the adjourned date of hearing (2) On closure of the plaintiff's evidence adduction of evidence in defence and (3) Arguments on the entire material in the case. Since on the core principle of the law of pleading which says that the plaintiff has to succeed according to allegations and proof (Secundum allegata et probata) there can be no doubt Written Statement or no Written Statement the defendant set ex-parte and appearing at the adjourned hearing can by arguments show the defect/weakness of the plaintiff's case on law as well as facts pleaded and proved or not proved. SANGRAM SINGH (Supra) and ARJUN SINGH (Supra) leave no scope for any residual doubt in this regard. The other two components are being dealt with hereinafter.

2.1. THE DEFENDANT WITHOUT A WRITTEN STATEMENT.

To set the matter straight it may be stated at the beginning that no decision of the Supreme Court dealing with the rights of a defendant set ex-parte on failure to file a Written Statement could be discovered by the Writer. SANGRAM SINGH (Supra), ARJUN SINGH (Supra) and MODULA INDIA VS KAMAKSHYA SINGH DEO, AIR 1989 S.C. 162 decided on the 27th of September 1988 that is after the 1976 Amendment of the Code are all cases where there are written Statements filed by the parties. A search for decisions from the high Courts where the rights of a defendant not filing a Written Statement has been considered yielded the following.

In GOBINDA GORHI AND OTHERS Vs BALDEO RAM AND OTHERS, AIR 1930 Patna 293 a Division Bench of the Patna High Court rebuffed a specific argument regarding the evidence of the defendants who did not file Written Statement by holding thus : "It, therefore, cannot be held that these defendants are debarred from giving evidence which traverse the allegations in the plaint, and their evidence must be

considered in the merits." Though the argument of the Counsel was based on unamended Order VIII Rule 5 as explained in ROSS VS SCRIVEN (Supra) the conclusion, if one looks at the phrase qualifying the word "evidence", definitely had gone beyond the argument and is really based on the essence of the doctrine secundum allegata et probata. The defendant cannot without or even with a pleading give evidence relatable to a possible but absent plea in the Written Statement or not relatable to a plea present in the Written Statement filed. Two more judgments from Patna High Court indicating the same law are the Division Bench Judgment in BHGERAN RAI AND OTHERS Vs. BHAGWAN SINGH AND OTHERS, AIR 1962 Patna 319 and SIAI SINHA Vs SHIVADHARI SINHA AND OTHERS, AIR 1972 Patna 81 where occurs the following statement of law.

> ***"a defendant even without filing a Written Statement can take part in the hearing of the suit. He may cross-examine the plaintiff's witnesses to demolish their version in examination-in-chief. Without Written Statement, however, he cannot be permitted to cross-examine the witnesses on questions of fact which himself has not pleaded nor can he be allowed to adduce evidence on questions of fact which have not been pleaded by him by filing any Written Statement."***

GOPI CHARAN BAJPAI VS RAM PRASAD AWASTHI, AIR 1957 ALL 283 says much the same thing while allowing a Civil Revision Application by directing that "the defendant will not be precluded from appearing at the trial and leading evidence, even though they would be precluded from putting in a Written Statement.

In CHUNI LAL CHOWDHURY VS BANK OF BORODA AND OTHERS, AIR 1982 J&K 93 the Jammu and Kashmir high Court in this regard adopted the view of the Patna High Court in SIAI SINHA (Supra).

In GANPAT CHAND VS JETH MAL, AIR 1983 Rajasthan 146 occurs the following :-

> ***"The defendant, who has not filed a Written Statement, in a case where the Trial Court decides to proceed according to the second part of 0.8, R.10 C.P.C., although is debarred from subsequently producing his written statement at some later date, yet he may be allowed to cross-examine the witnesses produced by the plaintiff and he may also be allowed to lead evidence in rebuttal of the allegations made in the plaint and then he can be allowed to take part in the final arguments, leading to the decision of the suit..... he cannot be***

allowed to examine any evidence in respect of any specific defences that might have taken in the suit."

The reasoning is thus squarely put under the core principle of law of pleading that is secundum allegata et probata. Incidentally the Supreme Court in BALRAJ TANEJA Vs SUNIL MADAN, (1999)8 SCC 396 while laying down the law under Order VIII Rule 10 approved SIAI SINHA (Supra) and CHUNI LAL CHOWDHURY (Supra) considered here.

2.2. THE DEFENDANT WITH A WRITTEN STATEMENT

The defendant without a Written Statement can participate in the adjourned ex-parte hearing to the extent explicit on the principles and precedents as above. Obviously the defendant with a Written Statement will be on much stronger ground. Such a defendant can cross-examine the plaintiff's remaining witnesses, can adduce evidence not only in rebuttal of the plaintiff's case but also on the pleas in his written statement and argue the case. All this he can do without setting aside the order for ex-parte hearing within Order IX, Rule 7. He cannot, however, turn the clock back without such setting aside. This is the law laid down in SANGRAM SINGH (Supra) and ARJUN SINGH (Supra) by the Supreme Court.

However, there appears a confusion in some quarters about the true ratio of SANGRAM SINGH (Supra). To dispel the confusion it may be stated that Bhureylal, the respondent No.2 in the Election Petition did file a Written Statement. His prayer under Order IX Rule 7 was rejected. The Supreme Court upheld the rejection and then considering the several provisions of Order VIII, Order IX and Order XVII as those provisions then were extant affirmed the right to cross-examine and adduce evidence but on the peculiar facts of the case put those rights within the limitation of the discretion to be exercised by the Tribunal. All that was done basing on the words in Order XVII Rule 2 "or make such other Order as it thinks fit" and also to repel, a specific objection raised by O'sullivan J in HARIRAM REWA CHAND (Supra). In the light of later Three Judge decision in ARJUN SINGH (Supra), also a case with Written Statement, the limitation necessitated by the facts of the case spoken of in SANGRAM SINGH (Supra) may not be read as the part of true ratio of the case.

Before summarizing two more decisions one from the Gauhati High Court and the other from the Supreme Court need to be perused. Reason is that on these two judgments had been founded the decision to "expunge" the examination-in-chief on affidavit of Birochan Das of the Gauhati case mentioned in the introductory facts.

3. TWO PRECEDENTS :

In umpteen cases the Supreme Court cautioned the High Courts and the subordinate courts to be mindful of proper use of precedents. The following from only one among such cases, (2004) 6 SCC 186, would suffice.-

> ***"11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decisions on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark on lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.***
>
> ***1.2.....***
>
> ***1.3. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."***

With the above background in mind one may now look at the two decisions.

3.1 MODULA INDIA, AIR 1989 S.C. 162

Even a mere glance at the Head Note of the Report should inform anyone that the decision dealt with the statutory striking off of the defence of a Tenant under Section 17(3) of the West Bengal Premises Tenancy Act, 1956. The defendant there filed a Written Statement. It was "necessary for the Judges to embark on lengthy discussion" covering provisions of Order VIII, Order IX of Order XI Rule 21 of the Code to arrive at the conclusion thus :-

> ***"In a case where the defence against delivery of possession of a tenant is struck off under Section 17(4) of the Act the defendant, subject to the exercise of an appropriate discretion by the Court on the facts of a particular case, would generally be entitled.***
>
> ***(a) to cross-examine the plaintiff's witnesses; and***
>
> ***(b) to address arguments on the basis of the plaintiff's case.***
>
> ***We would like to make it clear that the defendant would not be entitled to lead any evidence of his own……."***

This was not even a case of striking out of defence within Order XI Rule 21 of the Code. It is crystal clear that MODULA INDIA (Supra) cannot sustain a holding that a defendant not filing a Written Statement cannot adduce any evidence in his turn.

3.2. SHRI PADA ACHARJEE VS SHRI HARIPADA ACHARJEE AND ORS, (1991) I GLR 157.

Facts are almost on all fours with those of GANPAT CHAND (Supra) of the Rajasthan High Court considered in para 2.1 of this essay. A decree under Order VIII Rule 10 was in question before the High Court. Like GANPAT (Supra) the Gauhati High Court considered the two courses open to the Court under the provisions of Order VIII Rule 10. But unlike GANAPAT (Supra) while considering the second course the High Court pithily observed thus :-

> ***"But he cannot be allowed to lead evidence in respect of defence on account of his failure to file Written Statement."***

What has been stated in GANAPAT (Supra) in a expanded way has been repeated pithily in the Gauhati case. Both statements of law are firmly based on the principle of secundum allegata et probata. SHRI PADA (Supra) cannot be read without the qualifying words that follow the word "evidence" in the extract above. It does not say that such a defendant cannot lead any kind of evidence . Thus neither MODULA INDIA (Supra) nor SHRI PADA (Supra) support a view that a defendant not filing a Written Statement cannot adduce any evidence at all.

4. A CONTRARY VIEW :

But contrary to the view so far exposed on precedents and principles the Gauhati High Court on the 8th of August 2006 in ANU DAS VS PADUMI DAS. (2007)1 GLR 538 held that "the law is well settled that the defendant who fails to present Written Statement or has already been debarred from filing Written Statement, cannot examine himself as a witness." It has already been emphasized that neither the provisions of the Evidence Act nor those of the Code enact any such disqualification. If anything provisions like those of order XVI Rule 1A and Rule 21 indicate that even a defendant can be a witness for the plaintiff. No prohibition for one defendant being a witness for another defendant is there. This is the case where Birochan Das mentioned in the introductory facts is the defendant No.1 who did not file any Written Statement nor contested the suit otherwise. He also apparently did not make any approach within Order IX Rule 7 on being set ex-parte. Anu Das the defendant No.2 is the wife of defendant No.1 and Padumi Das the plaintiff is the mother of defendant No.1 and mother-in-law of defendant No.2. It appears that the Trial Court without perusing MODULA INDIA (Supra) and SHRI PADA (Supra) in total disregard of the Supreme Court's caution about use of precedents in (2004) 6 SCC 186 quoted at para 3 above blindly relied on them and "expunged" the evidence of the Ex-parte defendant No.1 tendered on behalf of the contesting defendant No.2 Unfortunately the glaring misapplication of these two precedents exposed in para 3 above has received the approval of the High Court. The learned Counsel for Anu Das, in the High Court did not make any attempt to urge before the High Court that neither MODULA INDIA (Supra) nor SHRI PADA (Supra) would support the view that defendant No.1 cannot be a witness for defendant No.2 simply because he did not file a Written Statement. Nor was it pointed out that in MODULA INDIA (Supra) there was a Written Statement. One other aspect of the Trial courts order calls for some comment. There is no provision in the Evidence Act for expunction of Evidence. The Evidence Act only provides for relevancy and admissibility and their opposite. Even the precedents discussed in this essay do not speak of expunction but only say that evidence not based on pleading has to be overlooked/ignored thus providing for a kind of inadmissibility of evidence apart from those provided by the Evidence Act. If the evidence of defendant No.1 on behalf of defendant No.2 turns out to be in breach of such a rule of inadmissibility flowing from the core principle of law of pleading discussed earlier such evidence can only be ignored and not expunged. This new idea of expunction seems to have originated with the new provisions of Order XVIII Rule 4 of the Code requiring Evidence –in-chief to be given by affidavit. ANU DAS (Supra) has not been correctly decided and needs correction by a Larger Bench of the High Court.

5. THE SUMMING UP :

The law that emerges on principle and precedents considered in this essay may best be summed up through an illustration. In a case of money lent by A the plaintiff to B the defendant, the defendant failed to appear and file a Written Statement and thus the suit was ordered to be heard exparte against B. On the adjourned date of hearing B appeared and either did not make any approach within Order IX Rule 7 or was unsuccessful in such an approach. B can take part in the arguments in the case. B can cross-examine witnesses for the plaintiff that remained to be examined on the adjourned date. But apart from the general restriction within the Evidence Act he is further restricted because of the principles of pleading in such cross-examination. He can only traverse in cross-examination the plaintiff's pleading, demolish the plaintiff's case and test the veracity of his witnesses. He cannot throw a suggestion to the witnesses that the loan has been repaid because this would require the plea of repayment but there is no pleading. Supposing a witness for the plaintiff admits in cross-examination that the loan is repaid. This admission would have to be ignored and would not avail the defendant because it would amount to evidence on something not pleaded. On the closure of plaintiff's evidence in his turn he can adduce evidence but with the same restrictions as in the cross-examination of plaintiff's witnesses. He can only traverse the allegations in the plaint by his evidence and not lead evidence which would require as its foundation a pleading which he has not filed. Suppose in the case A leads oral evidence that money was paid to B at Guwahati on a particular day in presence of his witnesses X and Y. B even if he did not file any Written Statement and was set exparte can certainly suggest to X and Y in cross-examination that they were not at Guwahati on that day but were at Dibrugarh and adduce evidence of himself to support other witnesses on his behalf that X and Y were on that particular day not at Guwahati but were at Dibrugarh.