



IN THE HIGH COURT OF SIKKIM

ORDER SHEET

Writ Petition (C).....No. 49 of 2005

VIJAYA BANK.....Petitioner/Appellant

Versus

SHRI RAHUL KUMAR PRASAD
AND OTHERS.....Respondent

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
01.	12.12.05	<p>Heard Mr. A.K. Upadhyaya, learned senior counsel assisted by Ms. Manita Pradhan, learned counsel for the petitioner.</p> <p>Let a rule issue calling upon the respondents to show cause as to why an appropriate writ or order or direction appropriate in the case should not be issued/passed as prayed for by the petitioner. Rule is made returnable on 07.03.2006. The petitioner is required to take steps for service of notice upon the respondents within three days.</p> <p>In meantime, the impugned order dated 08.09.2005 passed in M.S. No. 9 of 2005 by the District Judge (East & North) at Gangtok shall not be given effect to it until further orders of this Court.</p> <p>N.S. Singh (N.S. Singh) Chief Justice (Acting)</p>	<p>A Copy of order forwarded to D.J. CE+M on 12-12-05. <i>hucars</i></p> <p>Requisite filed on 17-12-2005. Notice issued upon receipt. <i>hucars</i> 12/12/05.</p> <p>1. AD Cards recd. from respdt. ns 2 h 4.</p> <p>2. Unserved notice recd back from respdt. ns stating their address out of station. <i>hucars</i> 6/3/06</p>



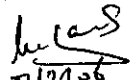
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2.	7.3.2006	<p>Heard Mr. A. K. Upadhyaya, learned senior counsel assisted by Ms. Manita Pradhan, learned counsel for the petitioner.</p> <p>Service upon the respondent Nos. 2, 3 and 4 is complete, and apart from that Mr. Karma Chedup Bhutia, the respondent No.2 is present before this Court today. So far as respondent No.1 – Mr. Rahul Kumar Prasad is concerned, his presence is not so much necessary at this juncture, as the original case was proceeded against the respondent No.1 ex-parte, and in view of it, this case can be taken up today for hearing and accordingly, it is taken up and the same is disposed of finally on its own merit with the following order :-</p> <p>On 8th September, 2005, the original Case being No.M.S.No. 9 of 2005 was fixed for filing evidence of the plaintiff, and on that day the learned counsel appearing for the plaintiff, i.e., the petitioner herein, filed an application for adjournment by contending inter alia, that the case was fixed on that day for framing of issues. The prayer for adjournment was rejected by the learned Court below by holding, that the learned counsel for the plaintiff has no regard for the case, thus dismissing the suit on that day.</p> <p>It is an admitted position that the case was not decided on merit. According to us, the learned Court below ought to have granted the adjournment sought for by the plaintiff as 8th September, 2005 was fixed by the Court below for filing of affidavit-evidence of the plaintiff. Even assuming if the court was satisfied that</p>	

no sufficient reason was assigned in the adjournment application, thus rejecting the prayer for adjournment,



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		<p>the learned Court below ought to have proceeded ^{with} the case in accordance with law thus framing issues and deciding the same on merit in accordance with law which was not done in the case in hand. On this ground alone, the impugned order deserves to be set aside, and accordingly, it is set aside with a direction to the court below to allow the plaintiff to file affidavit-evidence before the Court below and to proceed with the case and decide the same in accordance with law expeditiously, preferably within a period of three months, for which the parties are directed to appear before the Court below on 14th March, 2006 at 10.30 a.m.</p> <p>In the result the petition is allowed. No order as to costs.</p> <p>Registry is directed to communicate a copy of this order to the Court below, as early as possible.</p> <p style="text-align: center;"> (N. Surjamani Singh) <u>Judge</u></p> <p style="text-align: center;"> (A. P. Subba) <u>Judge</u></p>	<p>A Copy of order forwarded to Court below on 7.3.06.  7/3/06</p>