



| Serial No. of Order | Date of Order | Order with Signature | Office Note as to action (if any) taken on Order |
|---------------------------|---------------------|---|--|
| 7. | 26.5.08 | <p data-bbox="342 438 1175 512">Present: Mr. Ashis Sinha and Mr. Laxuman Gurung, Advocates for the Appellant.</p> <p data-bbox="537 556 1175 680">Mr. A.K. Upadhyaya, Sr. Advocate with Mr. Ashim Chhetri, Advocate for the Respondents.</p> <p data-bbox="732 699 764 724">...</p> <p data-bbox="342 758 1175 1049">This is an appeal by the constituent of a bank who as plaintiff has failed to obtain a decree in the lower Court. The learned District Judge, East & North, Dr. S.W. Lepcha has dismissed the plaintiff's suit.</p> <p data-bbox="342 1108 1175 1579">The facts are given in the said judgment but today this Court has to examine under Order XLI Rule 11 of the CPC whether it would be at all just to admit the appeal, i.e. whether it has any resemblance of success ultimately; this is especially necessary because the banker, as defendant, will be spending public money for the costs of the appeal if it is admitted.</p> <p data-bbox="342 1638 1175 2047">The Order XLI Rule 11 procedure is not a mechanical one. For the purpose of saving Court's time and for summarily disposing of appeals, which lie as a matter of right, but do not appear to be meritorious in any manner on facts or in law, the summary jurisdiction is exercised as a valuable tool in the hands of the</p> | |



| Serial No. of Order | Date of Order | Order with Signature | Office Note as to action (if any) taken on Order |
|---------------------------|---------------------|---|--|
| | | <p data-bbox="342 392 1175 677">Court of Appeal. Of course, in some such cases as internal appeals within the High Court in some Letters Patent appeals, this practice of admission is not followed, but that is not material here.</p> <p data-bbox="342 738 1183 1568">Very briefly put, it appears that a fixed deposit made by the plaintiff with the defendant bank in 1994 matured in the year 1996. The plaintiff had also a cash credit account with the bank which was running in debit. One interesting fact about the plaintiff, although not very necessary for this suit, is that he had obtained as large a sum of money as Rs.5 crore as a loan from the State of Sikkim, and the said loan was interest free. The first defendant herein had guaranteed the said loan and the transactions started. This suit is only the tip of the iceberg, or may be just a small chip of ice from the tip.</p> <p data-bbox="350 1590 1187 2055">Be that as it may, some 3 years after the date of maturity of the FDR in 1996, i.e. sometime in the year 1999, the bank appropriated from the FDR amount moneys towards pro tanto satisfaction of their dues from the plaintiff in the running cash credit amount. The FDR receipt continued to remain with the plaintiff.</p> | |

NO. OF
Orderor
Order

Order with Signature

Office Note as to
action (if any)
taken on Order

The plaintiff raised the objection that such appropriation could not be made after the running out of the period of limitation of 3 years from the date of maturity of the fixed deposit amount.

It is well known, and the learned Judge of the lower Court also held, that the period of limitation is not to be used for purposes other than that for which it is enacted. The law of limitation is for barring of remedy and for keeping prospective plaintiffs diligent. The right of getting money from a debtor, which resides in the creditor, is not extinguished after the period of limitation. The period of limitation has nothing to do with the existence of such right; it only bars the legal process.

In the instant case, the bank did not have to file a suit but it took money from out of moneys it already had, which would have been payable to the plaintiff, had he been free from all debts.

These facts are not such that the Court should enter into any more discussion on bankers' lien or laws of contract or such like;



| No. of Order | of Order | Order with Signature | Office Note as to action (if any) taken on Order |
|--------------|----------|---|---|
| | | <p data-bbox="341 377 1177 487">the issue is too simple and too much in favour of the bank for the Court to admit this appeal.</p> <p data-bbox="341 548 1177 645">The appeal is not admitted and it is dismissed in limine.</p> <p data-bbox="933 657 1177 791"><i>A.N. Ray</i> (A.N. Ray, CJ)</p> | <p data-bbox="1226 341 1591 462"><i>Trust Court records, Order & decree forwarded on 31-3-68</i></p> <p data-bbox="1380 450 1534 560"><i>Lucas</i> <i>31/3/68</i></p> |



HIGH COURT OF SIKKIM
GANGTOK

DECREE IN APPEAL
([Under Order 41 Rule 35 of C.P.C.]

The Regular First Appeal No.3 of 2007 against the Judgment dated 19.3.2007 passed by the Id. District Judge (East & North) at Gangtok in Money Suit No.21 of 2005.

M/S. Himal Laboratories Pvt.
Ltd., Majitar, Rangpo, East Sikkim

...Appellant.

- Versus -

1. The Senior Manager, United
Commercial Bank, Gangtok Branch,
P.S. Road, Gangtok, East Sikkim.
2. United Commercial Bank
Represented by the General
Manager, having its Head Office at
10-Brabourne Road, Calcutta 700001.

...Respondents.

This Appeal coming up for hearing on 26th day of May, 2008 before Hon'ble Shri Justice Ajoy Nath Ray, Chief Justice and Hon'ble Justice A.P. Subba, Judge of this Court in presence of Mr. Ashis Sinha and Mr. Laxuman Gurung, Advocates for the Appellant and Mr. A.K. Upadhyaya, Sr.Advocate with Mr. Ashim Chhetri, Advocate for the Respondents.

On hearing arguments the Hon'ble Court has dismissed the appeal in limine.

2
28/5/08

**Cost of Appeal**

| <u>Appellant</u> | <u>Amount</u> | <u>Respondent</u> | <u>Amount</u> |
|-----------------------------|----------------------|--------------------------|----------------------|
| 1. Stamp for Memo of Appeal | Rs. 2.00 | | |
| 2. Stamp for power | Rs. 2.00 | Stamp for power | Rs.2.00 |
| 3. Stamp for petitioner | ----- | | |
| 4. Court fee | Rs.19,352.00 | | |
| 5. Pleader's fee | ----- | | |
| 6. Service of Process | ----- | | |
| 7. Misc. | ----- | Misc. | ----- |
| | <u>Rs.19,356.00</u> | | <u>Rs.2.00</u> |

Given under my hand and seal of the Court on 26th day of May, 2008 at Gangtok.

Prepared by

Joint Registrar-cum-Reader
High Court of Sikkim
Gangtok.

Registrar General I/C
High Court of Sikkim
Gangtok