

# IN THE HIGH COURT OF SIKKIM

## CIVIL JURISDICTION

WP(C) No. 23 of 2010

Dafodil's School & Ano.

Appellants (s)  
Petitioner (s)

Versus

Kalpang Pradhan

Respondent (s)  
Opposite party (s)

Appellant

For \_\_\_\_\_ Mrs. Laxmi Chakraborty and Mrs. Manju Rai  
Petitioner  
(Advocate (s))

Respondent

For \_\_\_\_\_  
Opposite Party  
(Advocate (s))

Serial No.	Date	Order (s) with Signature (s)
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1.	19-05-2010 (Ghosh, CJ)	<p style="text-align: center;"><b><u>BEFORE</u></b></p> <p style="text-align: center;">HON'BLE THE CHIEF JUSTICE MR. JUSTICE BARIN GHOSH HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE</p> <p>Present: Mrs. Laxmi Chakraborti with Ms. Manju Rai, Advocates for the petitioners.</p> <p style="text-align: center;">...</p> <p>Being aggrieved by the order passed on 24.04.2010 directing issue of warrant of delivery of possession of the decreed premises, without offering an opportunity to file written objection to the execution case</p>



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		<p>registered as Civil (execution) Case No. 01 of 2010, the present appeal has been preferred. The subject matter of the execution case referred above is a compromise decree. In the compromise decree it has been provided in no uncertain terms that the appellant before us shall vacate the suit premises and give Khas vacant possession to the plaintiff on expiry of 31<sup>st</sup> December, 2009 without fail. The compromise decree further provides that the defendant shall pay rent fixed at the rate of Rs.10,000/- (rupees ten thousand) per month with effect from 1<sup>st</sup> day of May 2006 which shall be payable according to English Calendar Month within 1<sup>st</sup> week of the succeeding month. The order sheet of the Court below suggests that on 15.04.2010, when the case was listed before the Court below after service, the counsel appearing on behalf of the appellant prayed for time for settlement and such time was granted. On the next date which was fixed in the presence of the counsel for the appellant, a prayer was made for filing written objection. The Court below having taken notice of the fact that the compromise decree in no uncertain terms provides that the appellant shall vacate the suit premises and give Khas possession on expiry of 31<sup>st</sup> December, 2009, we think correctly, did not permit the appellant to delay execution of the compromise decree. Before us it is being contended that while a sum of Rs.50,000/- (fifty</p>





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		<p>thousand) was paid by cheque, rent in advance for the month of January, 2010 was paid and accordingly, a new tenancy has come into force. To support such contention, recourse has been taken to the books of the accounts maintained by the appellant, which in terms of Section 34 of the Evidence Act cannot charge the respondent plaintiff without corroboration. However, despite payment made by cheque, the receipt granted therefore has not been produced before us. There is, therefore, nothing before us on the basis of which we can even prima facie hold that a new tenancy has come into force from 01.01.2010. Furthermore, in terms of the compromise decree an amount of Rs.10,000/- (ten thousand) payable as rent for the month of December, 2006 was to be paid in the month of January, 2010 and the cheque in question was encashed on 08.01.2010. That being the situation, we are also of the view that if any indulgence is shown, the same would tantamount to permit the appellant to commit breach of the undertaking given solemnly by her while she of her own volition entered into the compromise decree.</p> <p>The learned counsel appearing in support of the appeal cited before us the judgment of the Hon'ble Supreme Court rendered in the case of <b>Bibekananda Bhowal Vs. Satindra Mohan Deb</b>, reported in <b>AIR 1996 SC 1985</b>. In that case, compromise decree provided that</p>



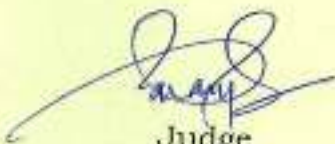



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		<p>the defendant would be liable to be vacated from the suit land after expiry of ten years by appropriate action in Court of law. The decree thus considered in that case and the decree in the instant case are quite different and, accordingly, law pronounced by the Hon'ble Supreme Court in that case has no application whatsoever to the present case.</p> <p>In the instant case as aforesaid in no uncertain terms and without any ambiguity, it had been declared that the defendant shall vacate the suit premises and give Khas possession to the plaintiff on the expiry of 31<sup>st</sup> December of 2009 without fail.</p> <p>The learned counsel cited yet another judgment, which has been rendered by a learned single Judge of this Court in Civil Revision No. 6 of 1998 and other connected Civil Revisions. In that case, the Court was concerned with new rights growing from a new agreement entered subsequent to the compromise decree. That judgment, therefore, is of no help to the appellant, in the absence of the appellant demonstrating creation of new rights subsequent to the compromise decree, which, as aforesaid, the appellant has failed to demonstrate.</p> <p>The learned counsel lastly submitted that the suit premises is not only contiguous to the premises of the school, but in the manner in which two premises have been constructed, having only one entrance, it is not</p>



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		<p>possible to take possession of the suit premises and to handover the same to the plaintiff in the suit. We feel that, in fact, if there is any such problem the same is to be sorted out by the executing Court and an apprehended situation of that nature is no ground to challenge the order of the Court below issuing warrant of delivery of possession and accordingly, we refuse to admit the appeal.</p> <div><div> Judge 19.05.10</div><div> Chief Justice 19.05.10</div></div>

rsr/yb