



IN THE HIGH COURT OF SIKKIM AT GANGTOK
(CIVIL REVISIONAL JURISDICTION)

DATED : 04.10.2010

CORAM

HON'BLE MR. JUSTICE P.D. DINAKARAN, CHIEF JUSTICE

Civil Revision Petition No. 05 of 2009

Smt. Yangzila Bhutiani,
Wife of Shri P. T. Bhutia,
Resident of Development Area,
Gangtok, East Sikkim.

... Petitioner/Revisionist

-versus-

1. M/s Nauratanmal Ashok Kumar,
M.G. Marg, Gangtok,
East Sikkim.

2. Shri Sampatmal Buccha,
Resident of M.G. Marg,
Gangtok, East Sikkim.

... Respondents

For the petitioner : Mr. S. Majumdar, Advocate.

For the respondents : Mr. Gulshan Rai Nagpal, Advocate.

JUDGMENT

Dinakaran, CJ

1. This Revision is against the orders dated 05.10.2007
and 11.11.2008 of the learned District Judge, East and North



Sikkim at Gangtok in Title Suit No. 1 of 2003, renumbered as Eviction Suit No. 19 of 2005.

1.1 The orders dated 05.10.2007 and 11.11.2008 read as hereunder:

"5.10.07 Plaintiff present with Ld. Counsel Shri S. Majumdar with Ld. Counsel Kalpana Moktan.

Defendant No. 2 present with Ld. Counsel Shri J. K. Chandak.

Today the date is fixed for hearing of application under VIII rule 9 r/w Sec. 151 of C.P.C., application Under order 23 r/w Sec. 151 of C.P.C., filing the list of witness by the defendant and also for filing of evidence in chief by defendant No. 2.

Hearing of the matter could not be taken up as the defendant no. 2 files application for adjournment on the ground that his counsel Shri Bijay Saha could not appear today due to migraine pain.

Heard and Considered.

Adjournment is allowed.

For hearing of application under VIII rule 9 r/w Sec. 151 of C.P.C., application Under order 23 r/w Sec. 151 of C.P.C., filing the list of witness by the defendant and also for filing of evidence in chief by defendant No. 2.

To: 20.11.07.

Sd/-
(S. W. Lepcha)
District Judge, E & N."

"11.11.08 Plaintiff present through Id. Counsel Shri S. Majumdar.

Defendant present through Id. Counsel Shri J. K. Chandak.

Vide orders of this Court dated 12.04.2007, it is recorded as follows:



"Ld. counsel for the defendant submits that the defendant has filed application under Order VIII Rule 9 r/w Section 151 of the C.P.C. on 21.8.2006 to which the plaintiff has not filed any objection till today. He thus contends that since the plaintiff has not filed reply within 90 days the matter may be fixed for hearing exparte."

However, the order dated 20.11.2007 reflects the following interalia:

"Defendant No. 2 filed an affidavit on evidence in his counter claim. Copy served on the plaintiff side."

This order therefore indicates that leave to file counter claim by the defendant was allowed by the Court and no party can therefore raise the issue as the matter has already been settled.

Now the plaintiff submits that on 10.03.2008 he had filed an application under Order IX Rule 7 read with Section 151 C.P.C. and also in another application U/S 151 of C.P.C. for expulsion of issue No. 8.

Now to come up for (i) hearing on the application under Order IX read with Section 151 of the C.P.C. and (ii) hearing on the application U/S 151 of C.P.C. both filed by the plaintiff.

To: 10.03.2009.

Sd/- 11/11/08
(Meenakshi M. Rai)
District Judge (E&N)"

2. By Order dated 05.10.2007, the matter was adjourned to 20.11.2007 for filing of the list of witnesses by the defendant and also for filing of evidence in chief by defendant No.

3. By Order dated 11.11.2008, the application filed by the Respondent to raise counter claim was allowed. Mr. S.



Majumdar, learned counsel for the Revision Petitioner/Plaintiff, submits that the Revision Petitioner/Plaintiff should be given an opportunity to file written statement to the counter claim filed by the Respondents/Defendants, which was allowed by the learned trial Court on 11.11.2008.

4. Mr. Gulshan Rai Nagpal, learned Counsel appearing for the Respondents/Defendants, submits that by seeking time for filing written statement to the counter claim, the Revision Petitioner should not protract the proceedings.

5. In this regard, Mr. S. Majumdar, learned Counsel appearing for the Revision Petitioner/Plaintiff, on instructions from the Revision Petitioner/Plaintiff, submits that he requires only four weeks time to file written statement to the counter claim filed by the Respondents/Defendants and the Revision Petitioner/Plaintiff has also made an endorsement to that effect, which is also counter signed by the learned Counsel for the parties and reads as hereunder:

"I undertake to file written statement against the counter claim of the defendant within the time allowed by this Hon'ble Court.

Sd/- 4/10/10
(Illegible)

Sd/- 4/10/2010
(Sudipto Majumdar)
Advocate

Sd/- 4/10/2010
(Gulshan Rai Nagpal)
Advocate for respondent."



6. In the view of the matter, suffice it to permit the Revision Petitioner/Plaintiff to file a written statement to the counter claim filed by the Respondents/Defendants before 10.11.2010. Thereafter, the Respondents/Defendants are permitted to file rejoinder within two weeks, i.e. on or before 24.11.2010, if they are so advised. Both the parties shall file their list of witnesses on or before 15.12.2010. The trial Court shall take up the matter for trial on day to day basis, and pass appropriate decree in the suit within two months thereafter, as per the schedule mentioned above.

7. Both the parties are directed to cooperate in this regard.

8. The revision petition is disposed of accordingly, however, no order as to costs.

(P.D. DINAKARAN, CJ)
04.10.2010

Index : ~~Yes~~/No
Internet : ~~Yes~~/No

pm/jk

Note: Registry is directed to send a copy of this order to the learned District Judge, East and North Sikkim at Gangtok for reporting the compliance of the above order.