



Case No. CRP No. 10 of 2011.

Serial No.	Date	Order (s) with Signature (s)
1	2	3
11.	22.02.2013	<p style="text-align: center;">BEFORE</p> <p style="text-align: center;"><u>HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE</u></p> <p>Present : Mr. Udai P. Sharma, Advocate with Mr. Dawa Tashi Lepcha and Mr. Meg Nath Dhungel, Advocates for the Petitioner.</p> <p>Mr. J. B. Pradhan, Addl. Advocate General with Mr. S. K. Chettri, Asstt. Govt. Advocate for Respondents.</p> <p style="text-align: center;">***</p> <p>Before going into the merits of the Petition, a question has cropped up as to whether the Revision Petition is maintainable against an order of the Appellate Authority. This question would be set at rest as this Court has sufficient powers under Article 227 of the Constitution of India to entertain complaints of such nature. Therefore, in the larger interest of justice, the Petition is taken up as one under Article 227.</p> <p>Upon hearing the matter, this Petition may be disposed of solely on the ground of the impugned order having been passed without the Petitioner being given an opportunity of being heard despite the fact that he was being represented by a learned Counsel.</p>



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		<p>Mr. J. B. Pradhan, learned Additional Advocate General, fairly concedes to this and has referred to the following orders appearing on the records of the Appellate Authority which is extracted hereunder: -</p> <p>"3.2.11: Ld.Counsel for appellant U.P. Sharma present. Ld. Counsel for respondent no. 1 K. Moktan present prays time and files an application for adjournment. It is agreed that order may be passed on the basis of written argument as will be filed on the next date. Parties are at liberty to argue as well. To come up for above.</p> <p>To 4.3.11</p> <p>4.3.11 : P.O. is busy in official work at law department. Date referred to 16.4.11.</p> <p>16.4.11 : P.O. is on tour. Parties are present. Date referred to 18.6.11.</p> <p>18.6.11 : Ld. Counsel G. Lama is present. Ld. Counsel K. Moktan is also present. As per the order dated 3.2.11 it was agreed that written argument will be filed by the next date. However that not done by either party. Today however respondent filed (no.1) written argument but the appellant has not filed. SAs a last chance the appellant had agreed to file by next date his written argument and the matter will be heard as for disposal. Prayer for adjournment filed by appellant as such is accepted despite opposition by respondent on the ground that no further opportunity would be given to other party.</p> <p>To 23.7.11</p> <p>23.7.11 : P.O. is busy in other matter meeting in the sect. Parties are present. Date deferred to 30.8.11."</p>




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		<p>It is apparent from the above that neither of the parties had submitted their synopsis of arguments until 18.6.2011 when only the Respondent No.1 had done so. So far as the Petitioner is concerned, prayer had been made seeking further time to do so. Thereafter nothing appears to have been done. On the next date, i.e. on 23.07.2011 fixed by the Appellate Authority, even though the Appellate Authority was unable to be present, the parties had been there fixing 30.08.2011 as the next date. By order dated 18.06.2011 opportunity had been provided to file synopsis of arguments on behalf of the Petitioner. It would have been appropriate for the Appellate Authority to have either granted further opportunity to file synopsis or rejected the prayer for such opportunity but neither of such order appears to have been passed. This was necessary in view of the order dated 03.02.2011 where it had been agreed by the parties that the Appeal may be decided on the basis of the written arguments to be filed by the parties and further giving them opportunity to make oral arguments. This has been reiterated in Order</p>



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		<p>dated 18.6.2011 of the Appellate Authority as can be seen from the extract of the order reproduced above.</p> <p>As conceded to on behalf of the Respondents, there appears to be a procedural error on the part of the Appellate Authority resulting in denial of justice to the Petitioner in having been deprived of an opportunity of a fair hearing.</p> <p>Procedures are meant to be handmaid of justice and if there is violation of a procedure in the interest of justice this Court ought to intervene. Justice is not only to be done but also appear to have been done.</p> <p>In view of the above, this Revision Petition is allowed and the impugned order is set aside. The Appellate Authority is directed to hear the Appeal afresh.</p> <p>Considering the fact that this matter is quite old the Appeal be heard and disposed of so far as it is practicable within a period of two months.</p> <p>With the above directions, the Revision Petition accordingly stands disposed of.</p> <p>No order as to costs.</p> <div> Judge 22-02-2013</div> <p>Index : Yes/No</p>

SGPG- 3/ High Court/ 5000 No. 12/2013 : Yes/No