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		<p style="text-align: center;">BEFORE HON'BLE THE CHIEF JUSTICE MR. JUSTICE PERMOD KOHLI</p> <p style="text-align: center;"><u>W.P.(C) No. 11/2009, W.P.(C) No. 12/2009</u> <u>and CRP No. 01/2009</u></p> <p>19.02.13 Present: M/s. K.K. Rai and B. Sharma, Sr. Advocates with S.K. Pandey and N.T. Bhutia, Advocates for the petitioner.</p> <p>M/s. J.B. Pradhan, Addl. Advocate General with Karma Thinlay Namgyal, Govt. Advocate and S.K. Chettri, Asstt. Govt. Advocate for respondent No. 1 & 2.</p> <p>M/s Bhaskar Raj Pradhan, Sr. Advocate with Yangchen D. Gyatso and Jorgay Namkha, Advocates for respondent No. 3.</p> <p style="text-align: center;">---</p> <p>These three petitions have been filed invoking jurisdiction of this Court under Article 227 of the Constitution of India notwithstanding the nomenclature indicated in these petitions.</p> <p>2. The first petition in this series is CRP No. 01/2009, which was directed against the order dated 18.11.2008 passed by the learned District Judge, Special Division-I at Gangtok, Sikkim. Vide the impugned order dated 18.11.2008 certain directions were issued by the Court for regulating the proceedings by the Commission.</p>



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		<p>3. The principal grievance of the petitioner in this case is delay in conducting the proceedings before the Commission.</p> <p>4. The order impugned in this petition was stayed by this Court vide order dated 05.03.2009. The Commission was directed to conduct further cross-examination of the plaintiff No. 3 in the suit, i.e. the petitioner before me, with effect from 16.01.2009 to 25.01.2009. It is the admitted case of the parties that this cross-examination could not be conducted on account of the fact that the petitioner wanted to move this Court in revision petition and in fact the present petition i.e. CRP No. 01/2009 was filed before this Court. Since the proceedings before the Commission did not commence as directed by this Court, the Court was informed about this fact. On consideration of the various contentions of the parties, the trial Court passed order dated 19.02.2009. The relevant part of the order reads as under: -</p> <p style="text-align: center;">“ It is accordingly ordered that the plaintiff No. 3 shall bear the actual expenses incurred by the defendants 1 and 2 and the defendant No. 3 for going to Delhi for the cross-examination of the plaintiff No. 3 as follows:</p> <p style="padding-left: 40px;">(i) for defendants 1 and 2, the expenses incurred by Id. Government Advocate Shri J.K. Chandak for his to and fro Journey from Delhi on 15th and 16th of January, 2009 as claimed by him;</p> <p style="padding-left: 40px;">(ii) For defendant No. 3 the plaintiff shall bear the to and fro journey expenses of the Id. Advocates and the entire accompanying team;</p>



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		<p>(iii) Plaintiff No. 3 shall also bear the actual expenditure incurred by the defendant No. 3 from the 12th of January 2009 till the 18th of January, 2009 for their boarding, lodging and food expenses.</p> <p>Now the date is required to be fixed for cross-examination of the plaintiff No. 3, however, Id. Counsel Shri Norden Tshering Bhutia verbally submits that he is required to contact his clients to take step in the matter and also to seek the availability of the Hon'ble Commissioner.</p> <p>Considered, in the circumstances, time allowed. To: 2/3/09.</p> <p style="text-align: right;">Sd/- (Meenakshi M. Rai) District Judge, (Special Div-I) (I/C)"</p> <p>5. Aggrieved of the above order the petitioner i.e. plaintiff No. 3 filed W.P.(C) No. 12/2009. This order was also stayed by this Court on 09.04.2009. Resultantly the proceedings before the Commission virtually came to be stalled. When the trial Court took up the matter on 02.03.2009 the defendant No. 3 in the suit filed an application for dismissal of the suit for non-payment of the cost as ordered by the trial Court earlier on 19.02.2009. During the course of hearing the petitioner sought time to pay the costs. The Court issued further directions to the Commission for further conduct of the cross-examination, etc. At the same time the Peshkar of the Court was asked to remain present during the proceedings being conducted by the Commission at Delhi and the expenses to be incurred for the journey and stay of the Peshkar were also fastened upon the petitioner vide order dated 02.03.2009.</p>



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		<p>This order also became subject matter of challenge before this Court in W.P.(C) No. 11/2009 and stayed on 09.04.2009.</p> <p>6. The suit in question relates to the Revered Rumtek Monastery situated in the East District of Sikkim. It has been pleaded in the petition that the plaintiff No. 3 in the suit was prevented by the State Government from entering the State of Sikkim. On account of this factor the plaintiffs approached Hon'ble Supreme Court for transfer of the suit and proceedings pending before this Court from the State of Sikkim, being Transfer Petition (Civil) No(s). 191-194 of 2010. Vide order dated 07.11.2012 the Hon'ble Supreme Court directed the transfer of the Civil Suit pending in the Court of learned District Judge, Special Division-II, State of Sikkim at Gangtok to the District Judge, Darjeeling, State of West Bengal. I am informed by the learned counsel for the parties that now suit has been further assigned to the Addl. District Judge, Siliguri, but the learned District Judge, Darjeeling has further stayed the proceedings before the Addl. District Judge, Siliguri and the matter is pending for consideration with the learned District Judge, Darjeeling. On receipt of order of transfer of the matter from the State of Sikkim to the State of West Bengal, the relevant record of the case was transmitted to the Court of learned District</p>




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		<p>Judge, Darjeeling. The prayer for transfer of proceedings pending before this High Court was however declined by Hon'ble Supreme Court. It is under these circumstances present revision and writ petitions are on the Board of this Court.</p> <p>7. I have heard the learned counsel for the parties at length. The primary question urged before me is the validity of the order dated 19.02.2009 in W.P.(C) No. 12/2009 whereby the learned District Judge awarded compensatory costs to the respondents. Mr. K.K. Rai, learned Senior Advocate appearing for the petitioner has made particular reference to paragraph (ii) and (iii) of the order impugned whereunder the trial Court granted actual expenses incurred by defendant No. 3 for journey of his Advocates and their entire team and for their boarding, lodging and food expenses respectively. As regard the award of expenses for defendants No. 1 and 2 i.e. for the Government Advocate Shri J.K. Chandak under direction (i) of the impugned order, petitioner has no objection to the same.</p> <p>8. I have perused the details of the expenses claimed by the defendant No. 3 covered under directions (ii) and (iii) of the order dated 19.02.2009. The journey expenses</p>



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		<p>have been claimed for 10 persons from Bagdogra to New Delhi and back. The statement of expenditure indicates engagement of 2 Senior Advocates and 4 Assistants and 4 number of persons representing the defendant No. 3. Similarly the boarding and lodging expenses amounting to Rs.90,987/- have been claimed by the defendant No. 3. Learned Senior Advocate appearing for the petitioner has relied upon a Judgment of the Apex Court reported in (2012) 1 SCC 455 : Sanjeev Kumar Jain vs. Raghuvir Saran Charitable Trust and Others to dispute the quantum of liability. In this case, the Hon'ble Supreme Court was considering the issue of award of costs and expenses etc. by way of compensatory costs under Sections 35, 35-A and 35-B of CPC, particularly in Civil Suits/ Appeals. It has been observed that the principles enunciated under these provisions which are penal in nature are strictly applicable to the Civil Suits and Civil Appeals. The jurisdiction of the High Court in writ petitions is different. It further observed that award of costs including compensatory costs i.e. expenses etc. in civil matters must be in adherence to Sections 35, 35-A and 35-B of CPC. Even though the Hon'ble Supreme Court suggested amendment of the Rules to enable the Court to award actual expenses as observed in the case of Salem</p>



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		<p><i>Advocates Bar Association [(2009) 2 SCC 656],</i></p> <p>however, while interpreting the expression "actual expenses" the Hon'ble Supreme Court observed as under:-</p> <p>"36. We, therefore, suggest that the Rules be amended to provide for "actual realistic costs". The object is to streamline the award of costs and simplify the process of assessment, while making the cost "actual and realistic". While ascertainment of actual is necessary in regard to expenditure incurred (as for example, travel expenses of witnesses, cost of obtaining certified copies, etc.) insofar as advocates' fee is concerned, the emphasis should be on "realistic" rather than "actual". The courts are not concerned with the number of lawyers engaged or the high rate of day fee paid to them. For the present, the advocate fee should be a realistic normal single fee."</p> <p>9. Applying the ratio of the judgment referred to above, I am of the considered opinion that the direction contained in paragraph (ii) and (iii) of the impugned order dated 19.02.2009 in W.P.(C) No. 12/2009 are not sustainable in law. Taking the realistic view I direct the journey expense under direction No. (ii) shall be confined for four persons i.e. two Senior Advocates, one briefing Advocate and one person on behalf of defendant No. 3. Similarly as against lump sum claim of boarding, lodging and food expenses of Rs.90,987/-, I am of the view that an amount of Rs.50,000/- should be sufficient to compensate the defendant No. 3. To this extent the impugned order is accordingly modified. The costs to be worked out in terms of directions contained in order dated 19.02.2009 shall be</p>



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		<p>deposited by the petitioner before the trial Court within one month.</p> <p>10. In CRP No. 01/2009 the directions for further cross-examination by the defendant No. 3 before the Commission are also required to be set aside on account of subsequent event viz. transfer of the suit from the Court of District Judge, Special Division-II, Sikkim at Gangtok to the State of West Bengal. The necessity to issue Commission for cross-examination of defendant No. 3 arose because of the ban imposed by the State of Sikkim against entry of plaintiff No. 3. Now the suit has been transferred to the State of West Bengal, the plaintiff No. 3 can personally appear before the Transferee Court and can be subjected to cross-examination. Thus the direction contained in the impugned order dated 18.11.2008 and order dated 02.03.2009 impugned in W.P.(C) No. 11/2009 also needs to be set aside to the extent these orders contain the directions for cross-examination by the Commission at Delhi and further direction for payment of the cost in terms of the order dated 19.02.2009 shall stand set aside having been modified hereinfore. Resultantly it is directed that the plaintiff No. 3 shall now appear before the competent Court where the suit may be transferred for</p>



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		<p>further cross-examination as may be directed by the trial Court.</p> <p>11. With these observations these petitions stand disposed of.</p> <p>12. A copy of this order be kept in the connected files.</p> <div>Chief Justice 19.02.2013</div>

Index : Yes / No
Internet : Yes / No

pm/jk