

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

CR(P) NO.(SH)40/2012

Smti. Patrisha Sympli,
D/o (L) Bor Tlang,
R/o Upland Road,
Laitumkhrah,
East Khasi Hills District,
Shillong, Meghalaya.

:::: Petitioner

- Vrs -

1. Smti. Nandita Das,
W/o Late Bijit Lal Das,
R/o 21, New Park,
Brahmapur,
P.S. Regent Park,
Bansdroni,
Kolkatta: 700070.

2. Dr. Srikanta Das,
W/o Dr. Sanjay Das,
R/o 21, New Park,
Brahmapur,
P.S. Regent Park,
Bansdroni,
Kolkatta: 700070.

:::: Respondents

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner : Mr. K Paul, Adv

For the Respondents : Mr. S Mukherjee,
S Bhattacharjee,
P Yadav
K Bhattacharjee, Advs

Date of hearing : **26.06.2013**

Date of Judgment & Order : **26.06.2013**

JUDGMENT AND ORDER(ORAL)

Heard Mr. K Paul, learned counsel for the petitioner as well as Mr.
S Mukherjee, learned counsel appearing for the respondents.

2. It is nobody's dispute that the petitioner had earlier approached this Court by filing a revision petition being CR(P)No.(SH)24/2012, assailing the interim order dated 01.06.2012 passed by the Assistant to Deputy Commissioner, Shillong (Judicial) in Misc. Case No.201(T) 2012. This fact is very clear from the pleadings of the revision petitioner in Para-9 of the revision petition, which reads as follows:-

"9. That the petitioner states that thereafter the petitioner filed a revision application before this Hon'ble Court against the interim order dated 01.06.2012 passed by the learned Assistant to Deputy Commissioner, Shillong (Judicial) in Misc. Case No.201(T)2012 and the same was registered as CR(P)No.(SH)24/2012 along with Misc. Case No.243/2012 and the same was finally disposed of vide order dated 16.07.2012 with the direction to the learned Assistant to Deputy Commissioner, Shillong to expeditiously dispose of the Misc. Case after hearing the parties in accordance with law."

3. The said revision petition i.e. CR(P)No.(SH)24/2012, was dismissed by this Court vide order dated 16.07.2012, which reads as follows:-

"16.07.2012

As Mr. K Paul, learned counsel for the petitioner does not press this Revision Petition, the same is dismissed.

The learned Assistant to Deputy Commissioner, Shillong will expeditiously dispose of the Misc. Case No.201(T)2012 after hearing both the parties in accordance with law."

4. On bare perusal of the order of this Court dated 16.07.2012, it is crystal clear that the revision petition was dismissed as the revision petition was not pressed. Therefore, it is very clear that no liberty was sought for by the petitioner for filing afresh revision petition. The earlier petition i.e. CR(P)No.(SH)24/2012, challenged the same impugned interim order dated 01.06.2012. In this circumstances, this Court is compelled to make an observation that the Apex Court in a number of cases held that, second revision

petition or second writ petition challenging the same order cannot be filed if the earlier revision petition or writ petition, had been dismissed without any liberty for filing afresh revision petition or writ petition as provided under Order XXIII Rule 1 of the CPC.

5. For this settled position of law, this Court is not required to burden itself by referring to a number of cited cases. One of the decisions of the Apex Court in **Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P., Gwalior & Ors: (1987) 1 SCC 5**, will suffice this matter. Paras 5 & 6 of the SCC in **Sarguja Transport Service** case (*Supra*) read as follows:-

“5. In this case we are called upon to consider the effect of the withdrawal of the writ petition filed under Articles 226/227 of the Constitution of India without the permission of the High Court to file a fresh petition. The provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') are not in terms applicable to the writ proceedings although the procedure prescribed therein as far as it can be made applicable is followed by the High Court in disposing of the writ petitions. Rule 1 of Order XXIII of the Code provides for the withdrawal of a suit and the consequences of such withdrawal. Prior to its amendment by Act 104 of 1976, rule 1 of Order XXIII of the Code provided for two kinds of withdrawal of a suit, namely, (i) absolute withdrawal, and (ii) withdrawal with the permission of the Court to institute a fresh suit on the same cause of action. The first category of withdrawal was governed by sub-rule (1) thereof as it stood then, which provided that at any time after the institution of a suit the plaintiff might, as against all or any of the defendants 'withdraw' his suit or abandon a part of his claim. The second category was governed by sub-rule (2) thereof which provided that where the Court was satisfied (a) that a suit must fail by reason of some formal defect, or (b) that there were sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim. It might, on such terms as it thought fit, grant the plaintiff permission to withdraw from such suit or abandon a part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. Sub-rule (3) of the former rule 1 of order XXIII of the Code provided that where the plaintiff withdrew from a suit or abandoned a part of a claim without the permission referred to in sub-rule (2) he would be liable to such costs as the Court might award and would be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. Since it was considered that the use of the word 'withdrawal' in relation to both the categories of withdrawals led to confusion, the rule was amended to avoid such confusion. The relevant part of rule 1 of Order XXIII of the Code now reads thus:

Rule 1. Withdrawal of suit or abandonment of part of claim ---- (1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

(3) Where the Court is satisfied, ----

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff ----

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

6. *It may be noted that while in sub-rule (1) of the former Rule 1 of Order XXIII of the Code the words 'withdraw his suit' had been used, in sub-rule (1) of the new rule 1 of Order XXIII of the Code, the words 'abandon his suit' are used. The new sub-rule (1) is applicable to a case where the Court does not accord permission to withdraw from a suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. In the new sub-rule (3) which corresponds to the former sub-rule (2) practically no change is made and under that sub-rule the Court is empowered to grant subject to the conditions mentioned therein permission to withdraw from a suit with liberty to institute a fresh suit in respect of the subject-matter of such suit. Sub-rule (4) of the new Rule 1 of Order XXIII of the Code provides that where the plaintiff abandons any suit or part of claim under sub-rule (1) or withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he would be liable for such costs as the Court might award and would also be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim."*

6. The judgment and order of the Apex Court is binding to all the Courts as provided under Article 141 of the Constitution of India. In the above factual backdrop, this Court is of the considered view that the present revision petition is not maintainable. Accordingly, this revision petition is dismissed.

7. However, in the peculiar circumstances of the case and also taking into consideration of the earlier order of this Court dated 16.07.2012 passed in CR(P)No.(SH)24/2012, the learned Assistant to Deputy Commissioner, Shillong is directed to dispose of the said Misc. Case No.201(T)2012 within one month from the date of receipt of a certified copy of this judgment and order.

8. The Registry is directed to send down the LCR forthwith.

9. However, it is made clear that any observations made in this judgment and order shall not cause any prejudice to the trial court while disposing of the said Misc. Case i.e. Misc. Case No.201(T)2012.

JUDGE

LAM