

**BEFORE
THE HON'BLE MR. JUSTICE DINESH MAHESHWARI
CHIEF JUSTICE**

25.02.2016

The applicant of Misc. Case No.50 (H) of 2015 in the Court of Assistant District Judge, Shillong has filed this revision petition under Section 115 of the Code of Civil Procedure ('CPC') seeking to question the order dated 17.12.2015 passed by the learned trial court in disposal of the said application.

Having examined the record, the Court has posed a query at the outset to the learned counsel for the petitioner on the maintainability of this petition for revision under Section 115 of the Code of Civil Procedure because the order impugned essentially deals with the prayer for grant of temporary injunction during pendency of the civil suit; and such an order is an appealable one under Order XLIII Rule 1 (r) of the Code of Civil Procedure.

In response, in the first place, the learned counsel for the petitioner has attempted to argue that it had been an application under Section 94 (c) of the Code of Civil Procedure and hence, the order passed in its disposal being not provided as such either under Section 104 or under Order XLIII of the Code of Civil Procedure, the petitioner has been advised to file a revision petition. However, the Court has indicated that though Section 94 C.P.C. provides for supplemental proceedings in a civil suit and in this provision, the general powers of the Court in regard to various interlocutory orders have been summed up but then, the procedure for dealing with such applications is prescribed in the Rules; and that the entire procedure

for dealing with an application for temporary injunction is prescribed under Order XXXIX of the Code of Civil Procedure; and further, that an order passed on such an application for temporary injunction is an appealable one.

Upon the Court expressing reservations in entertaining this petition for revision for availability of the remedy of appeal, learned counsel for the petitioner seeks permission to withdraw with liberty for the petitioner to take recourse of the appropriate remedy in accordance with law.

Learned counsel for the respondent would submit that she has objections on the maintainability of this revision petition as the impugned order is an appealable one and further that in the event of the petitioner availing any other remedy, the respondent keeps option open of raising all the objections as permissible in law.

In the totality of circumstances, where this revision petition is not maintainable for availability of the remedy of appeal, it appears just and proper to grant the prayer made by the petitioner while also keeping all the objections of the respondents open.

Accordingly, the petitioner is permitted to withdraw with liberty as prayed and this petition stands dismissed as such but while making it clear that in the event of the petitioner seeking to avail any other remedy, all the objections of the respondent shall remain open, to be urged at the appropriate stage in appropriate manner.

CHIEF JUSTICE

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