HIGH COURT OF SIKKIM : GANGTOK
Record of Proceedings

W.P.(C) No. 42/2023

AMBIKA PRADHAN AND ANO. PETITIONER (S)

VERSUS

STATE OF SIKKIM AND ORS. RESPONDENT (S)

For Petitioners	:	Mr. Jorgay Namka, Senior Advocate as Legal Aid Counsel with Ms. Phu Doma Bhutia, Legal Aid Counsel.
For Respondents No. 1, 2, 5 to 9	:	Mr. Thinlay Dorjee Bhutia, Government Advocate, Mr. Shakil Raj Karki, Assistant Government Advocate.
For Respondents No. 3, 4 and 10	:	Mr. S.S. Hamal, Senior Advocate with Ms. Sabina Chettri, Mr. Leda T. Bhutia and Mr. Pradeep Sharma, Advocates.

Date: 06/12/2023

CORAM :

HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE

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O R D E R

This writ petition has been filed by two writ petitioners, namely, Ms. Ambika Pradhan and Ms. Anuka Pradhan, essentially seeking this Court's intervention for issuance of necessary direction upon the respondents no.1 and 2 for amendment of the Sikkim Civil Courts Act, 1978 (for short, "the Act").

The genesis of the matter pertains to a civil suit, titled, *Ambika Pradhan & Anr. Vs Mr. Purna Kumar Pradhan & 7 Ors.*, which was instituted in the Court of the learned Civil Judge (Senior Division) at Gangtok on 18th May, 2020. The writ petitioners before this Court are the plaintiffs before the learned Civil Judge (Senior Division) at Gangtok. The private respondents before this Court are defendants before the learned Civil Judge (Senior Division) at Gangtok. A judgment and decree was passed by the learned Civil Judge (Senior Division) at Gangtok on 31st March, 2023, in Title Suit No. 07 of 2020. By the said judgment and decree, the suit instituted by the plaintiffs, being Title Suit No.07 of 2020, stood dismissed by the learned Civil Judge (Senior Division) at Gangtok. Against

the judgment and decree dated 31st March, 2023, the plaintiffs preferred an appeal before the learned Principal District Judge at Gangtok, being Title Appeal No. 04 of 2023. This appeal is pending adjudication before the learned Principal District Judge at Gangtok.

The issue sought to be raised before this Court by the petitioners is that while section 16 of the Act was amended several times (lastly in the year 2013), corresponding amendment was not made in respect of sections 17 and 18 of the said Act. This has created an anomalous situation which has been elaborated in paragraphs 13 to 18 of the writ petition. According to the writ petitioners, if the corresponding amendments are carried out, the Principal District Judge, Gangtok, will have full competence and jurisdiction to entertain, try and determine the appeal, as presented by the plaintiffs in respect of the judgment and decree dated 31st March, 2023. Otherwise, the forum will be the High Court of Sikkim and thereby the appellants will lose one appellate forum in the process.

During the course of hearing of the matter, the learned Government Advocate submits, on instruction, that this issue is being examined by the competent authority of the State and necessary amendments will be carried out soon.

Considering the submission made by the learned Government Advocate, this Court is of the view that no mandatory order is required to be passed in the writ petition, as prayed for by the writ petitioners. The competent authority of the State shall take necessary steps to carry out the necessary amendments within a reasonable period of time, preferably within three (3) months.

In the meanwhile, the learned Principal District Judge at Gangtok shall be at liberty to continue hearing out the Title Appeal strictly on its merit without being influenced in any manner by any observation made by this Court. Needless to mention, the final outcome of the said appeal shall be subject to the amendments being carried out in the meanwhile.

Since no affidavits have been called for, allegations made in the writ petition are deemed to be not admitted by the respondents.

The writ petition, being W.P.(C) No.42 of 2023, stands accordingly disposed of.

(Biswanath Somadder)
Chief Justice

jk/avi/ami