



Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
7.	26.5.08	<p>Present: Mr. Ashis Sinha and Mr. Laxuman Gurung, Advocates for the Appellant.</p> <p>Mr. A.K. Upadhyaya, Sr. Advocate with Mr. Ashim Chhetri, Advocate for the Respondents.</p> <p>...</p> <p>This is an appeal by the constituent of a bank who as plaintiff has failed to obtain a decree in the lower Court. The learned District Judge, East &amp; North, Dr. S.W. Lepcha has dismissed the plaintiff's suit.</p> <p>The facts are given in the said judgment but today this Court has to examine under Order XLI Rule 11 of the CPC whether it would be at all just to admit the appeal, i.e. whether it has any resemblance of success ultimately; this is especially necessary because the banker, as defendant, will be spending public money for the costs of the appeal if it is admitted.</p> <p>The Order XLI Rule 11 procedure is not a mechanical one. For the purpose of saving Court's time and for summarily disposing of appeals, which lie as a matter of right, but do not appear to be meritorious in any manner on facts or in law, the summary jurisdiction is exercised as a valuable tool in the hands of the</p>	



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		<p>Court of Appeal. Of course, in some such cases as internal appeals within the High Court in some Letters Patent appeals, this practice of admission is not followed, but that is not material here.</p> <p>Very briefly put, it appears that a fixed deposit made by the plaintiff with the defendant bank in 1994 matured in the year 1996. The plaintiff had also a cash credit account with the bank which was running in debit. One interesting fact about the plaintiff, although not very necessary for this suit, is that he had obtained as large a sum of money as Rs.5 crore as a loan from the State of Sikkim, and the said loan was interest free. The first defendant herein had guaranteed the said loan and the transactions started. This suit is only the tip of the iceberg, or may be just a small chip of ice from the tip.</p> <p>Be that as it may, some 3 years after the date of maturity of the FDR in 1996, i.e. sometime in the year 1999, the bank appropriated from the FDR amount moneys towards pro tanto satisfaction of their dues from the plaintiff in the running cash credit amount. The FDR receipt continued to remain with the plaintiff.</p>	



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The plaintiff raised the objection that such appropriation could not be made after the running out of the period of limitation of 3 years from the date of maturity of the fixed deposit amount.

It is well known, and the learned Judge of the lower Court also held, that the period of limitation is not to be used for purposes other than that for which it is enacted. The law of limitation is for barring of remedy and for keeping prospective plaintiffs diligent. The right of getting money from a debtor, which resides in the creditor, is not extinguished after the period of limitation. The period of limitation has nothing to do with the existence of such right; it only bars the legal process.

In the instant case, the bank did not have to file a suit but it took money from out of moneys it already had, which would have been payable to the plaintiff, had he been free from all debts.

These facts are not such that the Court should enter into any more discussion on bankers' lien or laws of contract or such like;

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the issue is too simple and too much in favour  
of the bank for the Court to admit this appeal.

The appeal is not admitted and it is  
dismissed in limine.

*A.N. Ray*  
(A.N. Ray, CJ)

*Trust Court records,  
Order + Decree forwarded  
on 31.5.68*

*Lucas  
31/5/68*



HIGH COURT OF SIKKIM  
GANGTOK

DECREE IN APPEAL  
((Under Order 41 Rule 35 of C.P.C.)

The Regular First Appeal No.3 of 2007 against the Judgment dated 19.3.2007 passed by the Ld. District Judge (East & North) at Gangtok in Money Suit No.21 of 2005.

M/S. Himal Laboratories Pvt.  
Ltd., Majitar, Rangpo, East Sikkim

...Appellant.

- Versus -

1. The Senior Manager, United Commercial Bank, Gangtok Branch, P.S. Road, Gangtok, East Sikkim.
2. United Commercial Bank  
Represented by the General Manager, having its Head Office at 10-Brabourne Road, Calcutta 700001.

...Respondents.

This Appeal coming up for hearing on 26<sup>th</sup> day of May, 2008 before Hon'ble Shri Justice Ajoy Nath Ray, Chief Justice and Hon'ble Justice A.P. Subba, Judge of this Court in presence of Mr. Ashis Sinha and Mr. Laxuman Gurung, Advocates for the Appellant and Mr. A.K. Upadhyaya, Sr.Advocate with Mr. Ashim Chhetri, Advocate for the Respondents.

On hearing arguments the Hon'ble Court has dismissed the appeal in limine.

*d*  
28/5/08



2.

**Cost of Appeal**

<b><u>Appellant</u></b>	<b><u>Amount</u></b>	<b><u>Respondent</u></b>	<b><u>Amount</u></b>
1. Stamp for Memo of Appeal	Rs. 2.00		
2. Stamp for power	Rs. 2.00	Stamp for power	Rs.2.00
3. Stamp for petitioner	-----		
4. Court fee	Rs.19,352.00		
5. Pleader's fee	-----		
6. Service of Process	-----		
7. Misc.	-----	Misc.	-----
	Rs.19,356.00		Rs.2.00

Given under my hand and seal of the Court on 26<sup>th</sup> day of May, 2008 at Gangtok.

Prepared by

Joint Registrar-cum-Reader  
High Court of Sikkim  
Gangtok.

Registrar General I/C  
High Court of Sikkim  
Gangtok