



NO. of
Order

Order with Signature

Office Note as to
action (if any)
taken on Order

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|-----------------|-------------|--|--|
| 20. | 25.03.2008. | <p>Present : Ms. Laxmi Chakraborty, learned Counsel assisted by Ms. Manju Rai, learned Counsel for the Appellant.</p> <p>Ms. Jyoti Kharga, learned Counsel appearing on behalf of Mr. N. Rai, learned Counsel for the Respondent.</p> <p style="text-align: center;">-----</p> <p>This is an appeal filed by Ram Kumar Goyal under Sec. 96(2) CPC against the ex parte decree dated 05.12.2003 passed by the learned District Judge, Special Division - II, Sikkim at Gangtok in Civil Suit No. 06 of 2002.</p> <p>2. Heard learned Counsel for the parties.</p> <p>3. The main ground taken in the Appeal is that the learned trial Court failed to deal with three of seven issues framed in the suit, while disposing of the suit ex parte vide impugned order. The three issues thus left out of consideration relate to bar of limitation, non-compliance with the provisions of Order II Rule 2 C.P.C. by the Respondent in his pleadings and non-compliance with the provisions of Order XIV Rule 2 C.P.C. by the learned trial Court. The fact that the above issues were left out of consideration by the learned trial Court while disposing of the matter ex parte is borne out by record. The reasons given by the</p> | |



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learned trial Court in paragraph 6 of the impugned judgment reads as follows :-

"ISSUE NO. 1, 2 and 3

6. The defendants having been proceeded ex parte these issues did not crop up during trial."

4. In the course of hearing, Ms. Jyoti Kharga, learned Counsel appearing on behalf of Mr. N. Rai, learned Counsel for the Respondent, in all fairness, conceded that Or. XIV Rule 2 mandates the Court to pronounce judgment on all issues subject to provisions of sub-rule (2) and submitted that the Respondent will have no objection if the matter is remanded back to the learned trial Court for rehearing the matter according to law.
5. Accordingly, this appeal is allowed. The impugned order dated 05.12.2003 passed in Civil Suit No.6 of 2002 is hereby set aside and the matter is remanded with direction to the learned trial Court for rehearing the matter according to law.
6. Since the appeal is an old one pertaining to the year 2003, the learned trial Court is directed to dispose of the matter as expeditiously as possible preferably within 6 (six) months from the date of this order.

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7. Parties are directed to appear before the learned trial Court on **17.04.2008**.

Records of the lower Court be sent back forthwith.

(Justice A. P. Subba)
JUDGE

Copy forwarded to trial
Court on 27-3-08.
27/3/08