

THE HIGH COURT OF SIKKIM : GANGTOK

WRIT PETITION (C) NO. 13 OF 2004

In the matter of a petition under Article 227 of
the Constitution of India

and

in the matter of

1. M/s. Himal Match Company (P) Ltd. (HIMCO)
Through its Managing Director,
P.O. & P.S. Rangpo,
East Sikkim.
 2. B. K. Shrestha,
Managing Director,
Himal Match Company (P) Ltd.,
Majitar,
P.O. & P.S. Rangpo,
East Sikkim.
- ... Petitioners**

VERSUS

Rajabangshi Bhagat,
S/o Pundeo Bhagat,
R/o Mathia,
P.O. Mirgenja, Bihar
Through Kamlesh Bhagat
Constituted Attorney
S/o Raj Kishore Bhagat,
R/o Rangpo Bazar,
P.O. & P.S. Rangpo,
East Sikkim.

... Respondent

For petitioners : Messrs A. Moulik, J. K. Chandak
and N. Sherpa, Advocates.

For respondent : Suraj Chettri, Advocate.


**PRESENT : THE HON'BLE SHRI JUSTICE R.K. PATRA, CHIEF JUSTICE.
THE HON'B'LE SHRI JUSTICE N. SURJAMANI SINGH, JUDGE.**

Date of order : 16th September, 2004.

ORDER

R.K. PATRA, C.J.


The petitioners are defendants in an eviction suit
pending in the Court of learned District Judge (E & N),



Gangtok. In this petition under Article 227 of the Constitution of India they seek quashing of the order dated 24.5.2004 passed by the learned District Judge appointing a pleader commissioner to verify and report about the present condition of the suit building.

2. The respondent filed civil eviction suit no. 21 of 2000 (now re-numbered as eviction suit no.1 of 2004) praying eviction of the petitioners on the allegation that they have made alterations and additions to the suit building without any authority. The petitioners filed written statement denying the allegations made by the respondent. Their case is that petitioner no.1 was inducted as tenant under one Raj Kishore Bhagat on the basis of a written agreement dated 9.1.1978. It was provided in the said agreement vide clause (c) that the suit building required extensive repairs and rewiring and construction of new bathrooms. Pursuant to the said condition, the petitioners undertook repairing of the suit building but the repair work had to be stopped due to the intervention of the local police at the instance of the respondent and also because of the order of the trial Court directing the parties to maintain *status quo* in respect of the suit building. In course of the trial, the respondent examined 4 witnesses in support of his case whereas the petitioners examined 3 witnesses in support of their defence. After closure of evidence of both

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sides, the suit was fixed for argument. The parties were also directed to file their written arguments. When the matter stood thus the respondent filed an application under Order VI Rule 17 CPC praying for amendment of the plaint. He wanted *inter alia* to add the following allegations:-

“That the illegal acts of the defendants has also caused extensive damage to the suit building rendering is unfit for use and occupation in it’s present condition.”

The petitioners filed their objection to the said application for amendment. The suit was adjourned to 24.5.2004 for argument. When the argument was in progress counsel for the respondent prayed for appointment of pleader commissioner to verify and report about the present condition of the suit building. It was submitted on behalf of the respondent that the suit building has become uninhabitable because of extensive damage made by the petitioners by making unauthorised repairs. The petitioners objected the prayer for appointment of pleader commissioner. The learned trial Judge however passed order on the same date i.e. 24.5.2004 directing appointment of pleader commissioner to verify and report about the present condition of the suit building.


3. Shri Moulik, learned counsel for the petitioners submitted that as per the condition contained in the agreement the petitioners were permitted to undertake necessary repairs of the suit building as it required extensive


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repairs and rewiring and pursuant to the said condition they started the repaired work but it had to be stopped because of the intervention of the police and order of the trial Judge directing the parties to maintain *status quo*. According to the learned counsel, the parties to the suit led their evidence in support of their respective case and after closure of evidence when the matter was fixed for argument, the prayer made by the respondent for appointment for pleader commissioner ought not to have been accepted. In support of the above submission, he placed reliance on the order of the Division Bench of this Court passed on 28th May, 2004 in Writ Petition (C) no. 4 of 2004 (Tulamaya Chettri vs. Younarayan Pradhan). Learned counsel for the respondent submitted that it is necessary to appoint a pleader commissioner who can makes spot verification and report about the present condition of the suit building.

4. We have duly considered the submissions of the counsel for the parties. As mentioned above, when the suit was fixed for argument at that belated stage prayer made on behalf of the respondent for appointment of a pleader commissioner was nothing but an indirect way of filling up *lacunae* in their evidence and to make a roving enquiry. In the circumstances, learned District Judge erred in appointing a pleader commissioner. He seems to have failed to take note of the fact that the respondent filed an





application for amendment of the plaint making the self-same allegation of unauthorised repair of the suit building and they make it uninhabitable. Without disposing of the said application on merit he should not have directed appointment of a pleader commissioner.

5. For the reasons aforesaid, the impugned order dated 24.5.2004 and the subsequent orders dated 16.6.2004 and 5.7.2004 passed by the learned District Judge cannot be sustained in law which are hereby quashed.

6. As noted above, the application for amendment of plaint filed by the respondent pending considerations, we accordingly direct the learned trial Judge to dispose of the said application as well as main suit as expeditious as possible.

7. In the result, the writ petition is allowed. There shall be no order as to costs.


(**R. K. Patra**)
Chief Justice
16.09.2004

I agree.


(**N. Surjamani Singh**)
Judge
16.09.2004

Dictation taken
&
typed by me
Dipak Saha