



# COURT NEWSLETTER

## HIGH COURT OF SIKKIM

Vol.5 Issue No. 2

April to June, 2013



*Hon'ble Mr. Justice Pius C. Kuriakose, Chief Justice of Sikkim presenting a memento to Hon'ble Mr. Justice Altamas Kabir, Chief Justice of India in the presence of Hon'ble Chief Minister of Sikkim, Mr. Pawan Chamling and Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim during the Inaugural Function of the Sikkim Judicial Academy in the High Court Auditorium.*

### **EDITORIAL BOARD**

Hon'ble Mr. Justice Pius C. Kuriakose, Chief Justice, High Court of Sikkim  
Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim

### **COMPILED BY**

Mrs. K.C. Barphungpa, Registrar General, High Court of Sikkim

---

*A quarterly newsletter published by High Court of Sikkim, Gangtok.*

Also available on our website: [www.highcourtofsikkim.nic.in](http://www.highcourtofsikkim.nic.in)

## CONTENTS

Vacancies in Courts	1
Institution, Disposal and Pendency of Cases	2-3
Some Recent High Court Judgment	4-5
Major Developments & Events	6-12
Important Visits & Conferences	13

**INSTITUTION, DISPOSAL AND PENDENCY OF CASES****(1) High Court of Sikkim from 1.04.2013 to 30.06.2013**

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.06.13
	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	
1	60	24	15	69	9	25	19	15	84

**(2) District & Subordinate Courts from 1.04.13 to 30.06.13  
(East & North) & (South & West)**

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.06.13
	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	
1.	302	68	103	267	697	333	384	646	913

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 30.06.13
	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	
1.	153	135	107	181	22	615	619	18	199

**(3) Family Court (East & North) at Gangtok from 1.04.13 to 30.06.13**

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.06.13
	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	
1.	65	23	44	44	20	7	11	16	60

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 30.06.13
	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	
1.	17	17	16	16	2	8	6	4	20

(4) Family Court (South & West) at Namchi from 1.04.13 to 30.06.13

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil Misc. & Criminal Cases at the end of 30.06.13
	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	
1.	2	1	2	1	9	4	10	3	4

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 30.06.13
	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	Opening Balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	
1.	0	0	0	0	0	5	1	4	4

(5) Lok Adalat Cases from 1.04.13 to 30.06.13

Sl. No.	Name of Lok Adalat	Opening balance as on 1.04.13	Institution from 1.04.13 to 30.06.13	Disposal from 1.04.13 to 30.06.13	Pendency at the end of 30.06.13	Cases returned
1.	High Court Lok Adalat	4	2	1	5	0
2.	District Lok Adalat at Gangtok	128	259	178	200	9
3.	District Lok Adalat at Namchi	8	7	4	7	4
4.	Taluk Lok Adalats at Gyalshing	1	40	40	1	0
5.	Taluk Lok Adalats at Ravangla	0	16	16	0	0
6.	Taluk Lok Adalats at Mangan	0	0	0	0	0
	<b>Total</b>	<b>141</b>	<b>324</b>	<b>239</b>	<b>213</b>	<b>13</b>



### **SOME RECENT HIGH COURT JUDGMENTS OF PUBLIC IMPORTANCE**

- 1. Refund of tax illegally collected is permissible only if incidence of tax has not been passed on to another person:**  
On 10/05/2013, the Division Bench of the Court in Review Pet. (C) No. 01 of 2013 (M/s Summit Online Trade Solutions Pvt. Ltd. & Ors. Vs. Union of India & Ors.) and Review Pet. 2 of 2013 (M/s Future Gaming Solutions India Pvt. Ltd. Vs. Union of India & Ors.) has held that the well settled principle governing refund of tax on the ground of the provision of law under which such duty was collected being unconstitutional is that incidence of tax should not have been passed on to any other person, and that such refund should not result in unjust enrichment. The Court, referring to the judgment of the Hon'ble Supreme Court in Mafatal Industries Ltd. & Ors. Vs. Union of India & Ors. [(1997) 5SCC 536] has held that the duty would be on the person claiming refund to establish the incidence of such duty was not passed to any other person. The Court further held that there is no embargo upon the High Court in law in reviewing its own decision as the power of review is inherent in the High Court as a Writ Court.
- 2. Government should enact a comprehensive law providing for valid grounds of eviction of the tenant and also the right of tenant to defend eviction'**  
On 02/05/2013, a Single Bench of the Court in RFA No. 01 of 2012 (Rajla Devi & Ors. Vs. Tashi Tshering Bhutia) has held that the statutory position regarding eviction of tenants in the state of Sikkim is not satisfactory. Section 5 of the Gangtok Rent Control and Eviction Act, 1956 which governs eviction of tenants in Gangtok Bazaar Area prohibits sub-letting by tenants without the consent of the landlord. However, sub-letting is not made a ground for eviction. In the Notification dated 14<sup>th</sup> April, 1949 which governs landlord and tenant in other parts of the state, landlord has been defined as "the owner of the premises" and the tenant is defined as "persons in actual occupation". Going by the definition, only owners will qualify as landlords, and anybody in actual occupation including the trespassers and licensees can be a tenant. In view of the above, the Court directed the Government to take requisite steps for legislating a comprehensive law on the pattern of any one of the rent control legislations prevailing in various states of India providing for valid grounds of which an eviction can be given and also for the valid defence to the tenants to resist eviction if the same is sought on insufficient grounds.
- 3. Evidence of interested witnesses need not necessarily be discarded but should be subjected to close and careful scrutiny:**  
On 13/05/2013, a Single Bench of the Court in CrI. Rev. P. No. 03 of 2012 (Kamal Prasad Giri Vs. State of Sikkim) has held that it is a settled position in law that evidence of interested witnesses need not necessarily be discarded on that ground alone. All that the law requires is that it ought to be subjected to close and careful scrutiny. The Court further held that FIR is not a substantive piece of evidence but its only use is to contradict or

corroborate and nothing further. It was further held that delay in lodging FIR cannot be the sole ground for throwing out the entire case of the prosecution.

4. **Discretion to condone delay in filing appeal cannot be exercised in the absence of sufficient cause.**

On 24/06/2013, a Single Bench of the Court in *MAC Appeal No. 02 of 2013 (Branch Manager, New India Assurance Co. Ltd vs. Chandra Kala Tamang & Ors.)* has held that Section 173 of the Motor Vehicles Act, 1988 mandates that an appeal should be filed within a period of 90 days after the date of the award. Of course, under Second proviso to Section 173, discretion is vested in the High Court to entertain an appeal after the expiry of the said period of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. In the instant case, where the cause shown is not at all sufficient cause in view of the nebulous statement set out in the application for condonation of delay, discretion should not be exercised in favour of the appellant to condone the unexplained and inordinate delay in filing the appeal.

*Glimpses of the Inaugural Function*





**MAJOR DEVELOPMENTS AND EVENTS**

**(1) INAUGURAL CEREMONY OF SIKKIM JUDICIAL ACADEMY -  
2<sup>ND</sup> JUNE, 2013**



The Foundation Stone of the Sikkim Judicial Academy was laid on 14<sup>th</sup> May, 2012 at Sokeythang, East Sikkim by Hon'ble Mr. Justice Altamas Kabir, Chief Justice of India. Since, the construction of the Academy is likely to take some years to be completed, it was decided by the Hon'ble Chief Justice Hon'ble Mr. Justice Pius C. Kuriakose to start the Academy temporarily from the old office of the Ld. Advocate General situated in the High

Court premises.

The Sikkim Judicial Academy was thus formally inaugurated on 02.06.2013 by Hon'ble Mr. Justice Altamas Kabir, Chief Justice of India in the august presence of Hon'ble Mr. Justice Pius C. Kuriakose, Chief Justice, High Court of Sikkim & Founder-President, Sikkim Judicial Academy, Shri Pawan Chamling, Hon'ble Chief Minister, Chief Secretary, Government of Sikkim, Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim &



Member, Board of Governors, Sikkim Judicial Academy, Hon'ble Mr. Justice Permod Kohli, Former Chief Justice High Court of Sikkim and Hon'ble Mr.







Justice A.P. Subba, Former Judge, High Court of Sikkim and Member, Board of Governors, Sikkim Judicial Academy. The function was also attended by the dignitaries of the State Government; Ex-officio Members & Other Members of SLSA; Judicial Officers, Senior Advocates, Members of the Bar, Press & Media.

Hon'ble the Chief Justice of India in his Lordship's *Inaugural Address*, expressed his hope

that the Academy would be one of the finest centres of excellence and learning, servicing the entire North-Eastern region and Eastern India. His Lordship hoped that the Academy would bring excellence to adjudication in the Courts, enhance legal knowledge, impart proper grooming and Judicial conduct for Judicial Officers, practicing lawyers, Investigating Agencies and even bureaucrats. His Lordship also pointed out that a large number of Judicial Officers in the country were inadequately skilled, unable to clearly reason or legibly write judgments. New entrants tend to keep final judgments pending for too long because of their inability and lack of experience. Hence he hoped the Sikkim Judicial Academy will help train those Judicial Officers.



His Lordship also emphasized the need for the Academy to sensitize the Judicial Officers and inculcate a sense of justice amongst them. While pointing towards the decline in Court etiquette and ethics amongst the newer members of the Bar and even the Bench, the Chief Justice of India expressed his hope that the trend would soon change after the Academy starts functioning.



Hon'ble Mr. Justice Pius C. Kuriakose, Chief Justice, Sikkim High Court & Founder-President, Sikkim Judicial Academy while delivering his Lordship's *Introductory Address* highlighted the

everlasting values of the Academy for the State's Judiciary and the legal fraternity. His Lordship highlighted that pursuant to the Calendar Meeting of the National Judicial Academy, Bhopal which was held on 16.05.2013 the Sikkim Judicial Academy was authorized to extend its benefits to the novice members of the Bar and also to the final year law students which is a feature unique to the Sikkim Judicial Academy as compared to the other Judicial Academies in the country. His Lordship also informed that other Judicial Academies of the country, particularly the Kerala Judicial Academy had agreed to extend academic support to the Sikkim Judicial Academy.

Hon'ble Chief Minister of Sikkim Mr. Pawan Chamling while delivering the *Presidential Address* assured all possible support by the State Government to the Sikkim Judicial Academy.

Hon'ble Mr. Justice S.P. Wangdi in his *Welcome Address*, hoped that the Academy would cater to the need for judicial excellence and stated how richly the legal fraternity would be benefitted by legal education promoted by Sikkim Judicial Academy.

During the function, Hon'ble Mr. Justice S.P. Wangdi was felicitated with a memento on Lordship's appointment as a Member for the Central Authority, National Legal Services Authority (NALSA).





A memento was also presented to Mrs. Meenakshi M. Rai, District & Sessions Judge (East & North) during the function for creating the logo for the Sikkim Judicial Academy.

The programme concluded with a vote of thanks proposed by Mrs. K.C. Barhungpa, Registrar General while Mr. Prajwal Khatiwada, District & Sessions Judge (Special Div-I)/Director, Sikkim Judicial Academy conducted the day's Programme.

**(2) COLLOQUIUM ON MEDIATION : 21<sup>ST</sup> JUNE, 2013**

The Sikkim Judicial Academy and Sikkim State Legal Services Authority (SSLSA) jointly



organized a *Colloquium on Mediation* on 21.06.2013 in the High Court Auditorium. Hon'ble Mr. Justice Cyriac Joseph (former Judge, Supreme Court of India and Member, National Human



Rights Commission) graced the occasion as the Chief Guest in the presence of Hon'ble Mr. Justice Pius C. Kuriakose, Chief Justice and also the Patron-in-Chief, SSLSA and Hon'ble Mr. Justice S.P. Wangdi, Judge and Executive Chairman, SSLSA and Hon'ble Mr. Justice A.P. Subba, Former Judge High Court of Sikkim. The Colloquium was also attended by Trained Mediators, Judicial Officers, Panel Advocates, Para-Legal Volunteers and Faculty Members of the Sikkim University and Sikkim Government Law College.

### 3) SEMINAR ON HUMAN RIGHTS : 22<sup>ND</sup> JUNE, 2013



The Sikkim Judicial Academy and Sikkim State Legal Services Authority (SSLSA) jointly organized a *Seminar on Human Rights* in the Auditorium of the High Court. Hon'ble Mr. Justice Cyriac Joseph (former Judge, Supreme Court of India and Member, National Human Rights Commission) once again graced the occasion as the Chief Guest, in the presence of Hon'ble Mr. Justice Pius C. Kuriakose, Chief Justice and also the Patron-in-Chief, SSLSA and Hon'ble Mr. Justice S.P. Wangdi, Judge and Executive Chairman, SSLSA. Mr. Vineet Vinayak, ICP (CID) was one of the Resource Persons.

The Seminar was also attended by Police Officers, Judicial Officers, Senior Advocates, other Members of the Bar, Public Prosecutors and Faculty Members of the Sikkim University and Sikkim Government Law College.



**4) PARYAVARAN MOHOTSAV OBSERVED BY HIGH COURT ON 29<sup>TH</sup> AND 30<sup>TH</sup> JUNE, 2013**



During the 8<sup>th</sup> Phase of State Green Mission "PARYAVARAN MAHOTSAV, 2013", the Officials of the High Court actively participated and planted about 100 saplings of fruit trees, flowering plants and other plant species on 29<sup>th</sup> and 30<sup>th</sup> June, 2013 in the premises of the High Court, Sikkim State Legal Services Authority complex and Hon'ble Chief Justices' Bungalow at Forest Colony.

Hon'ble Mr. Justice S.P. Wangdi, Judge, Mrs. K.C. Barphungpa, Registrar General, Mr. N.G. Sherpa, Registrar, Mr. R.S. Rawat, Joint Registrar, Mrs. Jumden Lachungpa, Deputy Registrar (Accounts) and other Officers and staff of the High Court actively participated in the plantation drive.

### **IMPORTANT VISITS & CONFERENCES**

1. Hon'ble Mr. Justice Pius C. Kuriakose, Chief Justice attended the *Chief Justices' Conference and Joint Conference of the Chief Ministers of the States and Chief Justices' of the High Courts* from 5<sup>th</sup> 6<sup>th</sup> April, 2013 and 7<sup>th</sup> April, 2013 at Vigyan Bhawan, New Delhi. His Lordship was accompanied by Mrs. K.C. Barphungpa, Registrar General, High Court of Sikkim

His Lordship inspected the Courts of the Civil Judge-cum-Judicial Magistrate at Mangan (North Sikkim) and Gyalshing (West Sikkim) on 11<sup>th</sup> April, 2013 and 3<sup>rd</sup> May, 2013 respectively.

His Lordship also attended the *National Judicial Academy Calendar Meeting* held on 16<sup>th</sup> May, 2013 at the National Judicial Academy campus in Bhopal.

2. Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim / Executive Chairman, Sikkim SLSA inspected the Mediation Centre at Pentok and the District Consumer Forum at Mangan, North Sikkim on 6<sup>th</sup> April, 2013.

His Lordship also attended the Central Authority Meet of NALSA and 11th All India Meet of the Executive Chairpersons and Member Secretaries of the State Legal Services Authorities on 20<sup>th</sup> 21<sup>st</sup> April, 2013 at Chennai, Tamil Nadu. His Lordship was accompanied by Mrs. K.C. Barphungpa, Registrar General, High Court of Sikkim / Member Secretary, Sikkim SLSA.

\*\*\*\*\*