

# HIGH COURT OF SIKKIM



## NEWSLETTER

Vol.6 Issue No. 4

October to December , 2014



### **EDITORIAL BOARD**

Hon'ble Mr. Justice Sunil Kumar Sinha, 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

---

*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	2-7
Some Recent High Court Judgment	9-10
Major Developments & Events	11-12
Full Court Reference	13-14
Important Visits & Conferences	15

VACANCIES IN COURTS

## (i) Vacancies in the High Court of Sikkim as on 31.12.2014

Sl. No.	Name of the High Court	Sanctioned Strength	Working Strength	Vacancies
1.	Sikkim High Court	03	02	01

## (ii) Vacancies in the District &amp; Subordinate Courts as on 31.12.2014

Sl. No.	Sanctioned Strength	Working Strength	Vacancies
1.	<b>Sikkim Superior Judicial Service (SSJS) -10</b>	8	<b>2</b> <i>1 post of District &amp; Sessions Judge (Spl. Div.-I) &amp; 1 recently created post (in compliance to the decision passed in Brij Mohan Lal Vs. Union of India).</i>
2.	<b>Sikkim Judicial Service (SJS) - 08</b>	7	<b>1</b> <i>1 post of CJM-cum- Civil Judge (South &amp; West)</i>
Total	18	15	3

### INSTITUTION, DISPOSAL AND PENDENCY OF CASES

(1) Statement of Main & Misc. cases in the High Court of Sikkim from 01.10.2014 to 31.12.2014

Sl. No.	Pending as on 01.10.2014		Institution		Total Disposal		Pending as on 31.12.2014	
	Main Case	Misc. Appl	Main Case	Misc. Appl	Main Case	Misc. Appl	Main Case	Misc. Appl
1	107	23	53	115	52	94	108	44

(2) Total Institution, Disposal and Pendency of cases in the Subordinate Courts of Sikkim from 01.10.2014 to 31.12.2014

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 1.10.14	Institution from 1.10.14 to 31.12.14	Disposal from 1.10.14 to 31.12.14	Pendency at the end of 31.12.14	Opening Balance as on 1.10.14	Institution from 1.10.14 to 31.12.14	Disposal from 1.10.14 to 31.12.14	Pendency at the end of 31.12.14
East District at Gangtok	Main Cases	174	45	50	169	526	119	131	514
	Misc Cases	77	73	67	83	19	184	189	14
West District at Gyalshing	Main Cases	16	4	4	16	35	29	37	27
	Misc Cases	11	19	13	17	3	38	41	0
North District at Mangan	Main Cases	12	10	9	13	23	10	21	12
	Misc Cases	1	6	5	2	1	9	10	0
South District at Namchi	Main Cases	44	24	19	49	85	119	126	78
	Misc Cases	24	31	30	25	6	121	115	12
Family Courts	Main cases	69	42	34	77	34	22	29	27
	Misc Cases	1	1	2	0	12	9	13	8
Fast Track Court	Main Cases					6	4	3	7
	Misc Cases					0	3	3	0
Juvenile Justice Boards	Main cases					8	12	10	10
	Misc cases					0	1	1	0
<b>Total Main Cases</b>		<b>315</b>	<b>125</b>	<b>116</b>	<b>324</b>	<b>717</b>	<b>315</b>	<b>357</b>	<b>675</b>
<b>Total Misc Cases</b>		<b>114</b>	<b>130</b>	<b>117</b>	<b>127</b>	<b>41</b>	<b>365</b>	<b>372</b>	<b>34</b>

INSTITUTION, DISPOSAL AND PENDENCY OF CASES DISTRICT WISE

(1) Details of Institution, Disposal and Pendency of cases in the Subordinate Courts of Sikkim from 01.10.2014 to 31.12.2014

(i) East District at Gangtok

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening Balance as on 1.10.14	Institution from 1.10.14 to 31.12.14	Disposal from 1.10.14 to 31.12.14	Pendency at the end of 31.12.14	Opening Balance as on 1.10.14	Institution from 1.10.14 to 31.12.14	Disposal from 1.10.14 to 31.12.14	Pendency at the end of 31.12.14
Principal District & Sessions Judge (East)	Main Cases	64	30	29	65	79	21	29	71
	Misc Cases	56	70	58	68	2	49	49	2
District & Sessions Judge (Spl. Div.-I)	Main Cases	1	0	0	1	0	0	0	0
	Misc Cases	1	0	1	0	0	0	0	0
District & Sessions Judge (Spl. Div.-II)	Main Cases	2	1	2	1	1	0	0	1
	Misc Cases	7	1	7	1	0	0	0	0
Chief Judicial Magistrate-cum-Civil Judge (East & North)	Main Cases	6	0	0	6	293	72	85	280
	Misc Cases	4	1	0	5	8	86	90	4
Civil Judge-cum-Judicial Magistrate (East)	Main Cases	101	14	19	96	153	26	17	162
	Misc Cases	9	1	1	9	9	49	50	8
<b>Total Main Cases</b>		<b>174</b>	<b>45</b>	<b>50</b>	<b>169</b>	<b>526</b>	<b>119</b>	<b>131</b>	<b>514</b>
<b>Total Misc. Cases</b>		<b>77</b>	<b>73</b>	<b>67</b>	<b>83</b>	<b>19</b>	<b>184</b>	<b>189</b>	<b>14</b>

(ii) West District at Gyalshing

Name of the Court		CIVIL CASES				CRIMINAL CASES			
		Opening Balance as on 1.10.14	Institution from 1.10.14 to 31.12.14	Disposal from 1.10.14 to 31.12.14	Pendency at the end of 31.12.14	Opening Balance as on 1.10.14	Institution from 1.10.14 to 31.12.14	Disposal from 1.10.14 to 31.12.14	Pendency at the end of 31.12.14
District & Sessions Judge (West)	Main Cases	7	3	1	9	19	4	11	12
	Misc Cases	9	13	8	14	3	4	7	0
Civil Judge-cum-Judicial Magistrate (West)	Main Cases	9	1	3	7	16	25	26	15
	Misc Cases	2	6	5	3	0	34	34	0
<b>Total Main Cases</b>		<b>16</b>	<b>4</b>	<b>4</b>	<b>16</b>	<b>35</b>	<b>29</b>	<b>37</b>	<b>27</b>
<b>Total Misc. Cases</b>		<b>11</b>	<b>19</b>	<b>13</b>	<b>17</b>	<b>3</b>	<b>38</b>	<b>41</b>	<b>0</b>

(iii) North District at Mangan

Name of the Court		CIVIL CASES				CRIMINAL CASES			
		Opening Balance as on 1.10.14	Institution from 1.10.14 to 31.12.14	Disposal from 1.10.14 to 31.12.14	Pendency at the end of 31.12.14	Opening Balance as on 1.10.14	Institution from 1.10.14 to 31.12.14	Disposal from 1.10.14 to 31.12.14	Pendency at the end of 31.12.14
District & Sessions Judge (North)	Main Cases	4	10	6	8	5	2	6	1
	Misc Cases	1	5	4	2	0	0	0	0
Civil Judge-cum-Judicial Magistrate (North)	Main Cases	8	0	3	5	18	8	15	11
	Misc Cases	0	1	1	0	1	9	10	0
<b>Total Main Cases</b>		<b>12</b>	<b>10</b>	<b>9</b>	<b>13</b>	<b>23</b>	<b>10</b>	<b>21</b>	<b>12</b>
<b>Total Misc. Cases</b>		<b>1</b>	<b>6</b>	<b>5</b>	<b>2</b>	<b>1</b>	<b>9</b>	<b>10</b>	<b>0</b>

## (iv) South District at Namchi

Name of the Court		CIVIL CASES				CRIMINAL CASES			
		Opening Balance as on 1.10.14	Institution from 1.10.14 to 31.12.14	Disposal from 1.10.14 to 31.12.14	Pendency at the end of 31.12.14	Opening Balance as on 1.10.14	Institution from 1.10.14 to 31.12.14	Disposal from 1.10.14 to 31.12.14	Pendency at the end of 31.12.14
District & Sessions Judge (South)	Main Cases	27	10	5	32	47	18	17	48
	Misc Cases	22	18	21	19	1	16	17	0
Chief Judicial Magistrate cum-Civil Judge (South & West)	Main Cases	0	2	2	0	14	74	71	17
	Misc Cases	1	6	4	3	3	80	77	6
Civil Judge-cum-Judicial Magistrate (South)	Main Cases	17	12	12	17	24	27	38	13
	Misc Cases	1	7	5	3	2	25	21	6
<b>Total Main Cases</b>		<b>44</b>	<b>24</b>	<b>19</b>	<b>49</b>	<b>85</b>	<b>119</b>	<b>126</b>	<b>78</b>
<b>Total Misc. Cases</b>		<b>24</b>	<b>31</b>	<b>30</b>	<b>25</b>	<b>6</b>	<b>121</b>	<b>115</b>	<b>12</b>



(v) Family Courts

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening Balance as on 1.10.14	Institution from 1.10.14 to 31.12.14	Disposal from 1.10.14 to 31.12.14	Pendency at the end of 31.12.14	Opening Balance as on 1.10.14	Institution from 1.10.14 to 31.12.14	Disposal from 1.10.14 to 31.12.14	Pendency at the end of 31.12.14
Family Court, East at Gangtok	Main Cases	48	21	21	48	23	14	20	17
	Misc Cases	1	1	2	0	9	7	9	7
Family Court, West at Gyalshing	Main Cases	8	3	5	6	3	2	1	4
	Misc Cases	0	0	0	0	0	0	0	0
Family Court, North at Mangan	Main Cases	1	0	1	0	0	0	0	0
	Misc Cases	0	0	0	0	0	0	0	0
Family Court, South at Namchi	Main Cases	12	18	7	23	8	6	8	6
	Misc Cases	0	0	0	0	3	2	4	1
<b>Total Main Cases</b>		<b>69</b>	<b>42</b>	<b>34</b>	<b>77</b>	<b>34</b>	<b>22</b>	<b>29</b>	<b>27</b>
<b>Total Misc Cases</b>		<b>1</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>12</b>	<b>9</b>	<b>13</b>	<b>8</b>

(vi) Fast Track Court

NAME OF THE COURT		CRIMINAL CASES			
		Openg Balance as on 01.10.14	Institution From 01.10.14 to 31.12.14	Disposal From 01.10.14 to 31.12.14	Pendency at the end of 31.12.14
Fast Track Court (East & North at Gangtok)	Main cases	1	2	1	2
	Misc cases	0	3	3	0
Fast Track Court (South & West at Gyalshing)	Main cases	5	2	2	5
	Misc cases	0	0	0	0
<b>Total Main cases</b>		<b>6</b>	<b>4</b>	<b>3</b>	<b>7</b>
<b>Total Misc cases</b>		<b>0</b>	<b>3</b>	<b>3</b>	<b>0</b>



## (vii) Juvenile Justice Boards

Name of the Court		Criminal Cases			
		Opening Balance as on 01.10.14	Institution from 01.10.14 to 31.12.14	Disposal from 01.10.14 to 31.12.14	Pendency at the end of 31.12.14
Juvenile Justice Board East at Gangtok	Main cases	5	7	6	6
	Misc cases	0	0	0	0
Juvenile Justice Board West at Gyalshing	Main cases	2	1	3	0
	Misc cases	0	0	0	0
Juvenile Justice Board North at Mangan	Main cases	0	3	0	3
	Misc cases	0	1	1	0
Juvenile Justice Board South at Namchi	Main cases	1	1	1	1
	Misc cases	0	0	0	0
<b>Total Main cases</b>		<b>8</b>	<b>12</b>	<b>10</b>	<b>10</b>
<b>Total Misc cases</b>		<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>



*Full Bench Reference in honour of Hon'ble Mr. Justice Narendra Kumar Jain on 1<sup>st</sup> October, 2014 in the presence of Hon'ble Mr. Justice S. K. Sinha Judge High Court of Sikkim and Hon'ble Mr. Justice S. P. Wangdi, Judge High Court of Sikkim*

SOME RECENT HIGH COURT JUDGMENTS

**1. Question which does not involve the examination of the legal effects of the terms of a document is not a substantial question of law:** On 05.12.2014, a Single Bench of the Court in RSA No. 03 of 2013 (Bhagyamoni Devi Vs. Prayagchand Agarwal & Ors.) held that the fact in issue in the case being the existence of a 'gully' between the two plots of land belonging to the plaintiff and the defendant two plots of land belonging to the plaintiff and the defendant respectively was purely a question of fact. There was no question of examination of the legal effect of the terms of the documents being the two sale deeds, neither there was any question involved about construction of documents by necessary implication of any principle of law. In the facts and circumstances of the case, no question of law, much less a substantial question of law, is involved in this appeal and as such, the same issue cannot be agitated in second appeal.

**2. Appellate Court does not have the power to open the decree which has become final:** On 12.12.2014, a Single Bench of the Court in RSA No. 01 of 2014 (Son Tshering Lepcha & Ors. Vs. Saney Tshering Lepcha) held that Order XLI Rule 22 CPC authorizes the respondent to file a Cross Objection against the taking recourse to the second part of the said Rule. Although Rule 33 of the said Order confers wide powers upon the Appellate Court, it does not confer an unrestricted right to reopen a decree which has become final, merely because the First Appellate Court does not agree with the opinion of the trial court. As such, by entering into questions as regards finding of the trial court on issue No. 2 relating to Schedule 'C' land and issue No. 3 on adverse possession in the absence of counter claim filed by the defendant under Order XLI Rule 22 CPC, and by framing an additional issue of limitation in the appeal having preferred by the Appellants-Plaintiffs, the appellate court had exceeded its jurisdiction not vested in it by law and had even ventured to set aside the Portion of the judgment of the trial court which had not been

challenged to the detriment of the Appellants-Plaintiffs, only because it held a different view. The Court set aside the impugned judgment of the appellate court.

**3. Developmental works undertaken by the state and the protection of rights and interest of the people must be in balance with each other:** On 12.12.2014, the Court in WP(PIL) No. 6 of 2013 (Karma Thinlay Lama & Anr. Vs. State of Sikkim & Ors.), refusing to scrap the 96 MW Hydro-Electric Project in East District of Sikkim being developed by Madhya Bharat Power Corporation Ltd. engaged by the Government of Sikkim vide agreement dated 09.03.2006, held that if the parties concerned are inclined to revive the agreement after its termination and they do so, the same cannot be held to be without authority if such revival is not prohibited by law, in force. The court further held that a balance has to be struck between the developmental works undertaken by the State and the protection of rights and interest of the people. In the instant case, where more than 35% of the work has been completed, instead of scrapping the project, it would be appropriate to command the enforcement agencies to see that the work of the project goes on without affecting the rights and the interest of the people, which would be in the larger public interest in the prevailing facts and circumstances of the case. The Court directed the work of the project to be conducted under the strict supervision of the Multidisciplinary Committee constituted by the Government of Sikkim vide Notification dated 12.12.2011.



### MAJOR DEVELOPMENTS AND EVENTS

(1) FULL COURT FAREWELL REFERENCE IN HONOUR OF HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN, CHIEF JUSTICE, HIGH COURT OF SIKKIM



A Full Court Farewell Reference was held on 1st October, 2014 in the High Court of Sikkim in honor of Hon'ble Mr. Justice Narendra Kumar Jain, Chief Justice, High Court of Sikkim who was to superannuate on 7th October, 2014.

The Farewell Reference was attended by Hon'ble Mr. Justice S.K. Sinha, Judge, High Court of Sikkim; Hon'ble Mr. Justice S.P Wangdi, Judge, High Court of Sikkim; Hon'ble Mr. Justice Printinker Diwakar, Judge, Chhattisgarh High Court;

Hon'ble Mr. Justice A. Rastogi, Judge, Rajasthan High Cour, Hon'ble Mr. Justice A. P. Subba, Former Judge, High Court of Sikkim; Spouse of the Hon'ble Judges of the High Court of Sikkim; Family members of Hon'ble Mr. Justice N. K. Jain, Senior Advocates, Members of the Bar, Registrar General, Registrar, Judicial Officers, Officers & staff of Sikkim SLSA and Registry of the High Court of Sikkim. A dinner was hosted in the evening in honour of his Lordship.

2. On 2<sup>nd</sup> December, 2014 a Full Court Reference was observed in the High Court of Sikkim on the sad demise of Justice A.N. Ray, former Chief Justice of this High Court.

The Full Court Reference was attended by Hon'ble the Acting Chief Justice, Hon'ble Judge, Judicial Officers, President, Bar Association of Sikkim, Senior Advocates, Members of the Bar and Officers of the Registry.

**FULL COURT REFERENCE MADE BY HON'BLE THE ACTING CHIEF JUSTICE ON THE PASSING AWAY OF MR. JUSTICE A.N. RAY, FORMER CHIEF JUSTICE, HIGH COURT OF SIKKIM ON 2.12.2014 AT 11:30 A.M IN THE CHIEF JUSTICE'S COURT.**

My esteemed colleague Brother Wangdi; Mr. D.R. Thapa, President, Bar Association of Sikkim; Mr. A. Moulik, Sr. Advocate; Mr. B. Sharma, Sr. Advocate; Ld. Senior Members of the Bar, distinguished Members of the Legal Fraternity, Members of the Registry, Ladies and Gentlemen present.

With heavy heart we have assembled here to mourn the sad demise of Hon'ble Mr. Justice A.N. Ray, Former Chief Justice of the High Court of Sikkim, a great Judge who passed away at 5:10 p.m. on 30.11.2014 at his residence at Kolkata at the age of 68 years.

Since the High Court of Sikkim was closed on the relevant day, i.e. 30.11.2014 being Sunday and there was limited time to arrange this reference yesterday, as such; this reference is being made today.

Although I did not get opportunity to work with late Justice A.N. Ray, however, I am told that he was a great personality with immense legal acumen. I am also told that late Justice Ray had enormous contributions in the growth of this Institution, he was known for his simplicity and humility. He was loved and respected by all for his amiable disposition. He was very encouraging towards the juniors in the court room. He was basically a fine human being. Legacy left by him shall always be remembered.

Justice A.N. Ray was born on 31<sup>st</sup> October, 1946. He was enrolled as an Advocate in the Calcutta High Court on 4<sup>th</sup> August, 1970 and practiced in the Calcutta High Court in Civil matters since 1970. He was appointed as a permanent judge of the Calcutta High Court on 6<sup>th</sup> August, 1990. He was appointed as the Acting Chief Justice of the Calcutta High Court from 7<sup>th</sup> June, 2004 to 10<sup>th</sup> January,



2005. He was appointed as the Chief Justice of the Allahabad High Court on 11<sup>th</sup> January, 2005 and was transferred to the High Court of Sikkim on 12<sup>th</sup> January, 2007 where he assumed charge of the office of the Chief Justice on 27<sup>th</sup> January, 2007 and retired on 31<sup>st</sup> October, 2008.

On his retirement his Lordship worked as Chairman, Sikkim State Human Rights Commission. At present, he was Lokayukta of Sikkim.

His Lordship's demise is a great loss not only to the High Court of Sikkim but also to the entire institutions of legal fraternity. He is survived by his wife, son and daughter. He has also left behind a host of relatives and well wishers.

Myself and my esteemed colleague in the Bench fully associate ourselves with the sentiments and feelings expressed by the learned Members of the Bar. I, on my own behalf and on behalf of my esteemed Brother in the Bench and the Members of the Registry convey my deep condolences to the members of the bereaved family and pray to the Almighty to grant eternal peace to the departed soul and also to give strength and courage to the members of his family to bear this irreparable loss.

As a mark of respect to the departed soul, I now request all the learned Members of the Bar, my esteemed Brother and all present here to observe 2 minutes silence.

Sd/-  
**(SUNIL KUMAR SINHA)**  
**ACTING CHIEF JUSTICE**  
**HIGH COURT OF SIKKIM**

### IMPORTANT VISITS & CONFERENCES

(1) On 25.12.2014, Hon'ble Mr. Justice S.K. Sinha, Acting Chief Justice, High Court of Sikkim attended the *Pre-Conference Meeting with Chief Justices/Acting Chief Justices of the High Courts* in the Supreme Court of India, to review the progress made on the resolutions adopted in the previous Conferences and to set an agenda for the forthcoming Chief Justices' Conference, 2015.

(2) On 18.10.2014, Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim & Executive Chairman, Sikkim SLSA visited Soreng, West Sikkim to attend the *Awareness and Sensitization Programme on Mental Health & Suicide Prevention* at B. Ed. College.

On 01.11.2014, his Lordship attended a Meeting with Chairpersons of the District Legal Services Authority & Ex-Officio, Chairperson of Taluk Legal Services Committee (North) & other stakeholders with regard to the modalities to be adopted for the proposed National Lok Adalat schedules to be held on 06.12.2014 at Mangan, North Sikkim.

His Lordship also attended the *Plenary Meeting of the Hon'ble Executive Chairpersons & Member Secretaries* of best District Legal Services Authorities and the *National Level Meet of Para Legal Volunteers* at Ashoka Convention Hall, New Delhi on 08.11.2014 and on 09.11.2014.

Similarly, on 29.11.2014 his Lordship attended a Meeting of the Central Authority, National Legal Services Authority in the Supreme Court of India, New Delhi.

*Glimpses of the Farewell Dinner*



