

HIGH COURT OF SIKKIM



NEWSLETTER

Vol. 11, Issue No. 2

April to June, 2016



EDITORIAL BOARD

Hon'ble Mr. Justice Sunil Kumar Sinha, Chief Justice,
High Court of Sikkim

Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim

COMPILED BY

Mrs. K.C. Barphungpa, Registrar General

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HIGH COURT OF SIKKIM

EDITORIAL BOARD



Hon'ble Shri Justice Sunil Kumar Sinha,
Chief Justice,
High Court of Sikkim



Hon'ble Smt. Justice Meenakshi Madan Rai,
Judge,
High Court of Sikkim

VACANCIES IN COURTS

(i) Vacancies in the High Court of Sikkim as on 30.06.2016

Sl.No .	Sanctioned Strength	Working Strength	Vacancies
1.	03	02	01

(ii) Vacancies in the District & Subordinate Courts as on 30.06.2016

Sl.No .	Sanctioned Strength	Working Strength	Vacancies
1.	Superior Judicial Service (SSJS) - 10	07	03 01 post of District & Sessions Judge (Spl. Div.-1) and 01 post of District & Sessions Judge (Spl. Div.-II) & 01 post in the cadre of SSJS created (in compliance to the direction passed by the Hon'ble Supreme Court in Brij Mohan Lal Vs. Union of India)
2.	Sikkim Judicial Service (SJS) – 08	07	01 01 post of CJM-cum- Civil Judge (South & West)
Total	18	14	04

INSTITUTION, DISPOSAL & PENDENCY OF CASES**(1) Statement of Main & Misc. Cases in the High Court of Sikkim from 01.04.2016 to 30.06.2016.**

Sl. No.	Pending as on 30.06.2016	Institution	Disposal	Pending as on 30.06.2016
	Main Cases	Main Cases	Main Cases	Main Cases
1.	128	51	56	123

(2) Total Institution, Disposal & Pendency of cases in the Subordinate Courts of Sikkim from 01.04.2016 to 30.06.2016.

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016	Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016
East District at Gangtok	Main cases	243	65	62	246	723	177	192	708
	Misc. cases	95	45	63	77	18	271	270	19
West District at Gyalshing	Main cases	25	27	22	30	35	41	41	35
	Misc. cases	11	11	09	13	13	74	84	03
North District at Mangan	Main cases	04	03	03	04	09	08	09	08
	Misc. cases	14	10	16	08	00	31	28	03
South District at Namchi	Main cases	29	13	16	26	99	81	75	105
	Misc. cases	27	41	39	29	03	97	100	00
Family Courts	Main cases	99	69	58	110	31	19	27	23
	Misc. cases	00	04	02	02	16	09	18	07
Fast Track Courts	Main cases	-	-	-	-	04	05	02	07
	Misc. cases	-	-	-	-	00	03	03	00
Juvenile Justice Boards	Main cases	-	-	-	-	32	22	37	17
	Misc. cases	-	-	-	-	00	09	09	00
Total Main Cases		400	177	161	416	933	353	383	903
Total Misc. Cases		147	111	129	129	50	494	512	32

INSTITUTION, DISPOSAL AND PENDENCY OF CASES DISTRICT WISE

(1) Total Institution, Disposal and Pendency of cases in the Subordinate Courts of Sikkim from 01.04.2016 to 30.06.2016
(i) **East District at Gangtok.**

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016	Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016
District & Sessions Judge (East)	Main cases	102	40	36	106	106	31	27	110
	Misc. cases	78	43	57	64	04	112	110	06
District & Sessions Judge (Spl. Div.-I)	Main cases	00	03	00	03	00	00	00	00
	Misc. cases	01	00	00	01	00	00	00	00
District & Sessions Judge (Spl. Div.-II)	Main cases	10	00	05	05	03	00	01	02
	Misc. cases	00	00	00	00	00	00	00	00
Chief Judicial Magistrate-cum- Civil Judge (East & North)	Main cases	11	04	05	10	357	107	134	330
	Misc. cases	05	00	00	05	07	99	100	06
Civil Judge-cum- Judicial Magistrate (East)	Main cases	120	18	16	122	257	39	30	266
	Misc. cases	11	02	06	07	07	60	60	07
Total Main Cases		243	65	62	246	723	177	192	708
Total Misc. Cases		95	45	63	77	18	271	270	19

(ii) **West District at Gyalshing**

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016	Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016
District & Sessions Judge (West)	Main cases	14	24	18	20	19	09	11	17
	Misc. cases	10	07	06	11	00	28	27	01
Civil Judge-cum- Judicial Magistrate (West)	Main cases	06	03	00	09	11	20	24	07
	Misc. cases	01	04	03	02	00	28	28	00
* Civil Judge-cum-Judicial Magistrate, Soreng Subdivision, West Sikkim	Main cases	05	00	04	01	05	12	06	11
	Misc. cases	00	00	00	00	13	18	29	02
Total Main Cases		25	27	22	30	35	41	41	35
Total Misc. Cases		11	11	09	13	13	74	84	03

(iii) North District at Mangan

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016	Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016
District & Sessions Judge (North)	Main cases	03	02	03	02	01	02	02	01
	Misc. cases	14	06	12	08	00	12	09	03
Civil Judge-cum- Judicial Magistrate (North)	Main cases	01	01	00	02	08	04	05	07
	Misc. cases	00	03	03	00	00	17	17	00
*Civil Judge-cum-Judicial Magistrate, Chungthang Sub Division, North Sikkim	Main cases	00	00	00	00	00	02	02	00
	Misc. cases	00	01	01	00	00	02	02	00
Total Main Cases		04	03	03	04	09	08	09	08
Total Misc. Cases		14	10	16	08	00	31	28	03

(iv) South District at Namchi

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2015	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016	Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016
District & Sessions Judge (South)	Main cases	11	07	08	10	70	15	14	71
	Misc. cases	20	38	30	28	00	26	26	00
Chief Judicial Magistrate-cum- Civil Judge (South & West)	Main cases	00	00	00	00	17	39	42	14
	Misc. cases	02	00	02	00	01	38	39	00
Civil Judge-cum- Judicial Magistrate (South)	Main cases	18	06	08	16	12	27	19	20
	Misc. cases	05	03	07	01	02	33	35	00
Total Main Cases		29	13	16	26	99	81	75	105
Total Misc. Cases		27	41	39	29	03	97	100	00

(v) Family Courts

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016	Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016
Family Court, East at Gangtok	Main cases	74	51	41	84	19	11	14	16
	Misc. cases	00	03	02	01	06	06	09	03
Family Court West at Gyalshing	Main cases	05	06	06	05	03	04	05	02
	Misc. cases	00	00	00	00	00	00	00	00
Family Court North at Mangan	Main cases	01	00	01	00	01	00	01	00
	Misc. cases	00	00	00	00	00	00	00	00
Family Court South at Namchi	Main cases	19	12	10	21	08	04	07	05
	Misc. cases	00	01	00	01	10	03	09	04
Total Main Cases		99	69	58	110	31	19	27	23
Total Misc. Cases		00	04	02	02	16	09	18	07

(vi) Fast Track Court

NAME OF THE COURT		CRIMINAL CASES			
		Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016
Fast Track Court (East & North) at Gangtok	Main cases	02	03	01	04
	Misc. cases	00	01	01	00
Fast Track Court (South & West) at Gyalshing	Main cases	02	02	01	03
	Misc. cases	00	02	02	00
Total Main Cases		04	05	02	07
Total Misc. Cases		00	03	03	00

(vii) **Juvenile Justice Boards**

NAME OF THE COURTS		CRIMINAL CASES			
		Opening balance as on 01.04.2016	Institution from 01.04.2016 to 30.06.2016	Disposal from 01.04.2016 to 30.06.2016	Pendency at the end of 30.06.2016
Juvenile Justice Board East, at Gangtok	Main cases	30	12`	30	12
	Misc. cases	00	04	04	00
Juvenile Justice Board West, at Gyalshing	Main cases	01	08	04	05
	Misc. cases	00	02	02	00
Juvenile Justice Board North, at Mangan	Main cases	01	00	01	00
	Misc. cases	00	01	01	00
Juvenile Justice Board South, at Namchi	Main cases	00	02	02	00
	Misc. cases	00	02	02	00
Total Main Cases		32	22	37	17
Total Misc. Cases		00	09	09	00

SOME RECENT JUDGMENTS OF HIGH COURT OF SIKKIM

FROM (01.04.2016 to 30.06.2016)

1. State shall ensure availability of basic health facilities at all the hospitals/health centres: [WP(PIL) No. 39 of 2012 (Rinzing Chewang Kazi Vs. State of Sikkim & Ors.-Disposed on 05/04/2016]: This PIL was filed seeking effective implementation of the National Rural Health Mission (NRHM) in the State of Sikkim by issuing appropriate orders to provide required facilities and personnel in remote rural villages of the State, focusing in particular on the health of the women, children and senior citizens being marginalized groups of the society. The Court disposed of the said PIL by issuing a number of directions, some of which are: (1) the State will ensure availability of life saving drugs in all the hospitals/health centres; (2) Janani Suraksha Yojana (JSY) and Janani Sishu Suraksha Karyakram (JSSK) shall be implemented in their letter and spirit so that all the eligible women and children derive proper benefits from these schemes; (3) the State Government shall make all endeavours to establish a blood bank in each district and also to establish blood storage facility in each Community Health Centre (CHC) in near future; (4) State will create a free medicine counter in all district hospitals; (5) there shall be separate OPD card centres at STNM Hospital, viz. male, female and senior citizens which shall be regular in the morning and afternoon and afternoon OPD shall be maintained strictly; (5) an inquiry desk shall be available at STNM Hospital, Gangtok which would be easily visible to assist the patients/their attendants.

2. Conviction for an offence lesser in gravity than the one charged with is justified in law: In CrI. Appeal No. 26 of 2015 (Budha Singh Tamang Vs. State of Sikkim, disposed of on 19/04/2016), the issue before the Court was whether the Ld. Trial Court was justified in sentencing the appellant for the offence of molestation of a 12 year old girl on 02/12/2014 under section 9(m)/10 of the POCSO Act, 2012 and section 354 IPC simpliciter, although the charges were framed under Section 5(m) of the POCSO Act, 2012, Section 376(2)(i) and Section 354B of IPC for the said offence. In this regard, referring to Section 222(2) of the Cr. P. C., 1973, which permits conviction on a minor offence than the one charged with if so proved, the Court held that the gravity of an offence under Section 9(m)/10 of the POCSO Act is less than under Section 5(m)/6 of the POCSO Act, 2012 and therefore, although no charges were framed under section 9(m)/10 of the POCSO Act and section 354 of the IPC against the appellant for the offence, no error on conviction and sentencing has arisen. In this case, the Court

however noticed that the Trial Court has not taken any protective measures as required by law and has disclosed the name of the victim et al without recording reasons for such disclosure, in violation of POCSO Act, especially section 33 thereof, which casts a duty on the Special Court to ensure that the identity of the victim is not disclosed at any time during the course of investigation or trial. The Court directed all the Ld. Trial Courts to strictly abide by the mandate of law while dealing with such cases.

3. **Necessary party must be impleaded in the suit for complete and effective resolution of the dispute:** On 22/04/2016, a Single Bench of the Court in RFA No. 4 of 2016 (Indira Dahal Vs. Nil Kumar Dahal & Ano.) held that Rule 10(2) of Order 1 of CPC clothes the courts with the powers to strike out or add parties at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just. Although Order I Rule 9 of the CPC states that no suit shall be defeated by reason of misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it, but the rider in the proviso states that nothing in this Rule shall apply to non-joinder of a “necessary party”. As such, in the instant case, where the dispute related to the claim over “Jiwni Land”, it was held that the trial court was sufficiently empowered to invoke the aforesaid provision of law and implead the legal heirs and successors of the deceased son of the appellant who also maintained/looked after and performed the death rites of their father besides the respondents. By not impleading the legal heirs of the deceased son who are necessary parties to the Suit, it would not be possible to completely and effectively resolve the dispute in the instant matter and could lead to a multiplicity of proceedings. Remanding the matter for fresh trial, it was directed that the legal heirs and successors of the said deceased son of the appellant be impleaded as defendants in the title suit. It was further directed that the Suit shall be readmitted to its original number in the register of civil suits of the Ld. Trial Court, and disposed of within a period of six months in view of the fact that the Title Suit is of the year 2010.

4. Grievances relating to grant or cancellation of Sikkim Subject Certificate/Certificate of identification should be addressed before the issuing Authority, and not before the Court

[WP(PIL) No. 6 of 2015 (Biraj Adhikari Vs. State of Sikkim & Ors.)) (Disposed on: 20/06/2016) This PIL was filed seeking direction for a thorough court-monitored investigation by a Special Investigation Team (SIT) constituted by this High Court or the Central Bureau of Investigation (CBI) into the cases of false Sikkim Subject Certificates/Certificates of Identification including 31,180 reported cases as disclosed by the Land Revenue and Disaster Management Department, Government of Sikkim. Rejecting the petition, it was held that there is already a law prevailing in the State of Sikkim for cancellation of the Certificate of Identification being Notification No. 590 published on 01.11.2010. The contents of the said Notification would show that the Issuing Authority has already been authorized to cancel the COI of a person on certain grounds and it also provides that if a person is aggrieved by the refusal to grant or cancellation of his/her COI by the issuing Authority, he/she may apply to the Secretary, Land Revenue and Disaster Management Department, Government of Sikkim for redressal. Thus, there are two forums available for redressal of grievances relating to cancellation of COI. The first forum is the form of original jurisdiction and the second is the form of appellate jurisdiction. Power of cancellation certainly includes the power of inquiry, which has to be conducted before passing any order. Thus, the position is that law is not silent. The Court directed the respondents to carry out scrutiny and inquiry in the matter as contained in the affidavit filed by the Government.

5. Owner of the insured vehicle is not entitled to compensation under provisions of Section 147 of the Motor Vehicles Act, 1988

On 27/06/2016, a Single Bench of the Court in MAC App. No. 15 of 2015 (The Branch Manager, United India Insurance Company Ltd. Vs. Jit Man Rai & Ano.) held that Section 147 of the Motor Vehicles Act, 1988 requires an insurance company to cover the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or any property, caused by the owner of the vehicle. The purpose of the policy is to indemnify the insured against liabilities incurred by the owner towards other person (as third party) in respect of the damages

caused to him and the property. The owner of the insured vehicle is not entitled to compensation under provisions of Section 147 of the Act. As such, the Tribunal has committed an error in awarding the compensation to the tune of Rs. 22,66,979/-. However, since the policy, which is a comprehensive/package policy, clearly indicates that there was personal accident cover limited to Rs. 1,00,000/-, for which the owner was depositing the monthly premium of Rs. 50/-, the owner, under Personal Accident Cover (PAC) is indemnified to the extent of Rs. 1,00,000/- as specified in the policy. Appeal allowed.

SOME RECENT MAJOR EVENTS

1. SWEARING-IN CEREMONY



Hon'ble the Governor of Sikkim administering the Oath of Office to Hon'ble Shri Justice Satish Kumar Agnihotri at Aashirvad Hall, Raj Bhawan, Gangtok.

In pursuance of Notification No. K-11017/37/2016-US.I dated 09th May, 2016 issued by the Government of India, Ministry of Law & Justice, (Department of Justice), New Delhi, Hon'ble Shri Justice Satish Kumar Agnihotri, Judge of the Madras High Court was sworn-in as a Judge of the High Court of Sikkim on Monday, 23rd May, 2016 by Hon'ble Governor of Sikkim, Shri Srinivas Patil at Aashirvad Hall at Raj Bhawan, Gangtok.



Hon'ble Shri Justice Satish Kumar Agnihotri, Judge, High Court of Sikkim taking Oath as Judge on 23rd May, 2016 at Aashirvad Hall, Raj Bhawan, Gangtok.

The function was attended by Hon'ble Chief Minister of Sikkim, Shri Pawan Chamling, Hon'ble Cabinet Ministers, Hon'ble Mrs. Meenakshi Madan Rai, Judge, High Court of Sikkim. The Chief Secretary, dignitaries of the State Government, Judicial Officers, Sr. Advocates, Members of the Bar and local gentry.

2. INAUGURATION OF THE NEW ADR CENTRE AND THE EXTENSION AT THE DISTRICT COURT COMPLEX, SICHEY, GANGTOK (EAST) SIKKIM:



Ribbon Cutting Ceremony on the inaugural function of the new ADR Centre and the Extension at the District Court Complex, Sichey, Gangtok, East Sikkim by Hon'ble Shri Justice Sunil Kumar Sinha, Chief Justice, High Court of Sikkim in the presence of Hon'ble Shri Justice Satish Kumar Agnihotri, Judge, High Court of Sikkim and Hon'ble Mrs. Meenakshi Madan Rai, Judge, High Court of Sikkim.

On 25th June, 2016, Hon'ble Shri Justice Sunil Kumar Sinha, Chief Justice, High Court of Sikkim & Patron-in-Chief, Sikkim State Legal Services Authority inaugurated the newly constructed three storied structure of the District Courts Complex extension and the Alternative Dispute Redressal Center at Sichey, Gangtok in the presence of Hon'ble Shri Justice Satish Kumar Agnihotri, Judge, High Court of Sikkim and Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim & Executive Chairperson, Sikkim State Legal Services Authority as Guests of Honour.



Hon'ble Shri Justice Sunil Kumar Sinha, Chief Justice, High Court of Sikkim (centre), Hon'ble Shri Justice Satish Kumar Agnihotri, Judge, High Court of Sikkim (right) and Hon'ble Mrs. Meenakshi Madan Rai, Judge, High Court of Sikkim (left).



'Unveiling of Plaque' on the inaugural function of the District Court Complex Extension and ADR Centre at Sichey, Gangtok, East Sikkim by Hon'ble Shri Justice Sunil Kumar Sinha, High Court of Sikkim in the presence of Hon'ble Shri Justice Satish Kumar Agnihotri, Judge, High Court of Sikkim and Hon'ble Mrs. Meenakshi Madan Rai, Judge, High Court of Sikkim.



'Inaugural address' by Hon'ble Shri Justice Sunil Kumar Sinha, Chief Justice, High Court of Sikkim on the inaugural function of the District Court Complex Extension Building and ADR Centre at Sichey, Gangtok, East Sikkim.



'Special address' by Hon'ble Shri Justice Satish Kumar Agnihotri, Judge, High Court of Sikkim on the inaugural function of the District Court Complex Extension Building and ADR Centre at Sichey, Gangtok, East Sikkim.



'Keynote address' by Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim on the inaugural function of the District Court Complex Extension Building and ADR Centre at Sichey, Gangtok, East Sikkim.

3. INAUGURATION OF THE NEW DISTRICT & SESSIONS COURT BUILDING AT KYONGSA, GYALSHING, WEST SIKKIM:



The newly constructed District & Sessions Court Building, West Sikkim at Kyongsa, Gyalshing,



Ribbon Cutting Ceremony on the inaugural function of the newly constructed District & Sessions Court building at Kyongsa, Gylashing, West Sikkim by Hon'ble Shri Justice Sunil Kumar Sinha, Chief Justice, High Court of Sikkim in the presence of Hon'ble Shri Justice Satish Kumar Agnihotri, Judge, High Court of Sikkim and Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim.

On 11th June, 2016, Hon'ble Shri Justice Sunil Kumar Sinha, Chief Justice, High Court of Sikkim inaugurated the new District & Sessions Court building at Kyongsa, Gyalshing, West Sikkim in the presence of Hon'ble Shri Justice Satish Kumar Agnihotri, Judge, High Court of Sikkim and Hon'ble Shri Justice Meenakshi Madan Rai, Judge, High Court of Sikkim as Guests of Honour. The Court of the District & Sessions Judge at Kyongsa, Gyalshing, West Sikkim has been functioning from the new Complex thereafter.

IMPORTANT VISITS & CONFERENCES

1. Hon'ble Mrs. Meenakshi Madan Rai, Judge, High Court of Sikkim attended the 14th All India Meet of State Legal Services Authorities at Hyderabad, Telangana w.e.f. 09.04.2016 to 10.04.2016.
2. Hon'ble Mr. Justice Sunil Kumar Sinha, Chief Justice, High Court of Sikkim attended the "Chief Justices' Conference 2016" held at the Supreme Court of India, New Delhi w.e.f. 22.04.2016 to 23.04.2016. Thereafter, Hon'ble Mr. Justice Sunil Kumar Sinha, Chief Justice, High Court of Sikkim also attended the "Joint Conference of Chief Ministers of the States and the Chief Justices of the High Courts" held at Vigyan Bhavan, New Delhi on 24.04.2016.

**PROGRESS MADE IN THE HIGH COURT AND SUBORDINATE
COURTS OF SIKKIM UNDER E-COURTS MISSION MODE PROJECT**

April to June, 2016:

1. Two (2) DG sets of 5 KVA have been received for District & Sessions Court, West at Gyalshing and District & Sessions Court, North at Mangan on 14th June, 2016.
2. Tender Process for Scanning, Digitization and Digital Preservation of Cases/Judicial Records of High Court of Sikkim under Phase-II of e-Courts Mission Mode Project was completed and work for the same awarded in favour of M/s Informatic Publishing Ltd., RV Road, Basavanagudi, Bangalore, Karnataka on 20th June, 2016.

