

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

R.F.A. No. 7 of 2019

Airports Authority of India,
Represented by and through
The Airport Director,
Pakyong Airport,
Pakyong,
East Sikkim – 737106.

..... Appellant

versus

The State of Sikkim & 5 others

..... Respondents

Appearance:

Mr. Bhupendra Giri, Advocate for the appellant.

Mr. Zangpo Sherpa, Additional Advocate General, Mr. Thinlay Dorjee Bhutia, Government Advocate with Mr. Sujan Sunwar, Assistant Government Advocate for respondents no.1 to 5.

Mr. N. Rai, Senior Advocate with Ms Tara Devi Chettri, Advocate for respondent no.6.

and

R.F.A. No. 10 of 2019

Hantey Gyatso Kazi,
S/o Late Sonam Norbu Kazi,
R/o Pakyong,
P.O. & P.S. Pakyong,
East Sikkim.

..... Appellant

versus

The State of Sikkim & 5 others

..... Respondents

Appearance:

Mr. N. Rai, Senior Advocate with Ms Tara Devi Chettri, Advocate for the appellant.

Mr. Zangpo Sherpa, Additional Advocate General, Mr. Thinlay Dorjee Bhutia, Government Advocate with Mr. Sujan Sunwar, Assistant Government Advocate for the respondents no.1, 2, 3, 5 and 6.

Mr. Bhupendra Giri, Advocate for the respondent no.4.

Date of hearing: 1.9.2023

Date of order : 11.9.2023

ORDER

1. On 11.8.2023, this Court had passed an order directing that there should be a hearing on whether the appeal filed by Airports Authority of India (RFA No. 7 of 2019) and the Cross Appeal filed by Hantey Gyatso Kazi (R.F.A. No. 10 of 2019) against the Award dated 15.05.2019 of the Claims Commissioner (the Award) under section 17 of *the Sikkim Greenfield Airport, Pakyong (Settlement of Claims for Loss and Damages) Act, 2018*, was correctly filed before this Court.

2. On 1.9.2023, the learned counsel for the parties made their submissions and thereafter filed short synopsis of arguments. It seems there are two lines of thoughts. One thought led by Mr. N. Rai, learned Senior Counsel, is that the appeals have been correctly preferred before this Court. The other propounded by Mr. Zangpo Sherpa, learned Additional Advocate General, suggests that the appeals ought to have been before the jurisdictional District Judge instead.

3. The *Sikkim Greenfield Airport, Pakyong (Settlement of claims for Loss and Damages) Act, 2018 (Act of 2018)* came into force in Sikkim on 13.6.2018 on its publication in the Sikkim Government Gazette. The *Act of 2018* was enacted to provide for the settlement of claims for loss and damages arising out of construction of the airport at Pakyong.

4. Section 17 of the Act of 2018 provides for appeal and execution. It reads as under:

“17. Appeal and Execution. – *The Award of the Claims Commissioner, both interim and final, shall be deemed to be a decree of a Civil Court for the purposes of appeal and execution, which shall be governed by the provisions of the Code of Civil Procedure, 1908 (5 of 1908).”*

5. Section 13 deals with the power to regulate its own procedure. It provides that in the discharge of his functions, the Claims Commissioner shall be guided by the principles of natural justice and the provisions of the Code of Civil Procedure, 1908 (CPC) and shall have the powers to regulate his own procedure.

6. Section 18 provides that on the Claims Commissioner being appointed, any claim pending before any Authority, Tribunal or Court, claiming compensation or any other relief arising out of the construction of Pakyong Airport shall stand transferred to the Claims Commissioner, to be adjudicated upon, under and in accordance with the provisions of the *Act of 2018*.

7. Section 17 of the *Act of 2018* makes it clear that the provisions of CPC would apply to appeal and execution. Section 17 does not specify the forum for appeal.

8. Sections 96 of CPC provides:

“96. Appeal from original decree.—(1) *Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.*

(2) *An appeal may lie from an original decree passed ex parte.*

(3) *No appeal shall lie from a decree passed by the Court with the consent of parties.*

(4) *No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.”*

9. Section 96 of the CPC mandates that an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court “authorized” to hear appeals.

10. Section 6 of the CPC relates to pecuniary jurisdiction.

It provides:

“6. Pecuniary jurisdiction. — *Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.*

11. To understand which Court would be the Court “authorized” to hear appeals, it would be relevant to refer to the *Sikkim Civil Courts Act, 1978* which came into force in Sikkim on the 1st of July, 1978 on the issuance of notification no. 16(44)-

LL/78 dated 17.6.1978 published in the Sikkim Government Gazette No.85 on 19th June, 1978.

12. The *Sikkim Civil Courts Act, 1978* was enacted to consolidate the law relating to the Civil Courts subordinate to the High Court in the State of Sikkim. The *Sikkim Civil Courts Act, 1978* has been amended several times, inter alia, by the Sikkim Civil Courts (Amendment) Acts of 1988, 1998, 2000, 2001, 2011 and 2013.

13. As amended, Chapter III of the *Sikkim Civil Courts Act, 1978*, relates to jurisdiction of Courts. It consists of Sections 15 to 18. Section 15 relates to the original jurisdiction of the District Judge and provides:

“15. Save as otherwise provided in any law for the time being in force, the jurisdiction of a District Judge extends to all original suits for the time being cognizable by Civil Courts in the District.”

14. The *Sikkim Civil Courts Act, 1978* does not limit the pecuniary jurisdiction of the District Judge. *Per contra*, section 16 which deals with the extent of jurisdiction of a Civil Judge limits the pecuniary jurisdiction of the Civil Judge and provides:

“16. (1) Save as aforesaid, the jurisdiction of a Civil Judge (Senior Division) shall extend to suits, the value of which does not exceed 6(six) lakhs rupees and the jurisdiction of Civil Judge (Junior Division) shall extend to suits, the value of which does not exceed 5(five) lakhs rupees.”

15. The pecuniary jurisdiction of a Civil Judge (Senior Division) therefore extends to suits, the value of which does not

exceed 6(six) lakhs rupees and that of a Civil Judge (Junior Division) to 5(five) lakhs rupees.

16. Section 17 of the *Sikkim Civil Courts Act, 1978* deals with appeals from a decree or order of the District Judge and Civil Judge (Senior Division) provides:

“17.(1) Save as otherwise provided in any law for the time being in force, an appeal from a decree or order of a District Judge or a Civil Judge (Senior Division) shall lie to the High Court.”

17. Section 18 of the *Sikkim Civil Courts Act, 1978* deals with appeals from a decree or order from a Civil Judge and provides:

*“18. (1) Save as aforesaid an appeal from a decree or order of a Civil Judge (Junior Division) shall lie, -
 (a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed ten thousand rupees and
 (b) to the High Court in any other cases.”*

18. The claim petition filed by Shri Hantey Gyatso Kazi before the Claims Commissioner was for a sum of Rs.65,41,062/- and damages to the extent of Rs.1,50,00,000/-. The Claims Commissioner awarded an amount of Rs.20,00,000/- as compensation of damages to the claimant – Shri Hantey Gyatso Kazi, the appellant in R.F.A. No. 10 of 2019.

19. Reading Section 6 and Section 96 of the CPC and Chapter III of the *Sikkim Civil Courts Act, 1978*, it is clear that for the purpose of appeal, the award passed by the Claims Commissioner in terms of Section 17 of the Act of 2018 must be

construed to be that of the District Judge who had the original jurisdiction (therefore a Civil Court) to try a suit of the amount as claimed in the claim petition. This Court would therefore be the Court “authorized” to hear appeals from the decision of the Claims Commissioner.

20. The contention of the learned Additional Advocate General that since the *Act of 2018* does not limit the pecuniary jurisdiction, the Claims Commissioner would be equivalent to a Civil Judge may not be correct even after considering Section 15 of the CPC. Section 15 of the CPC provides that every suit shall be instituted in the Court of the lowest grade “competent” to try it. In view of the limitation of the Civil Judge regarding their pecuniary jurisdiction as provided in Section 16 of the Sikkim Civil Courts Act, 1978 only the District Judge would have the pecuniary jurisdiction to try a suit of the amount claimed and therefore “competent” to try it.

21. Thus, it is held that the appeals have been correctly preferred before this Court.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **Yes/No**
Internet : **Yes/No**

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