

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra Ordinary Jurisdiction)

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

W.P. (C) No. 37 of 2022

Shri Ashok Tshering Bhutia,
Son of Late A.C. Bhutia,
Resident of Tibet Road,
Gangtok, Sikkim

..... **Petitioner**

Versus

1. The Divisional Forest Officer (T),
Department of Forest, Environment & Wildlife Management,
South Division,
Namchi, South Sikkim.
2. The PCE-cum-Secretary,
Department of Forest, Environment & Wildlife
Management,
Government of Sikkim,
Gangtok, Sikkim.
3. The Secretary,
Energy and Power Department,
Government of Sikkim,
Gangtok, Sikkim.
4. Sub Registrar/Sub Divisional Magistrate,
Office of the District Collector,
Namchi, South Sikkim.

..... **Respondents**

Application under Article 227 of the Constitution of India.

(Impugned order of the learned District Judge, South Sikkim at Namchi dated 20.07.2022 rejecting the application dated 04.06.2022 for amendment of plaint filed by the petitioner under Order VI Rule 17 read with section 151 of the Code of Civil Procedure, 1908 and application dated 04.06.2022 seeking leave of the Hon'ble Court to file written statement to the counter claim of the respondent nos. 1 and 2 under Order VIII Rule 6A (3) read with section 151 of the CPC)

Appearance:

Mr. T. B. Thapa, Senior Advocate with Mr. Ranjan Chettri
Advocate for the Petitioner.

Dr. Doma T. Bhutia, Additional Advocate General, Mr. S.K. Chettri, Government Advocate and Mr. Shakil Raj Karki, Assistant Government Advocate for the Respondents.

10.08.2022
O R D E R (ORAL)

Bhaskar Raj Pradhan, J.

1. This is an application under Article 227 of the Constitution of India seeking to invoke the supervisory jurisdiction of this court to assail the impugned order dated 20.07.2022 rejecting the application for amendment of plaint filed by the petitioner under Order VI Rule 17 read with section 151 of the Code of Civil Procedure, 1908 (CPC) as well as an application seeking leave to file written statement to the counter claim of the respondent nos.1 and 2 under Order VIII Rule 6 A (3) read with section 151 of the CPC.

2. Heard Mr. T.B. Thapa, learned Senior Counsel for the petitioner at the admission stage. The learned Senior Counsel took this court to the impugned order as well as the provisions of law involved and submitted that this is a fit case in which the supervisory jurisdiction of this court ought to be invoked to render justice to the petitioner who suffers the consequence of the impugned order. The learned Senior Counsel also relied upon the judgment of the High Court of Judicature at Madras dated 28.01.2022 in *M/s. CSCO LLC vs. M/s. Lakshmi Sarawathi Spintex Limited*

& Ors.¹ in Application No. 4791 of 2021 in C.S. No. 697 of 2017.

3. In **CSCO LLC** (supra) the High Court of Judicature at Madras held that when it comes to filing a written statement for a counter claim, the same is specifically dealt with under Order VIII Rule 6 A (3) CPC. In such cases, the duty has been cast upon the court to fix the time limit. While fixing such time limits, the court is guided by Order VIII Rule 9 of CPC, wherein the court can fix a time limit of not more than 30 days for presenting the written statement for a counter claim. Even though leave is not required for filing a written statement for the counter claim, since it is a matter of right for the plaintiffs, the court can always fix a time limit for filing such a written statement. Hence, when a counter claim is filed by the defendants, the court has to specifically pass an order while taking the counter claim on file, directing summons to be served on the plaintiffs or if the plaintiff is represented by a counsel, directing the counsel to accept service of summons on behalf of the plaintiff. The time limit for filing a written statement for the counter claim will commence only thereafter.

4. The issue before the High Court of Judicature at Madras in **CSCO LLC** (supra) was whether it should condone the delay of 563 days in filing the written statement of the

¹ MANU/TN/4089/2022

plaintiff for the counter claim filed by the defendants. The facts and circumstances giving rise to the present application under Article 227 of the Constitution of India before this court is however different.

5. Before this court determines the issue involved in the present petition it may be pertinent to mention a few fact for clarity. The present petition arises out of a proceeding pursuant to the order passed by this court dated 12.04.2022 in RFA No 09 of 2020 preferred by the respondents against the judgment dated 24.12.2019 rendered by the learned District Judge in Title Suit No. 02 of 2017. While examining the appeal this court thought it fit to invoke the provisions of Order XLI Rule 25 CPC and framed three additional issues for examination. It was directed that the learned District Judge shall examine the additional issues in terms of Order XLI Rue 25 CPC, conduct a trial to ascertain the issues, take additional evidence, if required, and return the evidence to this court together with its finding thereof and the reasons thereof within a period of six months from the date of the first appearance of the parties as directed. Thus, it would be clear that the appeal filed by the respondents is pending determination before this court whilst certain issues which, were found relevant but not considered was directed to be considered by the learned District Judge. It is at this stage

of the proceedings, after the learned District Judge was directed to examine those specific additional issues, the petitioner thought it fit to move the two applications as aforesaid.

6. By the first application the petitioner sought to make various amendments to the plaint as specified therein. The amendments proposed were as follows:

“After paragraph 12 of the plaint, following paragraphs may be inserted:

12A. That the suit land was wrongly recorded in the name of Hari Krishna Sharma under the Survey of 1950-52 and ought to have been recorded in the name of his father Bishnu Prasad Sharma.

12B. That during the Survey Operations of 1950-52, Hari Krishna Sharma, Son of Bishnu Prasad Sharma was a minor.

12C. That similarly, the area of the land was also wrongly recorded as 1.10 acres instead of 4.33 acres under the said survey.

12D. That the records of the Survey Operations of 1950-52 were never attested and hence there was no opportunity to correct the wrong recording of the name as well as the area in the Record of Rights of the Survey Operations of 1950-52.

12E. That Bishnu Prasad Sharma was the absolute owner-in-possession of 4.33 acres of land in the concerned area and his ownership and possession of 4.33 acres of land was recognised and consequently recorded in his name when the subsequent Survey Operations of 1979-83 came to the area.

12.F. That the Record of Rights of the Survey Operations of 1979-1983 has since been attested.

12.G. That the area of land under the absolute ownership and possession of Bishnu Prasad Sharma was the same right from and even prior to the time when the Survey Operations of 1950-52 came to the area and which was subsequently substantiated by the Survey Operations of 1979-83.

12.H. That Bishnu Prasad Sharma had all along been in absolute ownership and possession of 4.33 acres of land in the concerned area till he sold the same subsequently to Shri Ong Tshering Bhutia S/o Late Inchung Tok tok.

.....”

7. The next application under Order VIII Rule 6 A (3) sought to urge the learned District Judge to permit the petitioner to file a written statement to the counter claim filed by the respondents. The argument of the learned Senior Counsel for the petitioner was that the language of the provision was clear and it was incumbent upon the learned District Judge to fix a period by which the petitioner may file a written statement and that having not been done during the trial permission should be granted to them to do so now. The learned District Judge examined both these applications and pronounced the impugned order dated 20.07.2022.

8. This court has examined the impugned order so rendered which is quite detailed examining various provisions of the law and the facts of the case after which the learned Judge concluded that both the applications ought to be rejected.

9. Both these applications have been filed after the conclusion of the trial on completion of pleadings, framing of issues, examination and cross-examination of respective witnesses and judgment rendered. This judgment is yet to be reconsidered in the respondent's statutory appeal. The petitioner has not filed any appeal aggrieved by any part of the judgment impugned in the respondent's appeal. What was not done at an appropriate stage by the petitioner is

sought to be done now when the learned District Judge had limited jurisdiction to determine only the additional issues framed by this court. This is not permissible. The additional issues were framed by this court on consideration of the pleadings of the parties. Amending the plaint at this stage would not be necessary to determine the controversy. The three additional issues framed by this court was directed to be considered by the learned District Judge on the pleadings of the respondents in their written statement as well as counter claim although no written statement was filed by the petitioner to the counter claim. The onus to prove the three additional issues were then put upon the respondents. Therefore, the necessary pleadings are available with the learned District Judge to determine the additional issues. The attempt to file written statement under Order VIII Rule 6 A (3) CPC would gravely affect the rights of the respondents. That would defeat the very purpose for which the additional issues had been framed by this court. Moreover, in the limited jurisdiction for which the matter was sent back to the learned District Judge it was impermissible to allow such applications which were thus rightly rejected.

10. The supervisory jurisdiction of this court under Article 227 of the Constitution of India is not meant to interfere in the administration of justice by the trial court at every

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stage but to correct gross errors or perversity in the orders passed. The impugned order passed by the learned District Judge is neither grossly erroneous nor perverse. It is well settled that judicial control of the High Court over the District judiciary ought to be invoked to keep it within the limits of their authority. The power may be exercised in cases occasioning grave injustice or failure of justice. The petitioner has not been able to demonstrate how the impugned order has caused any grave injustice to him. The applications filed by the petitioner were misconceived and rightly rejected. In view of the same this court is of the firm view that this petition does not deserve further examination and therefore dismissed with no orders as to cost.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **Yes**
Internet : **Yes**

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