

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

DIVISION BENCH: THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Com. A. No. 1 of 2025

Nil Kumar Pradhan,
S/o Late Ratna Kumar Pradhan,
Resident of Jitlang,
Central Pandem,
P.O. Duga,
Sikkim.

..... Appellant

versus

1. State of Sikkim,
Through the Chief Secretary,
Government of Sikkim.

2. Secretary,
Roads and Bridges Department,
Government of Sikkim,
Gangtok.

..... Respondents

**Appeal under Section 13(1A) of the Commercial Courts Act,
2015.**

Appearance:

Mr. D.K. Siwakoti, Advocate (Legal Aid Counsel) for the Appellant.

Mr. Aarohi Bhalla, Additional Advocate General with Mr. Thinlay Dorjee Bhutia, Government Advocate for the Respondents.

and

Com. A. No. 2 of 2025

Dil Bahadur Pradhan,
S/o Late Dhan Bahadur Pradhan,
Resident of Jitlang,
Central Pandem,
P.O. Duga, P.S. Rangpo,
Sikkim.

..... Appellant

versus

1. State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok.

2. Roads and Bridges Department,
Through the Secretary,
Government of Sikkim,
Gangtok, Sikkim.

..... Respondents

**Appeal under Section 13(1A) of the Commercial Courts Act,
2015.**

Appearance:

Mr. D.K. Siwakoti, Advocate (Legal Aid Counsel) for the Appellant.

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Dorjee Bhutia, Government Advocate for the Respondents.

J U D G M E N T

Date of Hearing : 28.10.2025 & 06.11.2025

Date of Judgment : 10.12.2025

Bhaskar Raj Pradhan, J.

This judgment shall dispose of two connected Commercial Appeals, i.e., Com. A. No. 1 of 2025 and Com. A. No. 2 of 2025, as they raise identical issues. In both the Commercial Appeals, the appellants filed identical suits for compensation under section 9 of the Code of Civil Procedure, 1908 read with section 21 of the Specific Relief Act, 1963, seeking compensation of Rs.20,49,576.52 each. Commercial Suit No.1 of 2024 related to a Notice Inviting Tender (NIT) for construction of road from Rangpo-Duga to Lower Jitlang in East Sikkim. Commercial Suit No.2 of 2024 related to a NIT for construction of road from Bhutia Turning to Sitey Jitlang in East Sikkim.

2. In both the Commercial Suits, the appellants had participated in the tender process, quoted 16 per cent above the estimated amount and declared successful bidders. Pursuant thereto, work orders dated 24.12.2018 were issued to them by the respondent no.2, i.e, the Roads and Bridges Department.

3. The work orders stated, *“The Government/Competent authority has approved to award the work to you at 16% (ABOVE) rate on the value of work. Hence, you are hereby directed to contact the undersigned for entering into an agreement and for further instructions for commencement of the work within 15 (Fifteen) days from the issue of this work order, failing which the work order shall be cancelled and the Security Deposit shall be forfeited. The stipulated time period for completion of work shall commence from the 15th days (sic) of the date of issue of this work order.”*

4. Admittedly, the appellants did not enter into any agreements as stipulated in the work order. Instead, the appellants entered into equipment rental agreements with one Khaling Enterprise for hiring JCB140/JCB Black Loader/JCB 205/Breaker/Bucket and Tipper for carrying out construction activities. According to the appellants, the

major portion of the area where proposed road had to be constructed fell within the forest land and so they requested the Roads and Bridges Department to hand over the site without any hinderence.

5. On 24.12.2018 (in Commercial Suit No. 1 of 2024) and 26.12.2018 (in Commercial Suit No. 2 of 2024), the Roads and Bridges Department requested the Forest Department for deputation of field officers for joint inspection for assessment and marking of trees. The appellants thereafter approached the Office of the Forest Department and Land Revenue Departments after which joint inspections were conducted which revealed further impediments. According to the appellants, they tried resolving these impediments pursuing various Government Departments by writing representations and visiting the officers. Both the appellants made the last of such representations to the Roads and Bridges Department on 14.07.2020. According to the appellants, because of the delay in providing the site for construction of the road they suffered losses to the extent of the compensation sought.

6. The learned Commercial Court framed four identical issues in the commercial suits and examined each of them based on the evidence led. The learned Commercial

Court was of the view that though the appellants had succeeded in the NIT and work orders issued to them, they had admittedly failed to enter into the agreements as stipulated in the work orders as well as in the Sikkim Public Works Manual, 2009. It was, therefore held that the work orders did not culminate into agreements. The learned Commercial Court was of the view that:-

- (i) the NIT floated by the Roads and Bridges Department were the invitations of offers by which the eligible contractors were required to quote their prices for construction of the concerned roads;
- (ii) the rates quoted by the appellants were accepted conditionally by the Roads & Bridges Department;
- (iii) for acceptance to be complete, the appellants were required to contact the concerned Assistant Engineer within fifteen days for execution of the agreements and obtain further instructions for commencement of the work which they did not;
- (iv) the work orders stipulated that in the event the appellants failed to execute the agreement and obtain further instructions for commencement of the work, the work orders shall be cancelled and security deposit forfeited.

(v) when offer and acceptance is incomplete, a valid contract cannot come into operation and consequently the work order cannot be treated as a valid contract.

7. The learned Commercial Court, therefore, held the first issue against the appellants concluding that the appellants and the Roads and Bridges Department had not entered into any agreement for construction of the roads.

8. The second issue examined by the learned Commercial Court was whether the failure to pay compensation to the Forest Department led to the non-execution of the road construction work. It was held that permission of the Forest Department was essential for commencement of construction inside the reserve forest. However, as there was no valid contract or agreement between the parties, obtaining NOC from the Forest Department was inconsequential. Resultantly, the second issue was also held against the appellants.

9. The third issue was whether the appellants had suffered a loss of Rs.20,49,576.52 each, due to non-execution of the construction of roads and whether the Roads and Bridges Department was liable to pay the same with *pendente lite* and further interest. The learned Commercial Court held that the evidence supported the

appellants' statement that they had hired equipments and machinery from Khaling Enterprise and had made payment of rupees five lakhs as advance to them. However, it was held that the appellants could not expect the Roads and Bridges Department to compensate them as there was no valid contract between them. It was held that the actions taken by the appellants were at their own risk and it could not be attributed to the Roads and Bridges Department. The learned Commercial Court held that the appellants ought to have obtained designs, drawings, Detailed Project Report (DPR) and other detailed instructions from the Roads and Bridges Department before hiring equipments and machinery and making other expenditures. Accordingly, the commercial suits were dismissed by judgments dated 27.12.2024.

10. After having heard the learned Counsel for the parties, we are of the view that the judgments passed by the learned Commercial Court are well reasoned. The facts have not been disputed by the learned Counsel for the appellants. He reiterated the same submissions made before the learned Commercial Court. The facts ascertained through the process of trial can result in the same conclusion as made by the learned Commercial Court.

11. Section 21 of the Specific Relief Act, 1963 invoked by the appellants relates to the power of the Courts to award compensation only in certain cases when compensation is sought for in addition to the prayer for specific performance of a contract. Although, the appellants have sought for compensation they have not sought for any specific performance of any contract in their plaints. This was impermissible. As the learned Commercial Court has held that there was no contract between the appellants and the respondents herein, the question of specific performance would not arise and resultantly, no compensation could be awarded under section 21. The learned Commercial Court has correctly dismissed the suits of the appellant.

12. Accordingly, both the Commercial Appeals are liable to be dismissed and stand accordingly dismissed. The records of the learned Commercial Court be remitted forthwith. No order as to costs.

(Bhaskar Raj Pradhan)
Judge

(Biswanath Somadder)
Chief Justice

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

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