

**IN THE HIGH COURT OF SIKKIM : GANGTOK**  
(Civil Revisional Jurisdiction)

**Dated: 27<sup>TH</sup> MARCH, 2019**

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**S.B.: HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CHIEF JUSTICE.**  
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**C.R.P. No. 09 of 2018**

M/s Balchand Udairam,  
Shri Jiwan Agarwal,  
R/o M.G. Marg,  
Gangtok, East Sikkim.

... Petitioner/Revisionist

Versus

1. Shri Naresh Subba,  
S/o Shri A.P. Subba,  
R/o House No. T 63 (A) and P87 (B)  
Sichey, Gangtok, East Sikkim.
2. Master Subhham Subba,  
Shri Naresh Subba,  
S/o Shri A.P. Subba,  
R/o House No. T 63 (A) and P87 (B)  
Sichey, Gangtok, East Sikkim.
3. Shri Thinlay Karma Peter Topden,  
R/o Martam House, Bhanu Path,  
Gangtok, East Sikkim-737 101.

... Respondents

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Appearance:

Mr. Zangpo Sherpa, Advocate for the petitioner.

Mr. Jorgay Namka, Mr. Karma Sonam Lhendup and Ms.  
Panila Theengh, Advocates for respondents No. 1 and 2.

Ms. Karma Yangchen Bhutia and Ms. Neetu Tamang,  
Advocates for respondents No. 3.

## **ORDER**

### **Chief Justice**

This revision petition is filed against the Order passed by the learned District Judge, East Sikkim at Gangtok, in *Eviction Suit No. 09 of 2015 : Mr. Naresh Subba and Anr. vs. M/s Balchand Udairam and Anr.*, whereby the adjournment application moved by the petitioner has been rejected.

2. The Respondent No. 1 and the Respondent No.2 instituted Eviction Suit No. 9 of 2015 against the petitioner/revisionist. The case was listed before the learned District Judge on 15.11.2018. On that day, an adjournment application was filed by the petitioner/revisionist on the ground that the conducting counsel Shri Sudesh Joshi was out of station due to some urgent personal work. After hearing the parties, the learned District Judge allowed the application subject to payment of cost of Rs.5000/- (Rupees five thousand) only, to the Plaintiff, on or before the next date fixed. In his Order, the learned District Judge made it clear to the learned counsel for the parties that no further adjournment would be granted in the matter and in the event the counsel failed to appear to conduct the case, the matter would be proceeded without cross-examination of the plaintiffs' witness.

3. On the next date, i.e. on 19.11.2018, again an application was moved by the petitioner/revisionist for adjournment on the ground that Shri Sudesh Joshi had gone to Delhi in connection with his urgent

matter before the Hon'ble Supreme Court. The same was opposed by learned counsel for the respondents. The learned District Judge by stating that the matter was pending since 2015 and counsel for the petitioner/revisionist sought time in two consecutive dates, rejected the application.

4. Heard Mr. Zangpo Sherpa, learned counsel for the petitioner/revisionist, Mr. Jorgay Namka assisted by Mr. Karma Sonam Lhendup, learned counsel for the respondents no.1 and 2 and Ms. Karma Yangchen Bhutia, learned counsel for the respondent no.3.

5. I have carefully read the Orders passed by the learned District Judge. The reason given by the learned District Judge for rejecting the application appears to be correct. But I have also perused annexures annexed with the revision petition, the pleadings and also the contents of paragraphs no.8 and 9 of the revision petition in which it is stated as follows:-

"8. That it is further stated that Mr. Sudesh Joshi (*sic*) office had been pursuing the matter seriously and effectively but due (*sic*) his prior commitment with an important matter before the Hon'ble Supreme Court of India, WP(C) No. 000059/2013 titled as "Old settlers of Sikkim-vs-Union of India". He was busy with the said case also. The photocopy of the said case details is annexed herein as **Annexure P-1.**

9. That it is further submitted that he is also the counsel of the said matter pending before the Hon'ble Supreme Court of India."

6. Having considered the submissions of learned counsel for the parties, I think that one last opportunity should be granted to the petitioner/revisionist.

7. Considering all of the above, I dispose of this petition in the following manner.

- (i) The Order dated 19.11.2018 passed by the learned District Judge, East Sikkim at Gangtok, rejecting the adjournment application, is set aside.
- (ii) The application moved by the petitioner for cross-examination of plaintiffs' witness is allowed subject to payment of cost of Rs.12,000/- (Rupees twelve thousand) only, out of which Rs.4000/- (Rupees four thousand) only, each, has to be paid to all the respondents herein, on or before 01.04.2019. In default thereof, the Order passed by the learned District Judge on 19.11.2018, shall stand revived.
- (iii) The petitioner/revisionist is directed to appear before the Court of the learned District Judge, East Sikkim at Gangtok, on the next date fixed, i.e., 01.04.2019. On that day, he will cross-examine the plaintiffs' witness and complete the process. He is also permitted to file evidence-on-affidavit of the substituted defendant no.2 and his witnesses within a period of ten days, thereafter.
- (iv) The learned District Judge is directed to decide the Eviction Suit No. 9 of 2015 at the earliest, preferably on or before 31.05.2019.

8. The Civil Revision Petition stands disposed of.
9. Stay Application (IA No. 01 of 2018) also stands disposed of.
10. Copy of this Order be sent to the concerned District Judge forthwith.

**Chief Justice**  
27.03.2019

Index : ~~Yes~~ / No  
Internet : Yes / ~~Ne~~

jk/bp