

IN THE HIGH COURT OF SIKKIM

Civil Revision Application No. 8 of 2000

Date of Decision: 21.06.2000

Naksuk Lepcha Petitioner.

Versus

Kyaloo Rai Respondent.

Coram:

The Hon'ble Mr. Justice Anup Deb, Judge.

Present: Miss P. Lhamu, Advocate for the petitioner.

J U D G M E N T

Deb, J.

By filing this Revision Application, the petitioner who is the defendant in the Civil Suit No. 35 of 1996 of the Court of learned District Judge, Special Division at Gangtok, has challenged the order dated 7.6.2000 passed by the learned District Judge, Special Division rejecting the prayer of the petitioner to implead one Jigme Dorjee as defendant on the ground that the application under Order 1 Rule 10, Code of Civil Procedure (in short C.P.C.) filed by the petitioner-respondent is pre-mature. The learned trial Court has further observed that during evidence stage, if it is found that there is cause of action for impleading Jigme Dorjee as one of the defendants, the Court will decide the issue accordingly.



2. Sub-Rule 2 of Rule 10 of Order 1 of C.P.C. is extracted below:-

“The Court may 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, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

3. While a necessary party is one without whom no order can be passed effectively, effectually and completely to adjudicate and settle all the questions involved in the suit, a proper party is one in whose absence an effective order can be made, but whose presence may be necessary for a complete and final decision on the question involved. Thus, if a necessary party or party likely to be affected by a decree or party whose presence may be necessary to make a decree effective, is not before the Court, the Court may either upon an application made for that purpose, or of its own motion, direct that such a party be added and such order should ordinarily be passed upon the notice to the party proposed to be added. There is, however, no bar to an *ex parte* order being made in proper cases.


4. While deciding an application under Order 1 Rule 10 C.P.C., the trial Court should take liberal view and should not reject an application on the ground that the application is pre-mature and the real question will be decided during evidence stage. This does not seem to be the correct position of law. C.P.C. has made the position amply clear by providing that Court may *at any stage of the proceedings*, order that the name of any party improperly joined, be struck out, and that the name of any person who ought to have been joined, be added. C.P.C. has nowhere provided that question of addition of parties may be decided during the stage of evidence. On the other hand, application for addition of party should be made at the early stage of the suit and such questions should be decided immediately thereafter. Thus the learned District Judge, Special Division has committed an error in holding



that the application Order 1 Rule 10 C.P.C. is premature and the order dated 7.6.2000 passed by the learned District Judge, Special Division in Civil Suit No. 35 of 1996 has to be set aside.

5. In the result, the Revision is allowed.

6. The learned District Judge, Special Division is directed to hear the application afresh and decide the application under Order 1 Rule 10 C.P.C. in the light of the observations made above.


(Anup Deb)
Judge
21.06.2000