
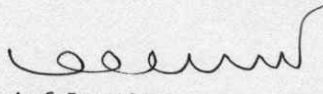


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02.	26.04.12	<p style="text-align: center;"><b>BEFORE</b></p> <p style="text-align: center;"><b>HON'BLE THE CHIEF JUSTICE MR. JUSTICE PERMOD KOHLI</b></p> <p>Present: Mr. N. Rai, Sr. Advocate with Ms. Jyoti Kharka, Advocate for the Petitioners.</p> <p style="text-align: center;">...</p> <p>This Revision Petition has been filed challenging the order dates 23.03.2012 passed by the learned Civil Judge, East Sikkim at Gangtok rejecting the application filed by the petitioners for return of the original document earlier filed in Civil Original Suit No. 1/2009 decided by the trial Court vide Judgment dated 31.12.2010. It is not in dispute that this document was filed in the Court by the petitioners who are defendants in the suit. The suit stands disposed off. Even a Civil First Appeal filed against the judgment and decree of the trial Court stands disposed off by the learned District Judge, Special Division-II, Sikkim at Gangtok on 29.02.2012. The trial Court rejected the application primarily on the ground that the period for filing further appeal is not yet over.</p> <p><b>02.</b> The right of the party filing a document in the Court to seek return of the same is governed by the provisions of Order XIII Rule 9 of the Code of Civil Procedure, 1908 (for short CPC), which reads as under:</p> <p style="text-align: center;"><b>"9. Return of admitted documents</b> - (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is</p>

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		<p>impounded under rule 8, be entitled to receive back the same,-</p> <p>(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and</p> <p>(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:</p> <p>Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor-</p> <p>(a) delivers to the proper officer for being substituted for the original,-</p> <p>(i) in the case of a party to the suit, a certified copy, and</p> <p>(ii) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (2) of rule 17 of Order VII, and</p> <p>(b) undertakes to produce the original, if required to do so :</p> <p>Provided also, that no document shall be returned which, by force of the decree, has become wholly void or useless.</p> <p>(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it."</p> <p><b>03.</b> Under Rule 9 (1) of Order XIII any person who has filed the document and is desirous of receiving back any document produced by him in the suit is entitled to receive the same provided the document is not impounded under Rule 8 of Order XIII in two situations, (i) where the suit is one where no appeal is allowed and the suit stands disposed off and (ii) where an appeal is preferred against a judgment and decree passed in the suit and either the</p>

*[Handwritten signature]*

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		<p>appeal has not been preferred within the prescribed period of limitation or the appeal stands disposed of on being filed.</p> <p><b>04.</b> Admittedly the first appeal stands disposed off. However, the period for filing of second appeal under Section 100 CPC which a party is entitled to file before this Court is not yet over. It seems that under these circumstances the trial Court rejected the application.</p> <p><b>05.</b> The petitioners invoked proviso to Rule 9 (1) of Order XIII which <i>inter alia</i> permits the return of the documents in favour of the person who filed the document subject to filing of a certified copy of the document in the Court and on undertaking to produce the original if required to do so.</p> <p><b>06.</b> Mr. N. Rai, learned Senior Counsel appearing for the petitioners submits that to comply the mandate of the proviso to Rule 9(1) the petitioners (defendants in the suit) while making an application dated 19.03.2012 for return of documents, also annexed therewith a certified copy of the document.</p> <p><b>07.</b> I have perused the copy of the application (Annexure-7) filed with the revision petition. In paragraph 5 of the application the defendants-petitioners averred that the certified copy of the document is enclosed therewith. This fact has not been taken note by the learned trial</p>

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		<p>Court. On enquiry from the Court, Mr. Rai submits that no undertaking has been filed by the petitioners undertaking to produce the original document if so required by the Court. Therefore, even though the first condition for returning the documents under proviso is satisfied, however, the second condition has not been complied with by the petitioners.</p> <p><b>08.</b> Mr. Rai submits that the petitioners are ready and willing to undertake before the trial Court to produce the original document if so directed by the Court in the event an appeal is filed or otherwise if required.</p> <p><b>09.</b> In view of the above submissions, this petition is allowed, order impugned dated 23.03.2012 is hereby set aside.</p> <p><b>10.</b> The trial Court is directed to return the original document to the petitioners (defendants) subject to verification that the document was presented before the trial Court by the petitioners and a certified copy of the document has already been filed and an undertaking to produce the document is filed by the petitioners on affidavit within a period of two weeks.</p> <p style="text-align: right;">             Chief Justice            26.04.2012         </p>

pm/jk

Index : Yes / No  
 Internet : Yes / No