

R.F.A. NO. 6 OF 2003

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
11.	10.8.2004	<p style="text-align: center;">Being felt aggrieved by the judgment and decree dated 30.9.2003 passed by the learned District Judge, Special Division – II, Sikkim in C. S. no. 14 of 2002 dismissing his suit, the plaintiff has filed this appeal.</p> <p>The appellant filed the aforesaid suit against the respondents for recovery of Rs.51,697/- towards cost of stitching charges of the uniforms of field officers of the Forest Department of the state government.</p> <p>The appellant's case is that he applied to the Department of Forest for grant of work of stitching of uniforms for the field officers of the department. Since the work of stitching of uniforms of field officers was of huge quantity and the work being time-bound one, he and the respondents entered into an agreement on 4.8.2000 by which the respondents agreed that after the completion of the work all of them would submit their respective bills and the bill amount would be equally shared amongst themselves. The appellant after completing the work of stitching handed over the bills to the respondents for submission of the same to the department. The respondents assured him that after the receipt of the money his share amount would be paid to him in terms of the agreement dated 4.8.2000. The respondent no. 1 had withdrawn Rs.31,899/- from the Department of Forest but did not pay a single pie</p>	


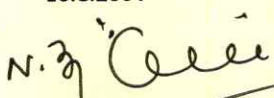
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		<p>to the appellant. The respondent no.2 had also withdrawn Rs.1,12,540/- from the department but did not pay anything to him. As per the agreement dated 4.8.2000 respondent no. 1 should have paid Rs.10,962/- and respondent no.2 Rs.40,735/- to the appellant. The appellant demanded his share but the respondents turned deaf ear. Finding no other alternative he instituted the suit.</p> <p>The respondents in their written statement admitted the fact of entering into an agreement with the appellant on 4.8.2000 but according to them the agreement is not enforceable in the eye of law. Their further case is that the appellant did not carry out any stitching work on their behalf and therefore payment of any amount to him does not arise.</p> <p>On the basis of evidence available on record, the learned trial Judge held that the stitching work was not given to the appellant by the department but it was given to the respondents. He further held that the appellant did not produce any evidence to show that he had undertaken stitching work on behalf of the respondents. On the basis of the aforesaid findings, the appellant's suit was dismissed.</p> <p>In course of hearing of this appeal, the appellant filed a petition under Order 41 Rule 27 CPC seeking permission of this Court to allow him</p>	

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		<p>to adduce additional evidence in support of his case by enclosing certain documents. The respondents have filed objection to this petition. On perusal of those documents, we have noticed that the appellant carried out the stitching work of some uniforms and the Range Officer of the Forest Department had issued clearance certificate. The appellant in this petition has averred that those documents were mis-placed for which he could not produce them during the trial and now in May, 2004 he has been able to trace them out and submitted the same for acceptance as additional evidence.</p> <p>We have heard Mr. B. Sharma, learned counsel for the appellant and Mrs. Anita Lepcha, learned counsel for the respondents. On consideration of the submission of the counsel for parties, we are of the opinion that the appellant was not able to produce those documents despite his diligence. They have now been produced before us and are very much relevant for the Court to pronounce the judgment. In the circumstances, we allow the prayer for adducing additional evidence made on behalf of the appellant. For this purpose, taking of oral evidence is necessary. The documents are also required to be proved according to law. The respondents are entitled to tender rebuttal</p>	

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		<p>evidence. In the interest of justice the matter has to be retried.</p> <p>In the circumstances, we set aside the impugned judgment and decree and remit the matter to the trial Judge for fresh disposal of the suit according to law. The appellant is permitted to adduce further evidence, both oral and documentary before the trial Judge. The respondents are at liberty to adduce their evidence, if so advised.</p> <p>Counsel for the parties agree that they will appear before the trial Judge on 30.8.2004 to receive further direction from him.</p> <p>In the result, the appeal is allowed. Parties will bear their respective costs.</p> <p>Lower Court records may be sent back forthwith.</p> <p style="text-align: center;"> (R. K. Patra) Chief Justice 10.8.2004</p> <p style="text-align: center;"> (N. Surjamani Singh) Judge 10.8.2004</p>	<p>Office Note as to action (if any) taken on Order</p> <p><i>Trial Court records forwarded on 12-8-04 along with the order dt. 10-8-04. on [unclear] 12/8/04</i></p>