

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

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**SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**  
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**RFA No. 07 of 2018**

Ms. Dinku Khati,  
Daughter of late Tek Bahadur Khati,  
R/o Utpal Nagar, Road No.-4,  
Siliguri-734003, P.O. Anchal,  
P.S. Pradhan Nagar,  
West Bengal.

C/o Ms. Shanti Ramudamu,  
Near Tathangchen School,  
Upper Tathangchen, Gangtok,  
East Sikkim.

.... Appellant

**Versus**

- 1.** Smt. Kamal Kumari Subba,  
Wife of Shri Ashok Kumar Subba (Tsong),  
R/o National Highway 10,  
Sisa Golai,  
P.O. Gangtok & P.S. Sadar  
East Sikkim.

- 2.** Shri Ashok Kumar Subba,  
S/o late Budh Bir Subba,  
R/o National Highway 10,  
Sisa Golai,  
P.O. Gangtok & P.S. Sadar,  
East Sikkim

.... Respondents

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**Appeal under Order XLI Rule 1 and 2 read with Section 151  
of the Code of Civil Procedure, 1908.**

**Appearance:**

Ms. Gita Bista, Legal Aid Counsel for the Appellant.

Mr. Vivek Anand Basnett and Ms. Mina Bhusal,  
Advocates for Respondent No.1.

Ms. Sashi Rai and Ms. Lhamu Bhutia, Advocates for the  
Respondent No.2.

Date of hearing : 30.11.2019

Date of judgment: 30.11.2019

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**J U D G M E N T (O R A L)**

**Bhaskar Raj Pradhan, J**

1. The present appeal assails the judgment and decree both dated 29.10.2018 passed by the learned District Judge, (Special Division-II) East Sikkim at Gangtok in Money Suit No.09 of 2016 (for short 'the suit') filed on 26.04.2016.

2. The case of the appellant in the suit is that she is a practicing Advocate who had been engaged by the respondents to appear before the Debt Recovery Tribunal at Guwahati, the Appellate Tribunal at Kolkata as well as the High Court of Guwahati. In the plaint the appellant has given a detailed history of how she was engaged by them from the year 2009 onwards. The appellant has also averred the details of the various professional engagements from 08.05.2012 till 18.07.2014. The averments in the plaint contours through the period 2009 to 2014 and how the respondents had sought time to pay her professional fees due to their poor financial condition assuring her that it would be done when their

financial condition improved. According to the appellant a total amount of Rs.10,75,000/- was payable on account of her professional engagements over the period by the respondents. The details of the appellant's professional engagements with specified dates have been mentioned in paragraphs 20 and 21 of the plaint. In paragraph 31 the appellant averred that the cause of action first arose on 26.03.2012, next on 20.04.2012, thereafter on 21.04.2012 and 03.05.2012 and finally when she demanded her fees through the legal notice. The legal notice is dated 02.06.2014.

**3.** The respondents filed their written statements. The respondent no.1 contested the suit on the ground that the fact about the appellant's professional engagement was not known to her. The respondent no.2 however, admitted the appellant's professional engagement. The respondent no.2 stated that Rs.5,000/- per day as legal fees besides accommodation was agreed upon; however, due to financial problems the respondent no.2 could not even pay her travel and accommodation charges; immediately on settlement of the case, the respondent no.1 in collusion with another received huge amounts of money and as a result the legal fees could not be settled. The respondent no.2 confirmed that the appellant had appeared and rendered her legal service as mentioned in paragraph 20 of the plaint. With regard to the averments made

by the appellant in paragraph 21 of the plaint the respondent no.2 had an issue about the quantum of fees payable but not on the fact that she had been engaged professionally.

**4.** On 13.09.2017 one issue was framed. The said issue was *“whether the defendant no.1 is liable to pay the sum of Rs.10,75,000/- to the plaintiff as her legal fees?”*

**5.** On 16.08.2017 the learned District Judge held *“after considering the submissions made by the parties as well as the contents of plaint and documents filed by the plaintiff, in my view, the question of limitation in the instant suit involves both facts and law. Therefore, it is proper if the question of limitation is heard and decided along with the other main issues at the final stage of the suit on receiving the evidence. Let the question of limitation be one of the issues of this suit.”* The learned District Judge while holding as above rejected the application filed by the respondent no.1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short ‘the CPC’).

**6.** The appellant filed her evidence on affidavit dated 14.10.2017 along with 13 documents in support thereof. On 20.03.2018 the appellant confirmed her evidence on affidavit and marked the documents as exhibit-1 to 13. The appellant was cross-examined by the respondent no.1 and respondent no.2. The respondent no.1 filed her evidence on affidavit dated 11.04.2018 and confirmed the same on 19.06.2018 exhibiting

5 documents as exhibit-D1-A to exhibit-D-1-F. The respondent no.1 was cross-examined by the appellant as well as the respondent no.2. The respondent no.2 filed his evidence on affidavit on 11.04.2018 and confirmed it on 22.09.2018. He was cross-examined by the appellant as well as by the respondent no.1.

**7.** On 29.10.2018 the learned District Judge rendered the impugned judgment and decree. The learned District Judge non suited the appellant on the ground of limitation and did not decide the first issue as to whether the respondent no.1 was liable to pay a sum of Rs.10,75,000/- to the appellant as her legal fees. The learned District Judge examined the provision of Section 3 of the Limitation Act, 1963 and the averments made in paragraph 31 of the plaint regarding the cause of action. The learned Counsel for the appellant relied upon Article 18 of the Limitation Act, 1963 before the learned District Judge. The learned District Judge held that Article 18 was not applicable to aid the appellant. The learned District Judge held that the cause of action for the plaintiff accrued on 26.03.2012 and therefore, the same was barred by limitation under Article 19 of the Limitation Act, 1963.

**8.** Heard Ms. Gita Bista, learned Counsel for the appellant, Mr. Vivek Anand Basnet, learned Counsel for the respondent

no.1 and Ms. Sashi Rai learned Counsel for the respondent no.2.

9. At the outset Ms. Gita Bista submits that she had inadvertently drawn the attention of the learned District Judge to Article 18 of the Limitation Act, 1963 although it now seems quite evident that it is not Article 18 but Article 113 which is applicable. To support her contention she relied upon the judgment of the Supreme Court in re: **Dharmarth Trust, Jammu and Kashmir, Jammu & Ors. v. Dinesh Chander Nanda**<sup>1</sup>. The Supreme Court examined whether a suit filed by an architect is covered under Article 56 or Article 119 of the Jammu and Kashmir Limitation Act, 1995 (for short ‘the JK Act’). Article 56 and Article 119 of the JK Act is similar to Article 18 and Article 113 of the Limitation Act, 1963. The Supreme Court held that the term “*price of work done*” in Article 56 of the JK Act cannot be made applicable to professions where the professionals merely provide service for a “*fee*”. While holding so the Supreme Court agreed with the ratio laid down by the Allahabad High Court in re: **Baroda Kant Sen v. Court of Wards**<sup>2</sup> and the High Court of Gauhati in **Kakodonga Tea Estate v. J. N. Saikia**<sup>3</sup>. The High Court of Gauhati had held that “*a suit to recover unpaid professional fees by a chartered accountant falls under Article 113 and not under Article 18 or Article 55 .....*”

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<sup>1</sup> (2010) 10 SCC 331

<sup>2</sup> AIR 1931 All 752 (2)

<sup>3</sup> AIR 1973 Gau 27

**10** While deciding the question of limitation which is held to be involving both facts and law it is important that the Court examines the facts as well as the law. When a claim for payment of professional fees have been made giving details of the dates of engagement, the quantum of fees payable and the work done it was incumbent upon the learned District Judge to examine each of these claims even to decide whether the same were barred by limitation. The learned District Judge did not do so. The pleading in the plaint does give a clear impression that the issue of limitation was an issue of both fact and law. When the learned District Judge on 16.08.2017 had taken a view that the question of limitation involved both facts and law and therefore, it would be proper if the question of limitation is heard and decided along with the other main issues at the final stage of the suit on receiving the evidence this Court sees no reason as to why the learned District Judge failed to do so while passing the impugned judgment. This was not a case in which the issue of limitation was taken up as a preliminary issue on a pure question of law. This was a case in which the trial had been concluded and evidence led by the parties. Thus, it was incumbent upon the learned District Judge to render its judgment on all the issues arising in the suit.

**11.** Order XIV and Order XX of the CPC would be relevant. Order XIV CPC relates to settlement of issues and

determination of suit on issues of law or on issues agreed upon. Order XIV Rule 2 of the CPC requires that a Court must decide all issues even if the case can be disposed of on a preliminary point except where a pure question of law relating to jurisdiction or bar to suit is involved. Order XX relates to judgment and decree. Order XX Rule 5 of the CPC provides that in suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon anyone or more of the issue is sufficient for the decision of the suit. Even under Order XXII Rule 5 of the CPC it is incumbent upon the Court to render its finding or decision with reasons on each of the issues. An exception is carved out for the Court when it is found and held that the finding upon anyone or more of the issue is sufficient for the decision of the suit. Order XXII Rule 5 of CPC must be complied with keeping in mind the issues framed under Order XIV Rule 1 and the mandate of Order XIV Rule 2 of CPC. The exception under Order XIV Rule 2 was not available to the learned District Judge in the facts of the present suit.

**12.** At this juncture it may be apposite to draw the attention to the opinion of the Supreme Court in re: ***M/s Fomento Resorts***

**and Hotels Ltd., v. Gustavo Ranato da Cruz Pinto & Ors<sup>4</sup>.** The Supreme Court held that:

*“27. In a matter of this nature where several contentions factual and legal are urged and when there is scope of an appeal from the decision of the Court, it is desirable as was observed by the Privy Council long time ago to avoid delay and protraction of litigation that the Court should, when dealing with any matter dispose of all the points and not merely rest its decision on one single point.”*

**13.** This Court is therefore, constrained to interfere with the impugned judgment and decree without deciding the case on merits as the learned District Judge has rendered no finding on it.

**14.** The appeal is allowed and the matter is remitted to the learned District Judge for its disposal by pronouncing opinion on all issues in accordance with law.

**15.** Resultantly, the judgment and decree passed by the learned District Judge is hereby set aside. In the facts and circumstances of the present case, the parties are directed to bear their own costs.

**( Bhaskar Raj Pradhan )**  
**Judge**  
30.11.2019

Approved for reporting: yes.  
Internet: yes.

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<sup>4</sup> AIR 1985 SC 736