

IN THE HIGH COURT OF SIKKIM

ORDER SHEET

Writ Petition(C).....No.23 of 2003.

State Bank of India..... Petitioner / Appellant

Versus

M/s. Super Auto Agency & Ors..... Respondent

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	31-7-2003	<p style="text-align: center;">Heard Mr. A. Moulik, learned counsel for the petitioner.</p> <p style="text-align: center;">Issue notice of admission returnable by 13-8-2003 indicating therein that the matter is likely to be finally disposed of at the stage of admission. Requisites for service of notice on the respondents be filed by tomorrow. Notice be sent by registered post.</p> <p style="text-align: center;"><u>C.M.A. No.104/2003.</u></p> <p style="text-align: center;">There shall be interim stay of further proceedings in Civil Suit No.9/2002 on the file of District Judge (Special Division-I). Records which have been received from the Court below may be retained till the disposal of the writ petition.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> <p><i>N. Surjmani Singh</i></p> <p>(N. Surjmani Singh) Judge 31-7-2003.</p> </div> <div style="text-align: center;"> <p><i>R.K. Patra</i></p> <p>(R.K. Patra) Chief Justice 31-7-2003.</p> </div> </div>	<p>Office Note as to action (if any) taken on Order</p> <p><i>Requasi filed on 4-8-03. Notice issued on 4-8-03.</i></p> <p><i>AD Cards recd. from Respell nos 1 to 3.</i></p> <p><i>12/8/03</i></p>
2.	13.8.2003	<p>We have heard Shri A. Moulik, learned counsel for the petitioner and Shri A. K. Upadhyaya, learned counsel for the contesting respondents.</p> <p>2. This is an application under Article 227 of the Constitution of India by which the petitioner seeks to assail the validity of the order dated 10th June, 2003 of the learned District Judge, Special Division-I, Gangtok rejecting its prayer for amendment of the plaint in Civil Suit No. 9 of 2002.</p>	

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		<p>3. The petitioner as plaintiff has filed money suit against the respondents for Rs.75,081/- with interest thereon and other consequential reliefs. Its case is respondent 2 on behalf of respondent 1 applied to it for a loan of Rs.2 lakhs as working capital for the purpose of business in the name and style of M/s. Super Auto Agency under the scheme of Cash Credit facility. On consideration of the said application, the petitioner sanctioned Cash Credit limit of Rs.2 lakhs to the respondent 1 on 5th November, 1998. The respondents 1 and 2 as borrowers and respondent 3 as guarantor duly executed necessary agreement for hypothecation and guarantee regarding hypothecation of goods etc. as security for repayment of the loan with interest @14% per annum. They have also given their personal guarantee for repayment of the loan with accrued interest thereon. The respondents, however, have failed to clear up the money and the suit amounts till outstanding against them. Hence the suit.</p> <p>4. The respondents filed written statement wherein they have admitted that on their application Cash Credit limit of Rs.2 lakhs was sanctioned in their favour on 5th November, 1998. On 4th November, 1998 respondent 2 withdrew an amount of Rs.58,410/- and Rs.56,364/- from his account in Deorali branch of State Bank of India and deposited those two amounts on the next day in two fixed deposits in his name with the petitioner with assurances that on maturity the said amounts with accrued interests would be paid to him. On 25th October, 1999 the petitioner returned a cheque of Rs.5,000/- presented by respondent 2 with endorsement 'refer to the drawer', although the balance was well within the sanctioned limit of Rs. 2 lakhs. Subsequently also the petitioner refused to pay the cheques issued by respondent 2 from time to time without any reason although he (respondent 2) had not overdrawn any amount. Besides this, the petitioner illegally adjusted the</p>	

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		<p>aforesaid two fixed deposits in its accounts even though the said fixed deposits have not matured.</p> <p>5. While the matter stood thus, the petitioner filed an application for amendment of the plaint for addition of the following paragraphs:-</p> <p style="padding-left: 40px;">“8A. That records and documents duly signed by the defendant No.2 which are in custody of the Bank show that while taking loan from the Bank, the defendant No.2 as the proprietor of the defendant No.1 had agreed and furnished the two STDRs stated by them in the written statement as security for the loan. In this regard prescribed form of agreement was signed and furnished by the defendant No.2 on 5-11-1998 through which the two STDRs dated 26-5-1998 and 6-2-1998 for Rs.55,191/- each were kept as security for the loan. In the form of agreement, it has been clearly spelt out that in the event of the loan remaining unpaid the loanee authorised the Bank that the money due and payable to the Bank shall be realised from the securities namely from the two STDRs mentioned in the schedule to the said form.</p> <p style="padding-left: 40px;">8B. That the appraisal form which bears the signature of the defendant No.2 as the proprietor of Super Auto Agency also shows that he had kept the STDRs as collateral security towards guarantee of repayment of the loan to the Bank. The Bank had never assured repayment of the money in the two fixed deposits.</p>	

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		<p style="text-align: center;">8C. That even the other documents signed by the defendant No.2 had agreed that the Bank may recover its dues from the receivables of the defendants in case the defendants do not repay the loan with interest.”</p> <p>6. The ground for the proposed amendment was that due to inadvertence and inadequate instructions particulars of two fixed deposits made on 26th May, 1998 and 6th February, 1998 for Rs.51,191/- each could not be stated in the plaint.</p> <p>The respondents filed written objection to the amendment on the ground, <i>inter alia</i>, that earlier when question of supply of some documents arose, the petitioner with regard to the fixed deposit certificates stated that it did not want to rely on them.</p> <p>7. The learned trial Judge upheld the above objection raised by the respondent and by the impugned order rejected the application for amendment of the plaint.</p> <p>8. On perusal of the impugned order, we have no hesitation to hold that the learned trial Judge fell into error in refusing the prayer for amendment of the plaint. We may note here that the trial of the suit has not yet commenced. As a matter of fact, issues have not yet framed. The suit is, therefore, at a very preliminary stage. By bringing the facts pleaded in the proposed amendment, there would be no change of the nature or character of the suit. Admittedly, the petitioner has already adjusted the two fixed deposits made by the respondents. Respondents now, therefore, can canvass in the suit as to whether the petitioner is justified in adjusting the two fixed deposits. By the amendment as proposed, the respondents would not be in anyway prejudiced. The apprehension of the learned trial</p>	

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Judge that if the amendment is allowed it would amount to introduction of new facts is without any basis.

9. For the reasons stated above, the impugned order passed by the learned trial Judge cannot be sustained in law which is hereby set aside. The amendment sought for by the petitioner is hereby allowed subject to payment of cost of Rs.1,000/- which shall be paid to the respondents by 6th September, 2003 in the trial Court. The petitioner is hereby directed to supply copies of the two fixed deposits certificates to the respondents by 15th September, 2002. In view of the fact that we have allowed the amendment of the plaint, the respondents are at liberty to file additional written statement. They may also make counter claim if so advised. The lower Court records may be sent back forthwith.

10. The writ application is accordingly allowed. No costs.

N. Surjamani Singh
 (N. Surjamani Singh)
 Judge
 13.08.2003

R. K. Patra
 (R. K. Patra)
 Chief Justice
 13.08.2003

*Case file recd. on
 18-08-03
 he has
 18/8/03
 heads of trial Court-
 sent back on 19/8/03
 he has
 19/8/03*