

# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extra Ordinary Jurisdiction)

**DATED: 12<sup>th</sup> APRIL, 2017**

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**S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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W.P.(C) No. 53 OF 2016

**Petitioners** : 1. Smt. Kalpana Roy,  
W/o Late Dulal Roy,  
R/o Singtam,  
Dhamala Colony,  
East Sikkim.

2. Shri Saurav Roy,  
S/o Late Dulal Roy,  
R/o Singtam,  
Dhamala Colony,  
East Sikkim.

## **Versus**

**Respondents** : 1. M/s Dhamala Autoworks,  
Dhamala Colony,  
Singtam,  
East Sikkim.  
Represented through its proprietor  
Shri Uma Shankar Sarda,  
S/o Late P. Sarda,  
R/o Singtam,  
East Sikkim.

2. Shri Uma Shankar Sarda,  
S/o Late P. Sarda,  
R/o Singtam,  
C/o M/s Dhamala Autoworks,  
Dhamala Colony,  
East Sikkim.

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## **Appearance**

Mr. Umesh Ranpal, Advocate with Ms. Kesang Choden Tamang and Ms. Kimti Gurung, Advocates for the Petitioners.

Mr. J.K. Chandak, Advocate for the Respondents.

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## O R D E R

Meenakshi Madan Rai, J.

**(1)** The instant Petition under Article 227 of the Constitution of India has been filed by the Petitioner praying for setting aside the impugned Order dated 13.09.2016, passed by the learned Civil Judge-II (Junior Division), East Sikkim at Gangtok, rejecting an Application filed by the Petitioner under Order XI Rule 14 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter 'CPC').

**(2)** Briefly stated, the Petitioners case is that they had instituted a Money Suit No.22 of 2013, which is now before the learned Civil Judge-II (Junior Division), East Sikkim at Gangtok, for recovery of a sum of Rs.4,86,000/- (Rupees four lakhs and eighty-six thousand) only, on account of the death of the husband of Petitioner No.1 and the father of the Petitioner No.2, who was employed in the garage of the Respondent No.2 and had died in the course of his employment. That, the Petitioners filed certain documents along with the Plaint to prove their case, one such document being a '*Milap Patra*' (Compromise Deed) dated 06.08.2013, executed by the Respondent No.2 admitting the claims of the Petitioners. It is alleged that the original of the said document is in the possession of the Respondent No.2, thus, only the photocopy could be filed. Hence, the Application under Order XI Rule 14 read with Section 151 of the CPC, seeking a direction to

the Respondent No. 2 to produce the original document. The Respondents denied the averments made by the Petitioner contending, *inter alia*, that in the first instance, the Respondent No.2 was not even a signatory to the alleged '*Milap Patra*' and he is ignorant of the whereabouts of such a document. After hearing the parties, the learned Civil Judge dismissed the Application.

**(3)** Before this Court, it is prayed that as the Respondents deny being in possession of the original '*Milap Patra*', the Petitioners be allowed to file the photocopy of the said document, which may be tested during the evidence of the parties.

**(4)** Learned Counsel for the Respondents submits that as the Respondent No.2 was not a party to the execution of the Compromise Deed, therefore, the photocopy filed by the Petitioner does not bear the signature of the Respondent No.2. Nevertheless, he has no objection, if the document is allowed to be filed, as it is to be tested in terms of the Law which is a different matter altogether.

**(5)** I have considered the submissions of learned Counsel for the parties.

**(6)** The learned Trial Court after hearing the parties and considering the submission of the Respondent that the document was not in his possession added that the document did not fulfill

the ingredients of Sections 63 and 65 of the Indian Evidence Act, 1872 and therefore, disallowed the Petitioners from filing the document.

**(7)** Order XI Rule 14 of the CPC deals with production of documents and clothes the Court with powers to order the production of document in the possession or power of any party, at any time during the pendency of a suit, upon oath, which relates to any matter in question in such suit, as the Court thinks right and deal with the document as appears just.

**(8)** Juxtaposed to this provision is Order XIII Rule 1 of the CPC, which requires that original documents are to be produced at or before settlement of such issues and directs the parties to produce all original documents and the Court to receive them. Order XIII, Rule 3 deals with rejection of irrelevant or inadmissible documents. This provision enables the Court to reject any document which it considers irrelevant or otherwise inadmissible, at any stage of the suit, duly recording the grounds of such rejection.

**(9)** Needless to add, there is a difference between relevance of a document or its admissibility or inadmissibility. A Court may reject a document if it is not relevant to the matter in controversy but so far as admissibility is concerned, the Law lays down that an objection against admissibility should be decided as soon as the

objection is raised and should not be reserved till judgment is pronounced.

**(10)** Having said that when we move on to consider Order XIII Rule 4 of the CPC, it lays down the process for endorsement on documents which have been admitted in evidence. The documents admitted in the Court have to be dealt with in two stages, the first is when the documents are filed or produced in the Court, at that stage documents have to be received by the court. The second stage relates to formal proof of documents, at that stage the Court has to consider whether they should be admitted in evidence or rejected. What follows therefore is, mere marking of a document as an exhibit does not dispense with the proof thereof. The admissibility of a document has to be tested at the stage of evidence in terms of the provisions enshrined in the Indian Evidence Act, 1872 and thereafter, necessary orders issued by the learned Trial Court. Consequently, the document, if found inadmissible shall not form part of the records and shall be returned to the person producing them, in terms of Order XIII Rule 7 of the CPC, after being rejected as inadmissible in terms of Order XIII Rule 6 of the CPC.

**(11)** Accordingly, the learned Trial Court may take steps in accordance with Law.

Kalpna Roy & Another vs M/s Dhamala Autoworks & Another

**(12)** Petition disposed of with the above direction.

**(13)** Copy of this Order be sent to the learned Trial Court for information and compliance.

Sd/-

**( Meenakshi Madan Rai )**  
**Judge**  
12-04-2017

Approved for reporting : **Yes**  
Internet : **Yes**

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