

(2013) 05 MEG CK 0004
In the Meghalaya High Court
Case No : CR (P) No. (SH) 7 of 2013

Shella Village Dorbar

APPELLANT

Vs

Wallamphrang Lyngdoh Mawphlang

RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Citation : (2013) 05 MEG CK 0004

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : K. Paul, for the Appellant; H.S. Thangkhiew and L. Khyriem, for the Respondent

Final Decision : Disposed Off

Judgement

T. Nandakumar Singh, J.—Heard Mr. K. Paul, learned counsel appearing for the petitioner and Mr. HS Thangkhiew, learned senior counsel assisted by Mr. L. Khyriem, learned counsel appearing for the respondent. In this judgment and order proposing to pass, this Court is not making any observations regarding the merit of the case. What the Court is deciding in the present revision petition are (i) the revision against the judgment and order passed by the Presiding Officer of the Subordinate District Council Court, Shillong which is an appealable is the proper forum or not and (ii) also shall the Court invoke the jurisdiction under Rule 6 of the Assam High Court (Jurisdiction Over District Council Courts) Order, 1954 for revising the order passed by the Presiding Officer of the Subordinate District Council Court, in case the order is appealable?

2. For deciding the point No. 1, this Court is required to look into the provisions under the United Khasi-Jaintia Hills Autonomous District Council (Administration of Justice) Rules, 1953, the Assam High Court (Jurisdiction over District Council Courts) Order, 1954 as well as the Code of Civil Procedure, 1908. Rule 4 of the United Khasi-Jaintia Hills Autonomous District Council (Administration of Justice) Rules, 1953 (hereinafter referred to as "the Rules of 1953") provides the Constitution of Courts: under Order 4 of the Rules of 1953, there are different

kinds of court, viz.,

(i) Village Courts;

(ii) Subordinate District Council Courts and Additional Subordinate District Council Courts.

(iii) District Council Court and Additional, District Council Court.

3. Rule 28 of the Rules of 1953 clearly provides that the appeal shall lie to the District Council Court from the decisions of a Subordinate District Court in any case, civil or criminal. For ready reference of Rule 28 of the Rules of 1953 is quoted here in under:

28. Appeal to District Council Court - An appeal shall lie to the District Council Court from the decisions of a Subordinate District Court in any case, Civil or Criminal. The District Council Court may hear the appeal itself or may endorse it for hearing to the Additional District Council Court:

Provided that when the District Council Court is not sitting by reason of its Presiding Officer being on leave or otherwise the appeal shall lie to the Additional District Court.

Provided further that such appeals are accompanied by a copy of the order appealed against and a clear statement of the ground of appeal, and are filed within sixty days from the date of the order, excluding the time required for obtaining a copy of the order appealed against.

Under Rule 47 of the Rules of 1953 in all cases, the procedure of the District Council, Subordinate District Council Court and Additional Subordinate District Council Court shall be guided by the spirit but not bound by the letter of the Code of Civil Procedure, 1908 (as amended up to date) in all matters not covered by recognized customary laws or usages of the District.

4. On perusal of Rule 47 of the Rules of 1953, it is clear that in all the matters not covered by recognized customary laws or usages of the District, procedure shall be guided by spirit (CPC) the CPC in spirit in the process of the civil cases. Therefore, the following of procedure prescribed under the CPC in the civil cases of the District Council Court, is not ruled out.

5. u/s 115 of the Code of Civil Procedure, 1908 (in short "the CPC") the High Court can exercise the revisional power against the order in which no appeal lies. The wording of Section 115 of the CPC and Rule 6 of the Assam High Court (Jurisdiction Over District Council Courts) Order, 1954 are pari materia except the words "in which no appeal lies", inasmuch as, those words are not mentioned in Rule 6 of the Assam High Court (Jurisdiction Over District Council Courts) Order, 1954.

6. The impugned order in the present revision petition is an order relating with temporary injunction matter. Appealable order(s) are also mentioned in Order

XLIII of the CPC. Under Order XLIII, Rule 1, sub-rule-(r), orders passed under Rule 1, Rule 21[Rule 2A] Rule 4 or Rule 10 of order XXXIX of the CPC are appealable order(s).

7. On conjoint reading of the Rules of 1953 and the CPC, 1908, it is clear that the order under Rule XXXIX of the CPC: injunction order(s) passed by the Presiding Officer of the Subordinate District Council Court are appealable order(s). Appeal lies under Rule 28 of the Rules of 1953 to the Court of the Judge, District Council Court. Accordingly, this Court in a clear term held that an appeal lies against the present impugned order dated 20.12.2012 passed by the Presiding Officer of the Subordinate District Council Court, Shillong which is an order rejecting the application for injunction filed by the petitioner, under Rule 28 of the Rules of 1953 to the Judge, District Council Court.

8. Regarding the second issue, this Court is making an attempt to decide this issue by taking into consideration of Section 115 of the CPC inasmuch as, the CPC in spirit is followed in the proceeding of civil cases before the Presiding Officer of the Subordinate District Council Court. Normally, this Court exercises the power for revision against the order passed by the Subordinate District Council Court in case no appeal lies against that order. In the instant case, even if there are two remedies open to the petitioner against the impugned order i.e. viz., one in the form of appeal before the Judge, District Council Court and another in the form of revision before this Court, the petitioner has to approach the lower court by filing an appeal inasmuch as, in case of the existence of two remedies, i.e. one before the Lower Court and another before the Higher Court, the petitioner has to approach the Lower Court first. This Court is not deciding that the revision lies against the injunction order passed by the Presiding Officer of the Subordinate District Council Court to this Court.

9. For the foregoing discussions, the petitioner is directed to approach the Judge, District Council Court, Shillong by filing an appeal against the present impugned judgment and order dated 20.12.2012 passed by the learned Presiding Officer of the Subordinate of the District Council Court, Shillong in an injunction matter. However, it is made clear that any observations made in this judgment and order shall not cause any prejudice to either of the parties. It is also reiterated that this Court is also not making any observations regarding the merit of the case.

10. In the peculiar circumstances of this case, it is made clear that the learned Judge, District Council Court, Shillong shall condone the delay in filing the appeal as per direction of this Court and also shall make an attempt to dispose of the appeal within one month from the date of filing the appeal. With the above observations and directions, the revision petition is disposed of.