

IN THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR: TRIPURA:  
MIZORAM AND ARUNACHAL PRADESH)  
ITANAGAR PERMANENT BENCH

Appeal From  
Writ Petition (Civil)

FAO. No. 02..... (AP) 2010

Shri Darka Kamsi

Appellant  
Petitioner.

-Versus-

Shri Momar Lollen

Respondent  
Opposite Party.

Counsel for the Appellant Mr. K. Ete  
Petitioner. Mr. N. Ratan  
Mr. M. Kato  
Mr. G. Kato  
Ms. S. Appa

Counsel for the Respondent MR D. Pangng  
Opposite Party. MS L. Hage  
S. V. Darang  
MR D. Soki  
" C. N. Pangyok

Noting by Officer or Advocate	Serial No.	Date	Office note, reports, orders or proceeding with signature
(1)	(2)	(3)	(4)

IN THE MATTER OF:

Shri Darka Kamsi,  
S/o Shri Nyadar Kamsi,  
resident of Upper Colony, Aalo,  
P.O. & P.S. Aalo, West Siang District,  
Arunachal Pradesh.

.....Appellant

-VERSUS-

Shri Momar Lollen,  
Resident of Gour Hill, Aalo,  
P.O. & P.S. Aalo, West Siang District,  
Arunachal Pradesh.

.....Respondent.

**FAO No.02 (AP) 2010**

**BEFORE  
THE HON'BLE MR. JUSTICE HRISHIKESH ROY**

**25-01-2011**

Heard Mr. D Pado, learned counsel appearing for the appellant (defendant). The opposite party (plaintiff) is represented by Mr. D Panging, learned counsel.

2. The judgment and order dated 11.6.2010 in Money Suit No.4/2010 rendered by the Dy. Commissioner, West Siang District, Aalo is under challenge in the present appeal.

3. By the impugned order, the learned Court has directed the defendant to deposit an amount of Rs.4,30,000/- (Rupees four lakhs thirty thousands) within 15 days, for payment to the opposite party (plaintiff).

4. It is contended on behalf of the appellant that the Dy. Commissioner has passed the impugned order without furnishing a copy of the plaint to the defendant. He submits further that no issue was framed in the suit and the impugned order was passed without recording any evidence of the parties. Mr. Pado, learned counsel for the appellant (defendant) additionally submits that the so called undertaking referred to by the Dy. Commissioner, was obtained under duress from the defendant during the earlier proceeding in the Court of the EAC (K), Aalo, when the petitioner was arrested and detained on the complaint of the opposite party.

5. Mr. D Panging, learned counsel appearing for the opposite party (plaintiff) however submits that the defendant had agreed to pay the amount to the plaintiff by giving an undertaking on 30.6.2008 in the Court of the EAC (K) and accordingly the Dy. Commissioner has rightly ordered payment of the plaintiff's dues on the basis of undertaking given earlier by the defendant.

6. The records of the proceeding before the Dy. Commissioner has been made available for the Court's perusal. It is seen from the Court's proceeding that after the Money Suit was filed sometime in February 2010, no formal notice was issued to the defendant nor any issues were framed in the suit. It further appears that the



impugned order has been passed by the Court on 11.6.2010 without recording any evidence of either the plaintiff or the defendant.

7. It therefore is apparent that the Court had passed its order, without arriving at any finding that the impugned claim in the Money Suit was actually due or was admitted to be due by the defendant. The defendant also was not afforded any opportunity to rebut the claim of the plaintiff as even the copy of the plaint was not furnished to the defendant.

8. In the above circumstances, the impugned judgment and order dated 11.6.2010 can not be sustained and the same is accordingly set aside and quashed. The matter is remanded back to the Court to proceed afresh, from the stage of filing of the plaint. But in view of the Notification dated 8<sup>th</sup> June 2010, which requires the Dy. Commissioner to transfer such pending proceeding to the Court of the District Judge, Western Zone, Yupia, the Dy. Commissioner may pass necessary order for transfer of the Money Suit No.4/2010 to the Court of competent jurisdiction. It is ordered accordingly.

9. The case is disposed of with the above order.

  
JUDGE