

-AND-

IN THE MATTER OF:

Shri Gumdo Loyi

S/o Shri ~~C. D.~~ Loyi.

Permanent resident of Kabu Village.

P.O & P.S. Aalo. District: West Siang.

Arunachal Pradesh.

.....PETITIONER.

-VERSUS-

Shri Hitum Loya

S/o late Loya

Permanent resident of Puak Gumin

Aalo. P.O. & P.S: Aalo. District: West

Siang. Arunachal Pradesh.

.....RESPONDENT.

Contd.....p/3.

CRP 12 (AP) 2013

::BEFORE::

THE HON'BLE MR JUSTICE KALYAN RAI SURANA

25.05.2017

JUDGMENT AND ORDER (ORAL)

None appears for the petitioner on call.

2]. I have heard Mr. K. Jini, learned counsel for the sole respondent and also perused the Lower Court records.

3]. This matter was previously listed on 15.05.2017 and due to paucity of time, the matter could not be taken up. The learned counsel for the sole respondent had submitted that the respondent is presently 85 years old and a prayer was made for fixing a date for hearing and accordingly, this matter was directed to be listed on 24.05.2017 as agreed to by the learned counsels for both the sides. However, the learned counsel for the petitioner has submitted his letter of absence, which is circulated in the cause list w.e.f. 23.05.2017 to 26.05.2017.

4]. The matter was listed on 24.05.2017 and on the said date, the learned proxy counsel has made a prayer for adjournment of the matter on the ground that the arguing counsel would be on leave till 26.05.2017 and on the said prayer, the matter was adjourned on 24.05.2017. As the matter was already listed in the Part-II hearing list, it was directed that the matter would be taken up for hearing today. Accordingly, in view of the fact that the sole respondent is 85 years old, this Court has heard the matter notwithstanding the absence of the learned counsel for the petitioner.

5]. The case projected by the petitioner is that in the year 1976 there was some disputes between the father of the petitioner and one Late Tumto Loyi regarding recovery of a sum of Rs.3,000/- which was paid to the third party by Late

Tumto Loyi on behalf of the father of the petitioner Late Tumto Loyi being the clan members of the father of the petitioner paid all dues so as to save him from handing of some valuable local ornament to the said third party.

6]. It is projected that in the year 1977 Late Tumto Loyi claiming back amounting Rs.3,000/- which was paid to the third party and with regard to the dispute, a Keba was conducted in the year 1977 at Aalo Dere where the members directed the father of the petitioner and the petitioner to refund a sum of Rs.3,000/-. It is further projected that the petitioner had worked as contract labourer in contract work of the respondent for a period of 17 months. The petitioner had on daily wages basis worked for the respondent and thereby the petitioner had discharged all his liabilities due to the respondent and accordingly, all dues was cleared in the year 1977 itself. All of a sudden in the year 2012, the respondent started making claim for refund of Rs.3,000/- by making out a new story and the learned Deputy Commissioner, Aalo directed the Head Gaon Burah (HGB, in short) of Kabu Village to conduct a local Keba and issued with a notice dated 23.05.2012 to attend the Keba to be held on 03.06.2012 and 04.06.2012 at Kabu Dere. But, on receipt of the said notice, dated 23.05.2012, the petitioner submitted a representation to the HGB of Kabu Village on 04.05.2012 with a request to adjourned the case on the ground that the presence of Smt. Gumnya Loyi (Boje) is necessary so as to adjudicate the dispute properly and accordingly, the petitioner left the Keba Dere. Thereafter, the petitioner was very surprised to receive the notice dated 12.04.2013 issued by the Deputy Commissioner, Aalo, whereby the petitioner was directed to comply with the Keba decision dated 04.06.2012 and further directed the petitioner to pay the decreed amount of Rs.3,00,000/-(Rupees Three Lakh only) to the respondent within a period of 30 (thirty) days from the date of the issue of

the said order. The further case of the petitioner is that on receipt of the said notice dated 12.04.2013, the petitioner had submitted representation dated 01.05.2013 addressed to the Deputy Commissioner, Aalo with a request to recall the said notice/ order dated 12.04.2013 issued by him and, as such, the petitioner has filed this revision to challenge the Keba Decision dated 04.05.2012 as well as the notice dated 12.04.2013 issued by the Deputy Commissioner, Aalo.

7]. The learned counsel for the sole respondent Mr. K. Jini submits that the present revision is not maintainable. He submits that the petitioner has not annexed the Keba Decision dated 03rd & 04th June, 2012. It is further stated that from the impugned notice dated 12.04.2013 issued by the learned Deputy Commissioner, Aalo, it was apparent that it contained a reference of the Keba Decision on 03rd & 04th June, 2012 and therefore, the present revision under Section 50 of the Assam (Administration of Justice) Regulation, 1945 was not maintainable as the said regulation provided for an appeal under Section 46 before the Assistant Commissioner in suits not exceeding Rs.500/- in value and to the Deputy Commissioner in suits exceeding that value and as such, an alternative and efficacious remedy is available to the petitioner, therefore, this revision is liable to dismissed.

8]. On perusal of the materials available on record, this Court finds that in this revision, the petitioner has made a specific prayer for setting aside and quashing the Keba Decision dated 04.06.2012 in connection with Case No. WS/JK/KPPE/9430/ 2011 (PT). Moreover, in the notice No. WS/JK/ MD-70/2013 dated 12.04.2013, it is mentioned that the petitioner is to comply with the Keba Decision taken on 03rd & 04th June, 2012 and to pay the decreed amount of Rs.3,00,000/- (Rupees Three Lakh only) to Shri Hitum Loya within 30 days from the date of this order. Therefore, there is no escape from the fact that the petitioner was aware of the

Keba decision when he had moved the learned Deputy Commissioner, Aalo. Hence, in the opinion of this Court the proper remedy to be availed by the petitioner is by way of an appeal as provided under the Assam Frontier (Administration of Justice) Regulation, 1945. It appears that the letter dated 01.05.2013 submitted by the petitioner before the learned Deputy Commissioner, West Siang District, Aalo is that the Keba decision dated 04.06.2012 was never communicated to him. On a pointed query to the learned counsel for the respondent, it is submitted by the learned counsel for the respondent that the Assam Frontier (Administration of Justice) Regulation, 1945 does not mandate that the decision of the Keba is to be communicated to either of the parties.

9]. Mr. Jini, learned counsel for the respondent has referred to the provision of Regulation 44, which is extracted below:-

“(1) All suits tried by the village authorities shall be decided in open Darbar in the presence of the parties and at least three independent witness.

(2) The Deputy Commissioner or an Assistant Commissioner may direct a village authority to report their proceedings in any cases or class of cases in any way which may appear to him to be suitable. Save as required by such direction, no record of any proceedings shall be maintained.

(3) After hearing both parties and their witness, if any, the village authority shall forthwith pronounce a decision”.

10]. From the said provision, it appears that the Deputy Commissioner or the Assistant Commissioner as the case may direct the Keba to report their proceeding in any cases or class of cases in any way which may appear to him to be suitable. Save as required by such direction, no record of any proceedings is required to be maintained. If that be so, this Court is of the view that if the Keba is being already called to adjudicate the dispute between the parties, it is the obligation

of the concerned party; to collect the information as regards the decision given by the Keba and the Keba was not obliged under the 1945 regulation to issue any notice or to communicate its decision to any of the parties to the dispute.

11]. As this Court finds that there is a provision for filing an appeal against the decision of the Keba conducted by the Village authority, as provided under Regulation, 1945 of the Assam Frontier (Administration of Justice) Regulation, 1945, this Court is of the view that the present revision is not maintainable in view of efficacious alternative remedy of appeal under the 1945 Regulation.

Accordingly, this revision is dismissed.

However, as the revision is being dismissed on the ground that there is alternative and efficacious remedy is available to the petitioner, this order shall not be a bar for the petitioner to approach the appellate authority, if so advised.

Needless to say, as this revision petition has been dismissed, the interim order, if any, stands vacated.

Return the LCRs, forthwith.

JUDGE

Talem