

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP. No. 10 of 2025

Date of Order: 09.06.2025

The State of Meghalaya & Anr.	Vs.	Bijon Dey Sawian & Ors.
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Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. S. Sen, GA. Ms. Z.E. Nongkynrih, GA.
For the Respondent(s)	:	Mr. A.S. Dey, Adv. Mr. S. Marpan, Adv. for R 1. Mr. N.D. Chullai, AAG with Ms. R. Colney, GA. for R 2-4.

1. Heard Mr. S. Sen, learned GA appearing on behalf of the State petitioner, who has submitted that the notice issued upon the proforma respondent Nos. 5, 6 & 7 have been duly affected, and affidavit of service in this regard has been filed before this Court. However, none has appeared on behalf of the said respondents.

2. It is also the submission of the learned GA that, apparently, the proforma respondents have not even made their appearance before the Trial Court, and as such, prays that this matter may proceed without their presence in these proceedings.

3. Mr. A.S. Dey, learned counsel for the respondent No. 1 has no objection to the prayer made by the learned GA, and has also concurred that the proforma respondents have failed to make their appearance before the Trial Court. Accordingly, the matter shall proceed ex-parte against the proforma respondent Nos. 5, 6 & 7 respectively.

4. The learned GA has also submitted that the matter may now be posted for final hearing on the next date.

5. In the meantime, prayer is made for stay of the proceedings before the Trial Court, inasmuch as, when the application under Order 7 Rule 11 CPC have been filed by the State petitioner, have been disallowed by the Trial Court, effectively, it would mean that the trial would proceed. However, the State petitioner being aggrieved by such order, the same being dated 01.04.2025, has approached this Court by way of this revision petition.

6. The learned GA further submits that, at this point of time, considering the fact that, if there is no stay in the proceedings before the Trial Court, there is the danger that the State respondent, who is the defendant in the suit, may be found wanting as far as filing of the written statement is concerned, vis-à-vis, the period stipulated by law, and as such, under such circumstances, it is prayed that the proceeding in the suit may be stayed till disposal of this instant petition.

7. To support his contention, the learned GA has also referred to the case of **R.K. Roja v. U.S. Rayudu & Anr reported in (2016) 14 SCC 275**, more particularly para 5, 6 and 8, and has laid stressed on the observation of the Hon'ble Supreme Court at para 8 which reads as follows:

“8. The procedure adopted by the court is not warranted under law. Without disposing of an application under Order 7 Rule 11 CPC, the court cannot proceed with the trial. In that view of the matter, the impugned order is only to be set aside. Ordered accordingly.”

8. Per contra, the learned counsel for the respondent No. 1 has resisted the prayer made, and has referred to the provision of Section 115 and sub-Section 3 of the Code of Civil Procedure, to say that a revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

9. The learned counsel has also referred to the case of **K.R. Subbaraju v. M/S Vasavi Trading Co. & Ors reported in AIR 2002 Karnataka 407**, wherein at para 5 of the same, the Hon'ble Karnataka High Court has observed as follows:

“5. Subsequently, the Parliament having noticed that litigants interested in delaying disposal of suits had approaching High Court under its revisional jurisdiction under S. 115 of the Code against each and every order passed by the trial Court during the adjudicatory process just to stall the expeditious disposals. It was also noticed that by taking bare plea of the intention to file revision petition or the statement that it has been so filed, the trial Courts were forced to stay their hands either under the executive

instructions from some of the High Courts or by building pressure on the trial Courts by the appearing counsel. The Parliament accordingly thought it advisable to further curtail the scope of S. 115 and also to statutorily declare that mere intention to file revision petition or just filing of revision petition cannot be taken to be a ground for staying further progress of the suit.”

10. The said observation made by the High Court is relevant to the case of the parties herein, inasmuch as, filing of revision application or appeal or any other application before the High Court should not be the cause of stay of the proceedings before the Trial Court, when such process may only result in delay in the proceedings, and thereby, would cause injustice to the parties concerned. It is because of this that the Parliament had accordingly amended the said provision of Section 115 to insert this caution, further submits the learned counsel.

11. Under such ground, the learned counsel has submitted that the prayer of the State petitioner may not be allowed as far as stay is concerned.

12. It is also the further submission of the learned counsel for the respondent No. 1 that there is an application under Order 39 Rules 1 and 2 CPC, wherein the party would press for injunction before the Trial Court. This application has not been heard by the Trial Court, and therefore, if there is a stay in the proceedings, the rights of the parties concerned, would be defeated.

13. This Court has considered the submission made, and has also looked into the provision of the CPC and the authorities cited by the parties

across the board, and would say that the prayer of the learned GA is found acceptable, inasmuch as, when the application in question is with regard the relevance of an application under Order 7 Rule 11, if the same is allowed, the whole case of the plaintiff would collapse. Therefore, to allow such proceeding to continue, would be a futile exercise under such eventuality.

14. Be that as it may, it is well-settled that an interim order cannot by any measure be sustained for a prolonged period. As such, depending on the conduct of the parties, this instant revision petition will be taken up and disposed of accordingly in due course.

15. The authorities cited by the parties need not be elaborated, and under such circumstances, till the next returnable date or until further orders, the trial of the suit before the Trial Court is hereby stayed.

16. As conceded by Mr. S. Sen, the respondent No. 1/plaintiff/petitioner is allowed to pursue with his application under Order 39 Rules 1 and 2 CPC, if so desired.

17. As prayed for by the parties, list this matter on 17.06.2025 for hearing.

Judge

Meghalaya
09.06.2025
"D. Nary, PS"