

Money Suit 1 of 18

Order no. 20
dated 12/02/2020

Parties file hazira.

The record is taken up for passing order in respect of a petition u/s 151 of CPC filed by the defendant no.1 praying for stay of the instant suit. It is the contention of the petitioner (defendant no.1 of the present suit) that the plaintiff has filed this suit for being maliciously prosecuted, subsequent to his acquittal by the Court of the Ld. J.M, Kalimpong from the two criminal cases being GR case Nos. 294/15 and 307/15 and the defendants (herein the petitioner) has contended that two appeals have been preferred against such orders of acquittal before the Ld. District and Sessions Judge, Kalimpong being Criminal Appeal Nos. 3 of 2018 and 4 of 2018 respectively and it has been prayed that in the event such Criminal Appeal is allowed, the instant suit will become infructuous.

The plaintiff in his written objection specifically stated that there is no order of stay from the upper forum and that if the instant suit is stayed, it will cause prejudice to the plaintiff and also cause unnecessary delay.

Having gone through the petition and the written objection as well as the plaint and also having heard the submission made by the respective parties, it is apparent that the instant suit is for damages and compensation on the allegation of malicious prosecution. The petitioner / defendant no.1 has also filed document to show that the appeal has been preferred against GR case No. 294/15 and 307/15 wherein the plaintiff was acquitted by the Ld. J.M, Kalimpong. The suit, at present, is at the nascent stage and in my opinion, it would be best to consider the instant

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petition for stay of the suit at an appropriate stage as there is all probability of the appeal being disposed of in the meanwhile. Moreover this will avoid the procrastination of the suit till disposal of the appeal. As such, the petition for stay of the suit shall be considered at appropriate stage.

Fix **16.04.2020** for evidence of PW1.

D & C by me:

Civil Judge (Sr. Divn.), Kpg.

Civil Judge (Sr. Divn.), Kalimpong.