

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Revisional Jurisdiction)

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

CRP No.03 of 2026

Petitioner : Dawa Tamang

versus

Respondents : Maita Kumar Tamang @ Maitay and Another

Application for revision under Article 227 of Constitution of India

Appearance

Mr. Passang Tshering Bhutia, Advocate with Ms. Pem Lhaki Tamang, Advocate for the Petitioner.

Mr. Jorgay Namka, Senior Advocate (Legal Aid Counsel) with Ms. Rinchen Ongmu Bhutia, Advocate (Legal Aid Counsel) for the Respondent No.1.

Mr. Lekden Thondup Basi, Advocate (Legal Aid Counsel) for the Respondent No.2.

Date of hearing : 21-04-2026
Date of pronouncement : 21-04-2026
Order uploaded : 23-04-2026

ORDER (ORAL)

Meenakshi Madan Rai, J.

1. The Petitioner herein, (Defendant No.1 before the Learned Trial Court), impugns the Order of the Court of the Learned Civil Judge (Senior Division), Pakyong, Sikkim, dated 27-11-2025, in Title Suit No.09 of 2024 (*Maita Kumar Tamang vs. Dawa Tamang*), vide which, the Learned Trial Court rejected an application of the Petitioner filed under Section 151 of the Code of Civil Procedure, 1908 (hereinafter, the "CPC"), seeking to file additional documents. The Petition was rejected *inter alia* on the ground that an erroneous provision of law was invoked by the Petitioner, as the CPC provided a specific provision for seeking leave of the Court to fill additional documents, post the filing of the Written Statement.

2. The additional documents sought to be filed by the Petitioners were the electricity bills in the name of the Petitioner/Defendant from June, 2007 to April, 2024 and the Voter Identity Cards issued by the Election Commission of India pertaining to Masini Tamang and Maita Kumar Tamang (the Respondent No.1 herein), to fortify the Petitioner's contention of impersonation by the Respondents.

3. It is the submission of Learned Counsel for the Petitioner that, merely because a wrong provision of law was cited, the prayer of the Petitioner ought not to have been rejected by the Court since relief could have been granted sans the technicality. Relying on the decision in ***Pruthvirajsinh Nodhubha Jadeja (D) by Lrs. vs. Jayeshkumar Chhakaddas Shah and Others***¹, it was urged that the Supreme Court has held therein that, it is well settled that, mere non-mentioning of a provision is not fatal to the application if the power to pass such an order is available with the Court.

4. Objecting to the prayers advanced by Learned Counsel for the Petitioner, Learned Senior Counsel for the Respondent No.1 submitted that no averments pertaining to the additional documents have been made in the Written Statement nor reasons given for filing of the documents. The source from where the documents were obtained has also not been revealed, hence there is no substantial ground for filing the Petition. That, if this Court is inclined to allow the Petitioner to rectify its Petition under Section 151 of the CPC, the Learned Trial Court ought to be directed to first consider the reasons for filing of the said documents.

5. Learned Counsel for the Respondent No.2 has no specific submissions to advance.

¹ Civil Appeal No.10521 of 2013 decided on 04-10-2019

6. I have heard Learned Counsel for the parties. The impugned Order, dated 27-11-2025, of the Learned Trial Court, *inter alia* reads as follows;

“.....

The absence of bona fides, combined with the availability of proper procedural mechanisms under the CPC—which the defendant failed to invoke—precludes the exercise of inherent powers in his favour. Section 151 cannot be used to circumvent express provisions of the Code or to assist a party who has not approached the Court with due diligence.

Also, the defendant's application under Section 151 CPC cannot be sustained as the defendant has neither disclosed the source nor established possession of the documents sought to be produced, nor has any satisfactory explanation for the delay in filing these documents been offered, thus the application under Section 151 CPC, 1908 is accordingly rejected.

.....”

7. To the extent of the observation of the Learned Trial Court that, the Petitioner ought to have been diligent and invoked the correct provision of law, this Court is on the same page with the Learned Court. Nonetheless, the circumstance of having invoked an incorrect provision by itself ought not to be the reason to deprive the Petitioner from filing the additional documents to buttress his case, when in fact the trial is at a nascent stage, as evident from the records available before this Court.

8. The Petitioner has also, in his application under Section 151 of the CPC as Defendant, before the Learned Trial Court, put forth the following averments;

“7. That the defendant in written statement has also stated that in the plaintiff's Electoral Voter Identity Card, bearing Epic No. SK01/019/009004, dated 1.11.1996, the plaintiff's father name has been recorded as Man Bdr. Tamang and the electoral Voter identity card of Masini Tamang bearing Epic no. SK01/019/009024 the husband name has been mention (sic) as Man Bahadur Tamang.

8. That on 02.12.2024 the Defendant had made an application praying for issuance of summons to the election department to get all the details of Electoral Voter Identity Card, bearing Epic No.

Dawa Tamang vs. Maita Kumar Tamang @ Maitay and Another

SK01/019/009004, dated 1.11.1996 and Epic SK01/019/009024, under section 30, Order XI Rule 14 read with section 151 of the Code of Civil Procedure, 1908 and vide order dated 19.12.2024 the application was allowed by this Hon'ble court.

9. That the defendant would like to submit that the Defendant somehow manage to get the Voter Identity Card, bearing Epic No. SK01/019/009004, dated 1.11.1996 of Maita Kr. Tamang and Epic No. SK01/019/009024 of Masini Tamang. A copy of the Voter Identity Card, bearing Epic No. SK01/019/009004, dated 1.11.1996 of Maita Kr. Tamang and Epic no. SK01/019/009024 of Masini Tamang is annexed herewith and marked as Annexure-A2 (colly)."

9. In fact, vide the Order of the Learned Trial Court, dated 19-12-2024, an application filed by the Petitioner under Section 30, Order XI Rule 14 read with Section 151 of the CPC, requesting the Court to issue summons to the Election Department, was allowed.

10. In the interregnum, the documents mentioned (*supra*) appear to have been obtained by the Petitioner. The Petitioner surely cannot be faulted for making efforts to buttress his defence before the Learned Trial Court. The argument of Learned Senior Counsel for the Respondent No.1 that no averments pertaining to such documents now sought to be filed as additional documents was made in the Written Statement, is not tenable for the reason that, Paragraph 16 of the Written Statement of the Petitioner makes a reference to the Electoral Identity Cards.

11. The entire exercise of a trial in a Title Suit is to get to the crux of the matter and to provide even handed justice to the litigating parties. Justice must be seen to be done and the Court should not be weighed down by technicalities.

12. On this facet, the Supreme Court in ***Sugandhi (dead) by Legal Representatives and Another vs. P. Rajkumar represented by his power agent Imam Oli***² has categorically propounded that;

² (2020) 10 SCC 706

Dawa Tamang vs. Maita Kumar Tamang @ Maitay and Another

"9. It is often said that *procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice.* If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3)."
[emphasis supplied]

(i) Further, the Supreme Court in ***Rani Kusum (Smt) vs. Kanchan Devi (Smt) and Others***³ has observed as follows;

"14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

(ii) In the same spirit, the Supreme Court in ***M/s Anvita Auto Tech Works Pvt. Ltd. vs. M/s Aroush Motors and Another***⁴ reiterated that;

"2. The present controversy can be encapsulated in words of the Hon'ble Justice V.R. Krishna Iyer:

"Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It is the handmaid of justice and not its mistress"

(iii) The gamut of the foregoing decisions of the Supreme Court is revelatory of the stand that, a litigant should not be denied substantial justice on grounds of technicalities.

13. In light of the facts and circumstances of the case and relying on the observations (*supra*) of the Hon'ble Supreme Court, although the Petitioner has invoked an incorrect provision of law, in my considered view, the Petitioner ought to be afforded an opportunity by the Learned Trial Court to re-file the application, filed under Section 151 of the Code of Civil Procedure, 1908, by

³ (2005) 6 SCC 705

⁴ 2025 SCC OnLine SC 2181

incorporating the correct legal provision, for seeking leave of the Court to file additional documents.

14. The Learned Trial Court shall thereafter consider the Petition as per law.

15. Civil Revision Petition stands disposed of accordingly.

16. Stay of the proceedings in Title Suit No.09 of 2024, granted vide Order of this Court, dated 19-02-2026, stands vacated accordingly.

17. Copy of this Order be forwarded to the Learned Trial Court for information and compliance.

(Meenakshi Madan Rai)
Judge

21-04-2026

Approved for reporting : **Yes**