

**IN THE GAUHATI HIGH COURT**

(The High Court of Assam, Nagaland, Meghalaya,  
Manipur, Tripura, Mizoram & Arunachal Pradesh)

**ITANAGAR BENCH**

**CRP No.03 (AP) of 2009**

Shri Doli Diyum,  
s/o late Mardo Diyum,  
permanent resident of Kombu Tarsu  
village, PO & PS Aalo, West Siang  
District, Arunachal Pradesh.

*...Petitioner*

**Versus**

Dr. Tojum Lollen,  
Serving as Medical Officer,  
District Hospital, Aalo,  
PO & PS Aalo, West Siang District,  
Arunachal Pradesh.

*...Respondent*

**BEFORE  
THE HON'BLE MR. JUSTICE AC UPADHYAY**

For the Petitioner            ::     Mr.K.Ete, Advocate.  
For the Respondent         ::     Mr.D.Panging, Advocate  
Date of hearing/            ::     14.12.2009  
Judgment & order

**JUDGMENT AND ORDER  
(O R A L)**

I have heard Mr.K.Ete, learned counsel  
appearing on behalf of the petitioner and Mr.D.Panging,  
learned counsel for the respondent.

[2] This is an application filed under Section 50 of the Assam Frontier (Administration of Justice) Regulation 1945 read with Section 115 of the Civil Procedure Code, 1908 for setting aside and quashing of the order dated 17.12.2008 passed by the Ex-Officio Assistant Commissioner, Aalo and order date 12.01.2009 passed by the learned Court of the Deputy Commissioner, West Siang District, Aalo, whereby the Officer-in-charge, Aalo, P.S. was directed to seize the Tata Safari vehicle of the petitioner and to place the same for public auction.

[3] The facts as stated by the petitioner, which led to filing of this Civil Revision Petition, may be narrated in brief, as follows:

The petitioner received a sum of Rs.30,000 (Rupees thirty thousand) as loan from the respondent sometime in the year 1994-95 to be paid back without any condition or interest on the principal amount as they were known to each other. The petitioner repaid a sum of Rs.24,000/- to the respondent on demand. After receiving the aforesaid amount of Rs.24,000/- the respondent claimed the entire amount with interest thereon. Thereafter, in the year 1996, the petitioner in order to settle the matter, to avoid bitter relationship, sold a plot of land to the respondent for consideration of a sum of Rs.60,000/-, for which the petitioner received a sum of Rs.30,000/- only from the respondent by deducting Rs.30,000/- by way of adjustment of loan aforesaid. Thereafter, the possession of the land was also handed over to the respondent. The petitioner relaxed after the settlement of the matter with the respondent.

[4] However, suddenly the petitioner came to know that a case had been filed before the Judicial Magistrate First Class, Aalo, by the respondent for recovery of the aforesaid amount. The petitioner entered appearance in the case on 4.9.2006 as directed by the court and explained the entire happening to the learned Presiding Officer, i.e. learned J.M.F.C, Aalo and sought for time for amicable settlement.

[5] The petitioner further alleged that the learned JMFC, Aalo, had no jurisdiction to try a civil case, however, ignoring such fact of lack of jurisdiction, the case was disposed of by the learned Court without giving any opportunity of being heard to the petitioner and without any evidence on record. The petitioner stated that the order dated 04.09.2006 was passed by the learned court below behind the back of the petitioner, wherein direction was issued to the petitioner to repay a sum of Rs.1,50,000/- in two instalments. On the same day i.e. 4.9.2006 the learned court of JMFC, Aalo, also issued non-bailable warrant of arrest against the petitioner.

[6] The petitioner was arrested and detained in the custody for non compliance of the said order. Vide order dated 04.01.2007, learned LMFC, Aalo, allowed the petitioner to go on bail, but again a condition was imposed directing the petitioner to execute an undertaking to the effect that he will deposit the said amount within a period of one month. Being aggrieved by the order dated 04.09.2006 the petitioner filed a Civil Revision Petition before this Court, which was registered as CRP No.02 (AP)/07 and, the same was disposed on withdrawal, vide order dated 12.09.2007, with an observation, to enable the petitioner to seek appropriate legal remedy as may be available under the

provisions of law. Accordingly, the petitioner filed an appeal petition dated 20.11.2007 along with a delay condonation petition in the Court of Deputy Commissioner, West Siang District.

[7] It is stated by the petitioner that the learned Court of the Deputy Commissioner, Aalo, without hearing the petition for condonation of delay in the connected appeal filed by the petitioner, issued the impugned orders dated 12.01.2009 directing attachment and seizure of the Tata Safari vehicle, belonging to the petitioner, for public auction. Hence, this Civil Revision petition has been filed praying for relief as indicated hereinabove.

[8] On perusal of the materials on record, it appears that the only grievance of the petitioner in the instant case is non disposal of the application for condonation of delay in the connected appeal filed by him before the Deputy Commissioner, West Siang District, Aalo, against the order dated 04.09.2006 passed by the Judicial Magistrate (1<sup>st</sup> Class), Aalo.

[9] On perusal the lower court record, which was called for in this case it appears that on 20.11.2007 the learned court of Deputy Commissioner, West Siang District, Aalo, having received the application for condonation of delay together with the appeal filed by the petitioner, marked it to the Extra Assistant Commissioner (J) for necessary action. However, apparently, thereafter no effective order finally disposing of the application/appeal aforesaid was passed by the learned court of the Deputy Commissioner, West Siang District.

[10] In the meantime, the learned court of Deputy Commissioner, Aalo by its order dated 12.01.2009 directed

the seizure of Tata Safari vehicle bearing Registration No.AS-06 C/2140 belonging to the petitioner with all its accessories and documents for non deposit of the decretal amount of Rs.1.5 lakh by the petitioner. Apparently, the learned court of D.C., Aalo, before passing this order of attachment of the vehicle belonging to the petitioner ought to have exercised his jurisdiction to dispose of the petition for condonation of delay in the connected appeal filed by the petitioner in accordance with law.

[11] Mr.D.Panging, learned counsel for the respondent submitted that even if petition for condonation of delay in filing the appeal is preferred in the connected appeal, there is no bar in executing the money decree passed by the learned Court below, since there is no stay order. However, learned counsel for the respondent also fairly submitted that there is no question of disputing the disposal of the condonation petition in the connected appeal preferred by the petitioner by the appropriate authority.

[12] In any view of the matter execution of the money decree is not the subject matter of dispute in this revision petition. Obviously it will be within the jurisdiction of the learned court of D.C., Aalo, to consider and decide as to whether in the given facts and circumstances, the money decree will be allowed to be executed at this stage, when the jurisdiction of the court passing the decree is under challenge and when the moot question before him for decision is non disposal of the appeal preferred by the petitioner before proceeding with the execution of the decree.

[13] It is well settled principle of law that if the court below fail to exercise its discretion in accordance with sound judicial principles it will be deemed to be an exercise of jurisdiction with material irregularity and in such circumstances this court would be bound to undo the injustice caused to the concerned party. Similarly, if the learned court below fails to exercise jurisdiction so vested in law, it would also invite interference by this court.

[14] The learned court of Deputy Commissioner, Aalo in the present case, by ignoring to pass any order whatsoever, on the condonation of delay petition in the connected appeal preferred by the petitioner, went ahead to issue the impugned order directing the seizure and auction of the vehicle belonging to the petitioner in execution of the decree. Thus, apparently, learned court of Deputy Commissioner, Aalo, failed to exercise jurisdiction so vested on him as appellate authority.

[15] In the facts and circumstances of the case, after having given thoughtful consideration on the entire subject matter, I am of considered view that the learned court of D.C., Aalo, before issuing any order of warrant of attachment of the vehicle of the petitioner should have taken steps for disposal of the condonation of delay application in the connected appeal preferred by the petitioner as against the impugned order of J.M.F.C, Aalo.

[16] Accordingly, without lingering the discussion any further, in the facts and circumstances discussed above, I propose to dispose of this case with a simple direction to the learned court below, i.e. the Deputy Commissioner, West Siang District, Aalo, to dispose of the application for condonation of delay filed by the petitioner

in the connected appeal in accordance with law by giving adequate opportunity of hearing .

[17] In view of the direction aforesaid, issued to the learned court of D.C., West Siang, Aalo, in fitness of things, the impugned orders dated 17.12.2008 and 12.01.2009 passed by the learned court below, are hereby set aside.

With the above direction, this case stands disposed of. Send back the L.C.R along with a copy of this order.

JUDGE