

# HIGH COURT OF SIKKIM



## NEWSLETTER

Vol. 11, Issue No. 4

October to December, 2016



### **EDITORIAL BOARD**

Hon'ble Mr. Justice Satish K. Agnihotri, Chief Justice,  
High Court of Sikkim

Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim

### **COMPILED BY**

Mr. N.G. Sherpa, Registrar General

---

A quarterly Newsletter published by High Court of Sikkim, Gangtok  
Also available on our website: [www.highcourtofsikkim.nic.in](http://www.highcourtofsikkim.nic.in)

# CONTENTS

	Page No.
EDITORIAL BOARD, HIGH COURT OF SIKKIM	
VACANCIES IN COURTS.....	1
INSTITUTION, DISPOSAL & PENDENCY OF CASES.....	2 - 6
RECENT HIGH COURT JUDGMENTS.....	7 - 8
SOME RECENT MAJOR EVENTS .....	9 - 10
IMPORTANT VISITS & CONFERENCES.....	11 - 12
E-COURTS – MISSION MODE PROJECT.....	13

# HIGH COURT OF SIKKIM

## EDITORIAL BOARD



Hon'ble Mr. Justice Satish K. Agnihotri,  
Chief Justice,  
High Court of Sikkim



Hon'ble Mrs. Justice Meenakshi Madan Rai,  
Judge,  
High Court of Sikkim

**VACANCIES IN COURTS**

(i) Vacancies in the High Court of Sikkim as on 31.12.2016

Sl.No.	Sanctioned Strength	Working Strength	Vacancies
1.	03	02	01

(ii) Vacancies in the District & Subordinate Courts as on 31.12.2016

Sl.No.	Sanctioned Strength	Working Strength	Vacancies
1.	Superior Judicial Service  (SSJS) - 13	07	06 <ul style="list-style-type: none"><li>• 01 post of District &amp; Sessions Judge (Spl. Div.-1)</li><li>• 01 post of District &amp; Sessions Judge (Spl. Div.-II)</li><li>• Member Secretary, Sikkim State Legal Services Authority</li><li>• Director, Sikkim Judicial Academy</li><li>• Central Project Coordinator, e-Courts</li><li>• 01 post in the cadre of SSJS created (in compliance to the direction passed by the Hon'ble Supreme Court in Brij Mohan Lal Vs. Union of India)</li></ul>
2.	Sikkim Judicial Service  (SJS) – 10	06	04 <ul style="list-style-type: none"><li>• Chief Judicial Magistrate-cum-Civil Judge (East) at Gangtok</li><li>• Civil Judge-cum-Judicial Magistrate (South) at Namchi</li><li>• Civil Judge-cum-Judicial Magistrate (West) at Gyalshing</li><li>• Civil Judge-cum-Judicial Magistrate (North) at Mangan</li></ul>
<b>Total</b>	<b>23</b>	<b>13</b>	<b>10</b>

COURT NEWSLETTER OCTOBER - DECEMBER 2016

INSTITUTION, DISPOSAL & PENDENCY OF CASES

(1) Statement of Main & Misc. Cases in the High Court of Sikkim from 01.10.2016 to 31.12.2016.

Sl. No.	Pending as on 30.09.2016	Institution	Disposal	Pending as on 31.12.2016
	Main Cases	Main Cases	Main Cases	Main Cases
1.	145	71	44	172

(2) Total Institution, Disposal & Pendency of cases in the Subordinate Courts of Sikkim from 01.10.2016 to 31.12.2016.

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016	Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016
East District at Gangtok	Main cases	230	105	76	259	723	231	231	723
	Misc. cases	87	63	63	87	26	208	216	18
West District at Gyalshing	Main cases	24	16	13	27	40	43	37	46
	Misc. cases	24	13	23	14	03	87	90	00
North District at Mangan	Main cases	09	01	02	08	08	10	10	08
	Misc. cases	07	31	29	09	00	16	14	02
South District at Namchi	Main cases	45	27	24	48	97	110	74	133
	Misc. cases	36	149	156	29	04	105	108	01
Family Courts	Main cases	124	51	43	132	28	22	22	28
	Misc. cases	01	00	01	00	03	05	05	03
Fast Track Courts	Main cases	-	-	-	-	10	06	04	12
	Misc. cases	-	-	-	-	00	00	00	00
Juvenile Justice Boards	Main cases	-	-	-	-	12	12	14	10
	Misc. cases	-	-	-	-	00	08	08	00
Total Main Cases		432	200	158	474	918	434	392	960
Total Misc. Cases		155	256	272	139	36	429	441	24

COURT NEWSLETTER OCTOBER – DECEMBER 2016

INSTITUTION, DISPOSAL AND PENDENCY OF CASES DISTRICT WISE

(1) Total Institution, Disposal and Pendency of cases in the Subordinate Courts of Sikkim from 01.10.2016 to 31.12.2016  
(i) East District at Gangtok.

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016	Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016
District & Sessions Judge (East)	Main cases	100	53	42	111	131	60	41	150
	Misc. cases	69	55	57	67	10	87	95	02
District & Sessions Judge (Spl. Div.-I)	Main cases	03	11	00	14	00	08	03	05
	Misc. cases	01	03	01	03	00	00	00	00
District & Sessions Judge (Spl. Div.-II)	Main cases	05	02	00	07	01	00	00	01
	Misc. cases	01	00	00	01	00	00	00	00
Chief Judicial Magistrate-cum-Civil Judge (East)	Main cases	07	02	04	05	317	134	138	313
	Misc. cases	04	02	01	05	07	31	27	11
Civil Judge-cum-Judicial Magistrate (East)	Main cases	69	35	21	83	195	28	31	192
	Misc. cases	10	03	04	09	06	90	93	03
Civil Judge-cum-Judicial Magistrate Chungthang Subdivision stationed at Gangtok (East)	Main cases	46	02	09	39	79	01	18	62
	Misc. cases	02	00	00	02	03	00	01	02
Total Main Cases		230	105	76	259	723	231	231	723
Total Misc. Cases		87	63	63	87	26	208	216	18

(ii) West District at Gyalshing

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016	Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016
District & Sessions Judge (West)	Main cases	14	14	09	19	25	11	09	27
	Misc. cases	22	07	18	11	02	28	30	00
Chief Judicial Magistrate-cum-Civil Judge (West)	Main cases	00	01	00	01	00	05	01	04
	Misc. cases	00	01	00	01	00	07	07	00
Civil Judge-cum-Judicial Magistrate (West)	Main cases	09	01	04	06	05	09	10	04
	Misc. cases	02	03	05	00	01	25	26	00
Civil Judge-cum-Judicial Magistrate, Soreng Subdivision, West Sikkim	Main cases	01	00	00	01	10	18	17	11
	Misc. cases	00	02	00	02	00	27	27	00
Total Main Cases		24	16	13	27	40	43	37	46
Total Misc. Cases		24	13	23	14	03	87	90	00

## COURT NEWSLETTER OCTOBER – DECEMBER 2016

### (iii) North District at Mangan

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016	Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016
District & Sessions Judge (North)	Main cases	01	00	01	00	05	05	04	06
	Misc. cases	06	02	03	05	00	04	03	01
Chief Judicial Magistrate-cum-Civil Judge (North)	Main cases	00	01	00	01	00	03	02	01
	Misc. cases	00	00	00	00	00	05	04	01
Civil Judge-cum-Judicial Magistrate (North)	Main cases	08	00	01	07	02	02	03	01
	Misc. cases	01	02	03	00	00	03	03	00
Civil Judge-cum-Judicial Magistrate, Chungthang Sub Division, North Sikkim	Main cases	00	00	00	00	01	00	01	00
	Misc. cases	00	27	23	04	00	04	04	00
Total Main Cases		09	01	02	08	08	10	10	08
Total Misc. Cases		07	31	29	09	00	16	14	02

### (iv) South District at Namchi

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016	Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016
District & Sessions Judge (South)	Main cases	18	11	07	22	81	37	14	104
	Misc. cases	36	139	154	21	03	53	56	00
Chief Judicial Magistrate-cum- Civil Judge (South)	Main cases	02	00	02	00	09	53	46	16
	Misc. cases	00	01	01	00	00	31	31	00
Civil Judge-cum- Judicial Magistrate (South)	Main cases	25	16	15	26	07	20	14	13
	Misc. cases	00	09	01	08	01	21	21	01
Total Main Cases		45	27	24	48	97	110	74	133
Total Misc. Cases		36	149	156	29	04	105	108	01

COURT NEWSLETTER OCTOBER – DECEMBER 2016

(v) Family Courts

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016	Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016
Family Court, East at Gangtok	Main cases	94	30	33	91	19	13	13	19
	Misc. cases	01	00	01	00	02	02	03	01
Family Court West at Gyalshing	Main cases	07	02	03	06	00	00	00	00
	Misc. cases	00	00	00	00	00	00	00	00
Family Court North at Mangan	Main cases	00	02	00	02	02	00	02	00
	Misc. cases	00	00	00	00	00	00	00	00
Family Court South at Namchi	Main cases	23	17	07	33	07	09	07	09
	Misc. cases	00	00	00	00	01	03	02	02
Total Main Cases		124	51	43	132	28	22	22	28
Total Misc. Cases		01	00	01	00	03	05	05	03

(vi) Fast Track Court

NAME OF THE COURT		CRIMINAL CASES			
		Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016
Fast Track Court (East & North) at Gangtok	Main cases	03	03	02	04
	Misc. cases	00	00	00	00
Fast Track Court (South & West) at Gyalshing	Main cases	07	03	02	08
	Misc. cases	00	00	00	00
Total Main Cases		10	06	04	12
Total Misc. Cases		00	00	00	00



(vii) Juvenile Justice Boards

NAME OF THE COURTS		CRIMINAL CASES			
		Opening balance as on 01.10.2016	Institution from 01.10.2016 to 31.12.2016	Disposal from 01.10.2016 to 31.12.2016	Pendency at the end of 31.12.2016
Juvenile Justice Board East, at Gangtok	Main cases	06	04	05	05
	Misc. cases	00	04	04	00
Juvenile Justice Board West, at Gyalshing	Main cases	02	01	03	00
	Misc. cases	00	00	00	00
Juvenile Justice Board North, at Mangan	Main cases	01	00	00	01
	Misc. cases	00	00	00	00
Juvenile Justice Board South, at Namchi	Main cases	03	07	06	04
	Misc. cases	00	04	04	00
Total Main Cases		12	12	14	10
Total Misc. Cases		00	08	08	00

## **SOME RECENT JUDGMENTS OF HIGH COURT OF SIKKIM**

**FROM (01.10.2016 to 31.12.2016)**

**1. Where there was contributory negligence on the part of the deceased driving the vehicle, 50% has to be deducted from the total loss of dependency:** On 25/10/2016, a Single bench of the Court in MAC App. No. 2 of 2016 (The Branch Manager, United India Insurance Co. Ltd. Vs. Lily Ongmu Lepcha) held that a claim for compensation arising out of motor vehicle accident is based on tortious liability while a contract of insurance is a contract of indemnity. The third party for whose benefit the insurance is taken and who files a claim under section 166 of the Motor Vehicles Act has to establish that the driver was negligent in driving the vehicle which thereby resulted in the accident; that the owner was vicariously liable and Insurance Company was bound to indemnify the owner. Hence, a claimant is entitled to get compensation under Section 166 of the Act when the driver who is the tortfeasor was driving the vehicle rashly and negligently. The legal burden of proving negligence rests on the claimant, but where it is impossible to know the precise cause of the accident, this hardship can be overcome by resorting to the principle of *res ipsa loquitur*. The option of filing a claim petition under section 163 of the Act is also extended when such a person does not seek to prove rash and negligent driving of the offending vehicle as the cause of the accident, and also whose annual income is below Rs. 40,000/-. In the instant case, the factum of rash and negligent driving has not only been established by the claimant but has also been admitted by the appellant. Further, the income of the deceased was also undoubtedly Rs. 40,000/-. Hence, recourse has rightly been taken to section 166 of the Act. However, as the accident occurred on account of the rash and negligent driving of the deceased, it would tantamount to contributory negligence on his part, thus, the claimant is entitled to only 50% of the total amount of loss of dependency. The amount of compensation awarded by the MAC Tribunal has been modified accordingly.

**2. Photocopy of the Power-of-Attorney does not empower the holder of the said document to represent a company in judicial proceedings:** In Crl. Appeal No. 11 of 2015 (Kail Ltd. Vs. Jamel Akhtar & Ano., decided on 08/11/2016), the issue before the Court was whether the Power-of-Attorney holder of the appellant company can represent the appellant with a photocopy of the said document and institute a case under Section 138 of the Negotiable Instrument Act, 1881. It was held that undoubtedly, the Power-of-Attorney empowers an agent to affect his principal's position by doing acts on his behalf, the relationship perhaps arising out of an ailment, old age or other inconvenience of the principal, or when the company as a juristic person authorizes a representative. But when the document is in photocopy with the signatures also in photocopy, it is legally not tenable to accept the document and allow its contents in evidence and therefore, allow the power of-Attorney holder to represent the company. No reasons have been put for non-filing of the original Power-of-Attorney or for that matter a certified copy of the said document. Petition accordingly dismissed.

**3. Requirement of the rented premises on ground of personal occupation extends to the requirement of not only the landlord, but also of his extended joint family:** On 18/11/2016, a Single Bench of the Court in RFA No. 3 of 2015 (Pradeep Golyan Vs. Durga Prasad Mukhia) held that the term “personal occupation” in the Notification of 1949 governing tenancy in Gangtok extends to occupation and requirement of not only the landlord, but brings within its ambit the immediate and extended joint family of the landlord or where the existence of a relationship gives rise to certain moral obligations, such as, extending shelter to a married daughter. Further, referring to the judgment of the Hon’ble Supreme Court in Sait Nagjee Purushottam, the Court held that the tenant cannot dictate terms to the landlord and advise him as to what he should do or should not do. It is always the privilege of the landlord to choose the nature and place of business. The Court upheld the impugned judgment and decree granting eviction on ground of personal occupation, considering the facts and circumstances of the case.

## **SOME RECENT MAJOR EVENTS**

### **1. FOUNDATION STONE LAYING CEREMONY OF THE COURT OF THE CIVIL JUDGE-CUM- JUDICIAL MAGISTRATE, CHUNGTHANG SUB DIVISION, NORTH SIKKIM.**



Hon'ble Mr. Justice Jagdish Singh Khehar, Judge, Supreme Court of India laying down the foundation stone of the Court of Civil Judge-cum-Judicial Magistrate, Chungthang Subdivision, North Sikkim.



Lightening of Lamp by Hon'ble Mr. Justice Jagdish Singh Khehar, Judge, Supreme Court of India, and Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of India, in the gracious presence of Hon'ble Mr. Justice Satish K. Agnihotri, Chief Justice, High Court of Sikkim and Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim.

The “Foundation Stone Laying Ceremony” of the Court of Civil Judge-cum-Judicial Magistrate, Chungthang Sub-Division, North Sikkim was held on 09<sup>th</sup> October, 2016 at Chungthang Sub-Division, North Sikkim. The Foundation Stone was laid by Hon’ble Mr. Justice Jagdish Singh Khehar, Judge, Supreme Court of India and Hon’ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of India, in the gracious presence of Hon’ble Mr. Justice Satish K. Agnihotri, Chief Justice, High Court of Sikkim and Hon’ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim.

**IMPORTANT VISITS & CONFERENCES**

1. Hon'ble Mr. Justice Satish K. Agnihotri, Chief Justice, High Court of Sikkim and Hon'ble Mrs. Meenakshi Madan Rai, Judge, High Court of Sikkim & Executive Chairperson, Sikkim State Legal Services Authority attended the Conference on "National Consultation on Challenges in Mediation and Way Forward" on 1<sup>st</sup> October, 2016 at Kothari Auditorium, DRDO, New Delhi.
2. Hon'ble Mr. Justice Satish K. Agnihotri, Chief Justice, High Court of Sikkim and Hon'ble Mrs. Meenakshi Madan Rai, Judge, High Court of Sikkim visited Chungthang to attend "Foundation Stone Laying Ceremony of the Court of the Civil Judge-cum-Judicial Magistrate, Chungthang Sub-Division, North Sikkim" on 09<sup>th</sup> October, 2016. The Foundation Stone was laid by Hon'ble Mr. Justice Jagdish Singh Khehar, Judge, Supreme Court of India and Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of India.
3. Hon'ble Mrs. Meenakshi Madan Rai, Judge, High Court of Sikkim & Hon'ble Chairperson, Juvenile Justice Act & Rules, High Court of Sikkim attended the Conference on "Regional Consultation on Effective Implementation of Juvenile Justice Act- Focus on Rehabilitation Services and Linkages with POCSO" at Guwahati, Assam w.e.f. 26<sup>th</sup> November, 2016 to 27<sup>th</sup> November, 2016 organized by the Supreme Court Juvenile Justice Committee and Guwahati High Court supported by UNICEF.
4. Hon'ble Mrs. Justice Meenakshi Madan Rai, High Court of Sikkim and Executive Chairperson, Sikkim State Legal Services Authority visited Gnathang, East Sikkim on 10<sup>th</sup> December, 2016 for launching of the NALSA (Legal Service to the Workers in the Unorganized Sector) Scheme, 2015.



5. Hon'ble Mr. Justice Satish K. Agnihotri, Chief Justice, High Court of Sikkim and Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim and Executive Chairperson, Sikkim State Legal Services Authority visited Namchi, South Sikkim for launching of the NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015, NALSA (Child Friendly Legal Services to Children and their Protection) Scheme, 2015 and for awareness on POCSO Act, 2012, organized by Sikkim State Legal Services Authority held on 17<sup>th</sup> December, 2016 at the Community Hall, Namchi, South Sikkim. On this auspicious occasion, Hon'ble Mr. Justice S. Nagamuthu, Judge, High Court of Madras presided as the Guest of Honour and Padmashree Smt. Sunita Krishnan, Co-founder and Director, Prajwala NGO, Hyderabad was the Resource Person for the programme.

**PROGRESS MADE IN THE HIGH COURT AND SUBORDINATE  
COURTS OF SIKKIM UNDER E-COURTS MISSION MODE PROJECT**

**October to December, 2016:**

1. Execution of work of Scanning, Digitization and Digital Preservation of Cases/Judicial Records of High Court of Sikkim and Subordinate Courts of Sikkim started with effect from 1<sup>st</sup> October, 2016. In the first phase, scanning of case records started in High Court and two District Courts of Sikkim, namely: District & Sessions Court, East at Gangtok and District & Sessions Court, South at Namchi. In the second phase, the District & Sessions Courts of West and North Districts will be covered where execution of works have commenced from mid April, 2017.
2. One CCTV camera each has been installed in the High Court and one each in the four District & Sessions Courts of Sikkim, for monitoring the work of Scanning and Digitization of case records.
3. One Server each has been provided to the High Court and one each in four District & Sessions Courts of Sikkim for digitally preserving Case data of scanned and digitized records.
4. Two printers for District & Sessions Court, Gangtok, East Sikkim and one printer each had been provided to District & Sessions Court, South and Civil Court Mangan, North Sikkim. Two more UPS had been provided to the Civil Court Mangan, North Sikkim in the month of February, 2017 from funds provided under E-Courts Mission Mode Project by E-Committee, Supreme Court of India.



