

GAHC040014952018



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**  
**(ITANAGAR BENCH)**

**CRP No. 10(AP)/2018**

1. Sri Balo Tadik

Son of late Balo Teri

Village Paga

P.O. Raga

District- Kamle (AP) Papum Pare district

2. Sri Godak Tajik

Son of late Godak Tatum

Village Boasimla

P.O. Boasimla

District-Kamle (AP) lower Subansiri

..... **Petitioners**

**VERSUS**

Smt. Joram Puni

Wife of Sri Joram Tagur

Village Sekh Jara

P.O. Yachuli

District Lower Subansiri,

Arunachal Pradesh.

..... **Respondent**

**BEFORE**  
**HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Advocate for the Petitioner : Mr. T Tapak, Advocate  
Advocate for the Respondent : None appeared.  
Date of Hearing : **19.07.2023**  
Date of Judgment : **24.11.2023**

**JUDGMENT & ORDER (CAV)**

1. Heard Mr. T. Tapak, learned counsel for the petitioner. The petitioner had taken steps to serve notice on the sole respondent but notices could not be served. Several endeavours were made by the petitioner to serve notices to the respondent and finally, the notices were published through paper publication in compliance to the orders of this Court dated 02.09.2022 and 06.12.2022 and finally, an affidavit was submitted by the petitioners relating to the paper publication of the notices to the respondent under Order V Rule 18 of the Code of Civil Procedure, 1908 (CPC for short). The petitioners in this case are Sri Balo Tadik and Sri Godak Tajik and the respondent is Smt Joram Puni.

2. This Civil Revision Petition is filed under Section 115 R/W Section 151 of the Code of Civil Procedure, 1908 for setting aside and quashing the order dated

13.03.2018 passed by the learned Civil Judge, Senior Division, Lower Subasiri District, Ziro in Money Suit No. 09/2017, whereby objection to the maintainability of the suit was not accepted and next date was fixed for documentation. The money suit was instituted by the plaintiff-respondent herein, representing Nyishi Police Fund – unregistered Society/Association against the petitioners/defendants. A preliminary objection was raised by the petitioners/defendants in the money suit relating to the maintainability of the money suit contending inter-alia that an unregistered society/association cannot sue and be sued.

3. Brief facts leading to this case are that the respondent as a treasurer of Nyishi Police Fund has averred that on 19.11.2014, Sri Balo Tadik-petitioner No. 1 herein, who was in dire need of money borrowed an amount of Rs. 1,00,000/- from the Nyishi Police Fund and the petitioner no. 2, Sri Godak Tajik, being a relative of the petitioner no. 1 stood as guarantor. On good faith, the respondent lent the amount to be repaid with 10% interest per month within one year and it was also assured by the petitioner no. 1 that in the event of his failure to repay the money the same shall be recovered from his salary. The petitioner no. 1, however, failed to repay the loan and he, thereafter, changed his permanent address from Raybalo village under Kra Daadi district to Paga village under Lower Subansiri district. The respondent apprised the petitioner

No. 1 to repay the loan but after the petitioner no. 1 changed his address, the respondent could not contact him. Sensing foul play, the respondent sent a notice dated 01.06.2016 requesting the petitioner no. 1 to repay the loan with interest failing which a legal proceeding would be initiated against him but there was no response to the notice by the petitioner. The petitioner no. 1 sought for more time to repay the loan with interest and accordingly, an agreement more particularly, Annexure-C was executed on 14.07.2016 in presence of attesting witnesses and the petitioner assured to pay Rs. 2,00,000/- but again the petitioner failed to repay the amount as agreed upon. The respondent also went up to the petitioner no. 1's present address but the petitioner could not be found and then, the respondent was impelled to bring up the Money Suit No. 9/2017 for recovery of an amount of Rs. 3,90,000/-, including the rate of interest at 10% per month for 29 months till 19.04.2017, out of the principal amount of Rs.1,00,000/- borrowed by the petitioner no. 1, along with the cost of suit and any other relief or reliefs as per law and equity.

4. Per contra, the petitioner no. 1 and 2 contested the money suit and filed separate written statements contending inter-alia that the suit is not maintainable and is liable to be rejected at the threshold. It was averred that the respondent is not a police and the petitioner no. 1 did not borrow money from the respondent and the respondent was also not granted permission from

the members of the Nyishi Police Fund to file the instant money suit. It is submitted that no cause of action arose warranting filing of the instant money suit. The money receipt is not registered as required under the Registration Act. As such, it is not admissible as evidence, more so, when the money receipt is not affixed with sufficient stamp as required under Indian Stamp Act.

5. It is also contended that Nyishi Police Fund is not a registered society or firm or company, which can be treated as a juristic person to sue or be sued. As such, the instant money suit is not maintainable under law. The petitioner no. 1 has denied that he borrowed money from the respondent Smt. Joram Puni/plaintiff. It is averred that the money receipt dated 19.11.2014, more particularly, Annexure-A of the plaint has been tampered with by obtaining signature of Smt. Joram Puni, whereas, in fact, the original money receipt does not bear the name and signature of Smt. Joram Puni. Moreover, Smt. Joram Puni (respondent) was not present at the time of execution of the aforesaid money receipt. As Smt. Joram Puni is not a police personnel, she cannot be a member of the Nyishi Police Fund. It is also averred that Nyishi Police Fund is not a legal entity to sue or to be sued and thus, has no locus standi to file the instant money suit. It is also averred that the interest rate of 10% per month is too high a rate.

6. Against the written statements filed by the defendants/petitioners herein,

the respondent/plaintiff Smt. Joram Puni filed an affidavit stating that through the written statements, the petitioners have brought in some new facts which had to be clarified. It was submitted that the respondent's husband is a police personnel and the respondent and her husband decided to operate the Nyishi Police Fund by contributing equal amounts on rotation basis to help the members. The members of the police fund did not approach the petitioners but it was the petitioners who compelled the respondent to lend money @ 10% interest per month. The respondent was duly authorised by the Nyishi Police Fund to conduct the meeting dated 28.05.2016 and the respondent was authorised to conduct the recovery drive, issue notice and file the original case on behalf of the members of the Nyishi Police Fund, Ziro (Hapoli). It is submitted that although, the Indian registration Act and Stamp Act are applicable in the state of Arunachal Pradesh, there are no mandatory provisions under the act to affix sufficient stamp on money receipt. The registration of money receipt is optional. Non registration of a document cannot be a ground to dismiss the suit unless the petitioners disprove the case of having borrowed money from the respondent. Money receipts and subsequent documents executed by the parties are admissible as primary evidence under the Indian Evidence Act 1872, (the Evidence Act for short). This instant case is indeed admissible in law and facts. It is also averred that the Nyishi Police Fund is a self

help group to help the members and there are no specific Rules relating to the Nyishi Police Fund. It is submitted that there is no bar to sue the present petitioners. The respondent has vehemently denied that the signature on the money receipt (Annexure-A) was fraudulently affixed. It submitted that an expert opinion can be sought to prove the signature of the petitioner as well as that of the respondent relating to the money receipt. It is also submitted that the petitioner cannot blow hot and cold at the same time. They earlier agreed to a rate of interest @ 10% per money and now, they have contended that 10% is too high a rate of interest. The respondent has prayed for a judgment and decree awarding Rs. 3,90,000/- to be paid by the petitioners.

7. On 13.03.2018, the impugned order was passed and the petitioners have prayed to set aside this impugned and the operative part is reproduced herein verbatim:-

*“The Ld. Counsel for the defendant has submitted that the Nyishi Police Fund is not a registered society under Society Registration Act and thereby they cannot have the privileges of juristic person. It is also alleged that the plaintiff has no Locus Standi to file the suit in capacity of treasurer of the said fund.*

*He has submitted that a decision of Madras High Court decided in Tamil Nadu Technical Education Versus the Secretary to Govt. decided on 10-06-10.*

*The Ld. Counsel has submitted that the instant Money Suit is not maintainable in its present form under law as well as fact.*

*The Ld. Counsel for the plaintiff has submitted that the non registration of the*

*group of persons cannot be a ground to dismiss the case under CPC. He has submitted one ruling of Supreme Court in K. B. Saha and sons Pvt. Ltd. Versus Development Consultant Ltd.*

*He has also pointed that the plaintiff has been duly authorized by the members of the Nyishi Police Fund in his plaint. He also submitted that the Section-65 of Indian Contract Act is applied in instant case in favour of the plaintiff.*

*Heard both the sides.*

*Perused the case records and the plaints.*

*I have carefully gone through the case decided in Tamil Nadu Technical Education Versus the Secretary to Govt., I find that it is a case relating to the matter of writ wherein a person must be filed a case either in personal capacity or in juristic person. The said writ was dismissed for want of juristic person essentially required in a writ petition. Now, the present case is in hand is a civil contract which is exclusive governed under Indian Contract Act and CPC.*

*The brief fact of the case is that the defendant has been alleged to obtain loan from the plaintiffs. The plaintiffs are a group of persons and raised the funds under the banner of Nyishi Police Fund. It is also alleged that the fund was raised for the purpose of welfare of the so called members. However, the fund was lent to the defendant on his request on several times.*

*As regards to maintainability of the suit, I find that the suit is only for recovery of the alleged lent amount from the defendant. "Now, the question of raising of registration of the so called Nyishi Police Fund is not the actual issue of the case. As such, I am of the view that the defendant is trying to take an advantage of such non registration of the group of association after availing the loan." It is clearly implies that the part of the agreement is a void agreement particularly the imposing of 10% per month and the lending of money under the name and stand of Nyishi Police Fund. However, if the claim of the defendant is allowed, it shall defeat the very object of Sec-65 of Indian Contract Act. The defendant cannot be allowed to take advantage of such*

*void agreement.” He has to compensate the amount if it is proved at the trial of the suit. Therefore, the case is not become maintainable for non registration of the society of the so called Nyishi Police Fund.”*

*As regards to Locus Standi of the plaintiff deponent, I am of the view that the suit has been filed by the plaintiff in his personal capacity representing the other members having interest on the claim amount. The suit is not filed in a representative capacity of treasurer. The plaintiff has mentioned the treasurer in his plaint but the same cannot be treated as a representative capacity of the Nyishi Police Fund. As per the provision of Order 1 Rule 8 and 10 of CPC, the plaintiff can represent the other persons having interest in the suit. Therefore, the suit is maintainable in personal capacity of the plaint representing the other members and not in a juristic representative capacity.”*

8. I have considered the submissions on behalf of the petitioners.

9. It is submitted that the respondent has no locus standi to file the suit. The ‘Nyishi Police Fund’ was not a Registered Society. Section 65 of the Indian Contract Act is not applicable because money does not belong to the respondent/plaintiff. The petitioners have relied on the decision of High Court of Judicature of Bombay at Aurangabad in **Gorakh Hilal Patil & Another Vs. Parit Samaj Seva Mandal & Another** reported in **2011 0 AIR (Bom) 654:-**

*“23..... Although admittedly, a registered society is endowed with an existence separate from that of its members for certain purposes, that is not to say that it is a legal person for the purposes of Sections 223 and 236 of the Act. Whereas a company can be regarded as having a complete legal personality, the same is not possible for a society, whose existence is closely connected, and even contingent, upon the persons who originally formed it. Inasmuch as a company enjoys an identity distinct from its original shareholders, whereas the society is undistinguishable, in some aspects, from its own members, that would qualify as a material distinction, which prevents societies*

*from obtaining Letter of Administration.”*

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*25. Therefore, it follows from the aforesaid authoritative pronouncement of the Hon'ble Supreme Court that the care must be taken to ensure that necessary party is before the Court, be it a plaintiff or defendant, otherwise, the suit or the proceedings will have to fail. (Emphasis supplied).*

*26. The contention of the counsel for the respondents that in case of SinghaiLal Chand Jain (dead) Vs. Rashtriya Swayamsewak Sangh, Panna & ors. (1996) 3 Supreme Court Cases 149, the Supreme Court has taken a view that the decree passed in the suit will not be a nullity on the ground of mere not seeking a permission of the Court under Order I Rule 8 of the Civil Procedure Code and, therefore, in the instant case also merely because no permission is taken from the Court to institute the suit in the representative capacity, would not nullify the decree, is not acceptable. From the reading of the facts in case of Singhai (supra), eviction suit filed against the respondent and represented by the Manager, the President who was practicing Advocate, and also member, and all the three were prosecuting the suit. Therefore, in that case eviction suit was filed against the registered body through its Manager, President and member and all the three persons were competent to file the suit. Therefore, in the facts of that case, the Hon'ble Supreme Court had taken that view. However, in the instant case, admittedly the respondent No.1 is unregistered. It is not a registered Society or Trust etc. Therefore, it was open for all 262 members to institute the suit. The 5 plaintiffs who instituted and prosecuted the suit have not prosecuted the suit in representative capacity by taking the permission from the Court as contemplated under the provisions of Order I Rule 8 of the Civil Procedure Code. Therefore, the suit which was instituted by the respondent No.1 should have been filed by joining all its 262 members who were necessary parties to the suit. If at all the respondent No.1 wanted to file the representative suit, in that case, it was open for them to institute a representative suit by following the procedure prescribed under Order I Rule 8 of the Civil Procedure Code. In the present case, the suit was instituted*

*in the name of Mandal through its President and 5 persons, who according to the respondent No.1 are panchas of the Mandal. The defect in the institution of suit is fatal to the maintainability of the suit itself. Therefore, in my opinion, taking overall view of the matter, it will have to be concluded that the suit which was instituted by the respondent No. 1 through its President and 5 other plaintiffs who are alleged to be the panchas of the Mandal, was not maintainable in absence of joining all 262 members as party to the suit. I also find force in the arguments of the counsel for the applicants that, if at all the possession of the suit property is to be handed over, it will have to be handed over to the 5 plaintiffs who are no more. Since the institution of the suit itself suffers from non joinder of necessary parties and the defect in the institution of the suit is fatal to the maintainability of the suit, handing over possession to the individuals who stepped in the shoes of 5 original plaintiffs who died during the pendency of the suit, would even cause damage and prejudice to the interest of the respondent No.1 itself. Therefore, though there are concurrent findings of the fact that the respondent No.1 is entitled to decree for bonafide requirement, the defect in the institution of the suit is fatal to the maintainability of the suit and, therefore, the suit should necessarily fail. In the instant case, the trial Court has neither exercised the discretion under Order I Rule 8(1)(b) of the Civil Procedure Code to direct one or more persons to sue on behalf of all persons, nor the plaintiffs sought such permission by way of filing application to exercise such discretion. A specific objection was raised by the original defendants for maintainability of the suit. Therefore, taking overall view of the matter, in my opinion, the judgments and orders passed by the courts below are not sustainable. Therefore, having been concluded that the suit was not maintainable, all further proceedings on merits and decree passed thereafter are of nullity.*

*27. In the result, the judgment and order dated 21/9/2007, passed by learned Ad-hoc District Judge-1, Dhule in Regular Civil Appeal No.26/2006 and the judgment and order dated 7/2/2006, passed by learned Civil Judge, Junior Division, Shirpur in Regular Civil Suit No. 263/1992 are quashed and set aside. However, it is clarified that the respondent No.1 is not precluded from instituting fresh suit in accordance with law and as contemplated under Order I Rule 8 of the Civil Procedure Code, or all 262 members can file the suit if they so desire. It is needless to mention that if such fresh*

*suit is filed by the respondent No.1, the concerned Court will keep in mind the time spent by the respondent No.1 in prosecuting the suit, appeal and proceedings before this Court. The Civil Revision Application is allowed to above extent and stands disposed of. Rule made absolute in above terms. Civil Application, if any, stands disposed of in view of disposal of the Civil Revision Application. Record and proceedings be sent back to the concerned Court forthwith."*

10. In the instant case, the learned Civil Judge has appositely passed the order. The money receipt marked as Annexure-1 has been challenged by the petitioners as not being properly stamped and it has also been challenged that the Nyishi Police Fund is not a juristic person. Through her affidavit in MS No. 9/2017, the plaintiff/respondent herein had submitted that the plaintiff and her husband decided to operate the Nyishi Police Fund by contributing equal amount to help the members on rotation basis. Para-3 of the affidavit reveals that the plaintiff-respondent herein and her husband decided to operate the Nyishi Police Fund by equal contribution and her husband is a police personnel. The respondent has not at all disputed that the Nyishi Police Fund is not a Registered Society or is not a juristic person. The petitioners have themselves disclaimed the validity of the receipt of the Nyishi Police Fund. It is premature to decide at this stage in what manner the respondent is willing to proceed with this case. When the respondent and her husband have claimed to be contributing to the Nyishi Police Fund, this suit indeed is not a suit of representative character as per Order I Rule 8 of the CPC. It is not clear, how

many members form the 'Nyishi Police Fund'. It is not clear at this juncture if the funds are contributed and maintained only by the petitioner and her husband.

11. It has been appositely held by the learned Civil Judge that the suit is for recovery of money borrowed by the petitioners from the respondent no. 2. The petitioners are trying to shy away from the responsibility of repayment of loan by diverting the attention towards the non-registration of the 'Nyishi Police Fund' and towards the allegedly illogical and high rate of interest imposed by the respondent. It has been correctly held that if the suit is dismissed on the ground of maintainability, the very object of Section 65 of the Indian Contract Act shall be defeated. The question of maintainability of the suit can be considered at the stage of final disposal of the suit.

12. The petitioners have themselves claimed that the respondent is not a member of Nyishi Police Fund. So, the argument of the petitioners that the suit is not maintainable as the Nyishi Police Fund is not a juristic person, can be safely brushed aside. As the respondent is allegedly not a member of Nyishi Police Fund and as she is not an employee under the Police Department, the dispute regarding the respondent not being a member of Nyishi Police Fund and the maintainability of the Title Suit captioned above, can be taken up along with the other issues while finally deciding the money suit. The respondent had earlier mentioned in her affidavit that the fund is maintained by a joint

contribution. It is not clear at this juncture, who maintains the fund. The dispute regarding the significantly high rate of interest @ 10% per month to be imposed for delay in the repayment of loan can also be decided at the stage of final disposal of the Title Suit. The denial of the petitioners relating to borrowing of money from the respondent or from the Nyishi Police Fund can only be decided with supporting evidence, be it documentary or oral evidence.

13. In the wake of the foregoing discussions, I am hesitant to interfere with the order dated 13.03.2018, passed by the learned Civil Judge, Senior Division, Lower Subansiri District, Ziro, in connection with Money Suit No. 09/2017.

14. The revision petition is hereby dismissed.

15. No order as to cost(s).

16. Send back the LCR.

**JUDGE**

**Comparing Assistant**