

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

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

CRP No. 6 of 2026

State of Sikkim,
Through the Secretary,
Tourism & Civil Aviation Department,
Government of Sikkim,
Gangtok,
Sikkim.
Pin - 737101.

..... Petitioner

versus

Nimmi Oberoi,
Hotel Norkhil Campus,
Paljor Stadium Road,
Gangtok,
East Sikkim,
Pin – 737101.

..... Respondent

**Revision Petition under Section 115 of the
Code of Civil Procedure, 1908**

Appearance:

Mr. Zangpo Sherpa, Additional Advocate General for the State
Petitioner.

Mr. Debarshi Dutta, Advocate (through V.C.) with Ms K.D. Bhutia,
Advocate for the respondent.

Date of hearing : 21st August, 2026
Date of judgment : 2nd September, 2026
Order uploaded on: 3rd September, 2026

O R D E R

Bhaskar Raj Pradhan, J.

The State of Sikkim invokes the provision of Section 115 of the Code of Civil Procedure, 1908 (CPC) to assail the impugned order dated 13.04.2026 passed by the learned Commercial Court at Mangon in Arbitration Case No.1 of 2026.

2. The State of Sikkim prays for transfer of Commercial Arbitration Case No.1 of 2026 to another district.

3. The necessary facts for disposal of the present case is on a narrow compass. On 15.05.2021, the respondents filed an application under Section 9(ii) of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) before the learned Commercial Court, East Sikkim at Gangtok, seeking interim relief of injunction. On 31.05.2021, the learned Commercial Court passed an order restraining the State of Sikkim from disturbing the respondent's possession and enjoyment of leased premises until commencement of the arbitration proceedings. According to the petitioner, the present Presiding Officer who passed the impugned order dated 13.04.2026 was also the same Presiding Officer who enjoined the State of Sikkim vide order dated 31.05.2021 in the application under Section 9(ii) of the Arbitration Act and he decided the said application extensively on the merits of the case. Thereafter, the State of Sikkim had assailed the order dated 31.05.2021 passed by the learned Commercial Court at Gangtok before this Court and this

Court had allowed the appeal filed by the State of Sikkim. However, the judgment passed by this Court allowing the appeal of the State of Sikkim was interfered by the Supreme Court which allowed the appeal of the respondent, set aside the impugned judgment of this Court and appointed a sole arbitrator to settle the dispute between the parties. The Sole Arbitrator passed an Award dated 05.12.2022 against the State of Sikkim. The State of Sikkim therefore preferred an appeal under Section 34 of the Arbitration Act before the Commercial Court at Gangtok. On 28.10.2025, the learned Judge, Commercial Court at Gangtok recused from hearing the case on the ground that the counsel for the respondent was his spouse. This Court vide office order no. 149/JUDL.HCS dated 25.02.2026 in the administrative side transferred the appeal under Section 34 of the Arbitration Act to the Commercial Court at Mangan. Thereafter, the Commercial Court at Mangan passed the impugned order dated 13.04.2026.

4. The learned Commercial Court in the impugned order dated 13.04.2026 opined that hearing of an earlier application seeking certain interim measures/orders concerning the same matter cannot be a ground for recusal of the Presiding Judge. Accordingly, the prayer for recusal was rejected. The State of Sikkim is aggrieved and therefore, the present petition.

5. Heard the learned Additional Advocate General for the State of Sikkim. It is contended by him that as the learned Judge, Commercial Court at Mangan had decided the application under

Section 9(ii) of the Arbitration Act extensively on merits, he ought not to hear the present appeal under Section 34 of the Arbitration Act as the learned Judge had already made up his mind on the merits of the case and rendered the findings against the State of Sikkim in the earlier order dated 31.05.2021.

6. Mr. Debarshi Dutta, learned Counsel for the respondent on the other hand vehemently objects to the present revision petition on several grounds. Firstly, it is contended that the impugned order is an interim order and therefore not assailable under Section 115 of the CPC. Secondly, it is contended that merely because the learned Presiding Judge had decided on an application under Section 9(ii) of the Arbitration Act earlier, he cannot be asked to recuse from hearing the appeal under Section 34 of the Arbitration Act. Finally, it is contended that the State of Sikkim has not been able to show any inherent bias which would preclude the learned Judge, Commercial Court at Mangon to hear the appeal.

7. Section 115 of the CPC permits the High Court to call for the records of any case pending in any Court subordinate to such High Court in which no appeal lies and if such subordinate Court appears - (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

8. The proviso to Section 115 of the CPC states that the High Court "shall not", under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceedings, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. The explanation further provides that the expression, "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceedings.

9. In ***DLF Housing & Construction Co. Pvt. Ltd. vs. Sarup Singh***¹, the Supreme Court had stated that:

"The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the

¹ (1972) SCR 368

prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal." at Pg.373."

10. The Amendment Act, 1999 which amended the proviso to Section 115(1) so as to delete clause (b) has the effect of barring interference in revision against interlocutory orders even where there is failure of justice or irreparable injury. This was done and intended to cut the number of revisions.

11. In **Tek Singh vs. Shashi Verma And Anr.**², the Supreme Court opined that from a reading of the proviso after 1999, revision petition filed under Section 115 of the CPC are not maintainable under interlocutory orders.

12. The impugned order of refusal to recuse from the case even if it was decided in favour of the State of Sikkim would not have disposed of the suit or other proceedings. All that it would result in would be a change of the Presiding Officer or the Court. However, neither the suit nor other proceeding would be disposed of. Therefore, I am in agreement with the objection raised by the

² Civil Appeal No.1416 of 2019

learned Counsel for the respondent that this is not a case in which the revisional powers under Section 115 of the CPC ought to be exercised.

13. In ***Neelam Manmohan Attavar vs. Manmohan Attavar (dead) through Legal Representatives***³, the applicant-petitioner-in-person submitted before the Supreme Court that one of the honourable Judges should recuse himself from hearing the application to which the Supreme Court opined:

"3. We see no valid and good ground for recusal by one of us. Merely because the order might not be in favour of the applicant earlier, cannot be a ground for recusal. A litigant cannot be permitted to browbeat the Court by seeking a Bench of its choice. Therefore, the prayer of the applicant-petitioner-in-person that one of us (Dr. Dhananjaya Y. Chandrachud, J.) should recuse from hearing the present miscellaneous application is not accepted and the said prayer is rejected."

14. I am also of the considered view that the learned Judge who decided the application under Section 9 of the Arbitration Act does not have to automatically recuse from subsequently hearing the appeal under section 34 arising from the same arbitration unless the State of Sikkim is able to demonstrate a real and reasonable apprehension of bias. If an application for recusal is permitted on the mere asking on the ground that the learned Judge had decided one way or the other earlier on an application under Section 9 of the Arbitration Act, it would lead to the party choosing their Judge which would not be proper for administration of justice. An application under Section 9 and an appeal under Section 34 of the Arbitration

³ (2021) 3 SCC 727

Act involves different inquiries. Section 9 deals with interim and protective measures while Section 34 is an appeal to set aside the award under limited statutory grounds.

15. It may also be relevant to examine whether the learned Judge while deciding the application under Section 9 finally adjudicated an issue directly central to an appeal under Section 34 and made findings that effectively amounted to conclusion on the validity or legality of the arbitral award or express strong views on the merit of the case which lays down a strong foundation of the charge of bias against him.

16. The paragraphs of the order dated 31.05.2021 passed by the learned Judge, Commercial Court on 31.05.2021 which troubled the State of Sikkim and quoted in the petition under Section 115 of the CPC, clearly reflects that he was conscious of the jurisdiction in interpreting the various clauses of the agreement at the stage of Section 9 of the Arbitration Act. The learned Judge carefully examined clauses thereof "*for the limited purpose of deciding the present petition*" and gave his "*prima facie*" opinion on it. I am, therefore, unable to agree with the learned Additional Advocate General that merely because the learned Judge reflected his *prima facie* opinion on the clauses of the agreement while deciding the application under Section 9, he would be biased against the State of Sikkim while deciding an application under Section 34 of the Arbitration Act.

17. Under the circumstances, I am of the view that the present revision petition filed by the State of Sikkim must fail. It is accordingly rejected. Parties may bear their own cost. This order may be sent to the Court of the learned Judge, Commercial Court at Mangan for information.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes/No**
Internet : **Yes/No**

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