

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT,
AIZAWL MIZORAM
Money Suit No.11/2010**

Shri Daniel Subha (Sr.Shubha)
S/o Late Jayanda Subha
Tuivamit,
House No.148
Chawlhmun, Aizawl, Mizoram.Plaintiff.

-Versus-

1. Mr. Sultan Sharma,
Manager Victor and Company
Zokhawsang, Zemabawk,
Aizawl, Mizoram.
2. Shri Chhotra Bhadur Sunar,
Black Smithy under 3rd Bn. MAP,
Mualpui, Aizawl, Mizoram.Defendant.

**BEFORE
R.VANLALENA, Senior Civil Judge-2**

For the Plaintiff : Shri R.Lalhmingmawia, Advocate.
For the Defendants: Shri Laltanpuia, Advocate.
Date of Hearing : 27.7.2012
Date of Judgement: 10.8.2012.

JUDGEMENT AND DECREE

The facts of the case leading to the filing of the instant suit as reflected in the plaint may be stated as belows:

The Plaintiff is a bonafide citizen of India permanently residing at Tuivamit, Aizawl, Mizoram. He was allotted a contract work by the Defendant No.1 for construction of :- (1) Completion of Plinth 15% dated 23.04.2009 for Construction of Assam Rifles Quarters Building No.19 with Tender amount of Rs.9,50,000/- at Zokhawsang, Aizawl under the Victor and Company and (2) Completion of Column & GF slab 9.5% dated 15.05.2009 for construction of Assam Rifles Building No.19 of Package –III at Zokhawsang, Aizawl with Tender amount of Rs.10,68,854.50p. The Plaintiff therefore executed the work and completed the works of :- Completion of Plinth 15% dated 23.04.2009 with Tender amount of Rs.9,50,000/- as per the terms and agreement to the satisfaction of the Defendant No.1 as well as the concerned company. Therefore the Plaintiff received some amount of his contract work from the hand of the Defendant No.1 amounting to Rs.10,000/- on dt.26.02.2010, Rs.5,500/- on dt.03.07.2009 and Rs.1000/- on dt.10.12.2009 = total amount

Rs.16,500/- leaving the remaining amount refused to pay by the Defendant No.1 i.e. Rs.2,48,770/- till date despite repeated request made by the Plaintiff. Regarding the contract work no.2 i.e. Completion of column & GF slab 9.5%, the Plaintiff had finished 5% of the said work by spending his own money. Though the Defendant No.1 had promised him to give bills from the running bills but not paid even a single money till date. Due to non-payment of running bills, the Plaintiff could no longer continue the contract work no.2 while he too was pressurized by his labourers to pay their wages.

The Plaintiff had so many times approached the Defendant No.1 to release and pay the bills as per their mutual agreement, but the Defendant No.1 did not pay heed to his request at all. Having no option, the Plaintiff wrote to the General Secretary of the National Trade Union of Mizoram (NTUM) to take necessary action in respect of his pending bill on 16.12.2009. The said NTUM called upon both the parties on 25.02.2010 and the Plaintiff and Defendant No.1 made an agreement in the Office of NTUM by which the Defendant no.1 shall pay 15% of the total amount of the cost of the contract work to the Plaintiff on or before 5th March 2010. However, the Defendant No.1 still failed to fulfill the said agreed terms. When the Plaintiff had approached and met the Defendant No.1 in his office, the Defendant No.1 informed him that the bills had already been released to the Defendant No.2 as such he has no liability to him. It is thus clear that the Defendants No.1 & 2 had dishonestly took away/withdrawn the contract bill without the knowledge of the Plaintiff.

The cause of action arose as soon as the Plaintiff completed the contract works and this court has jurisdiction to try the case as the cause of action arose within Aizawl District and the parties are residing within Aizawl District which is within the jurisdiction of this court. The suit valued at Rs.2,48,770/- for the purpose of jurisdiction. The Plaintiff is a house tax paying resident of Mizoram and the court fees payable by him is Rs.5000/-. However he paid only Rs.100/- and was granted leave by court to pay the remaining balance at a later stage but before judgment. He therefore deposited the remaining balance of court fees on 02.08.2012.

The suit is filed bonafide and for the ends of justice. The Plaintiff prays the following reliefs :-

- I. to order the Defendant No.1 to pay the remaining balance amounting to Rs.2,48,770/-(Rupees two lakhs, forty eight thousand, seven hundred and seventy) only to the Plaintiff as per the agreement with interest @ 12% per annum till realization of the full amount.
- II. to order the Defendants to pay cost of the suit and reasonable compensation to the petitioner on ground of causing mental agony.

- III. By way of permanent and mandatory injunction, the Defendants be restrained from disposing of their properties.
- IV. Any other relief if the court deems fit and proper.

On the other hand, the Defendant No.2 submitted his written statements while the Defendants No. 1 & 3 failed to submit their respective written statements which led to closure of their chance for submission of written statement and ex-parte against them. In his written statement, the Defendant No.2 contested the case stating that the suit is not maintainable in its present form and style. It is bad for non-joinder and mis-joinder of necessary parties. There is no cause of action in favour of the Plaintiff and against the answering Defendant. It is barred by principles of laches, acquiescence and limitation. It should be dismissed outright. The Defendant No.2 stated that as far as his knowledge is concerned, the Defendant No.1 issued two Work Orders for construction of Assam Rifles Quarters Type II Building No.19 and No.7 dated 23rd April 2009 in favour of the Plaintiff and Defendant No.2. Both the Defendant no.2 and the Plaintiff together worked for the said two contract works. The Defendant No.2 was requested by the Plaintiff to take all necessary steps for withdrawal of the running bills from Defendant No.1 and accordingly the Defendant no.2 withdraw bills amounting to Rs.4,16,000/- on different dates. The Plaintiff too withdraw an amount of Rs.16,500/- on three occasions for running bills of Construction of Building No.7 and 19. The Plaintiff and the Defendant No.2 put their respective signatures at the time when they had withdrawn the running bills in the Record Book and no complaint has been made against Defendant No.2 by the Plaintiff. All those moneys were spent by the Plaintiff and the Defendant No.2 together for labour charge, ration etc. However, the Plaintiff hypocritically filed the instant suit with intent to receive current bill from Defendant No.2 without completing his contract work though withdrawal of the current/running bills were with the knowledge and consent of the Plaintiff.

The Defendant no.2 stated that the Plaintiff has not completed his contract work for receiving contract bills and no cause of action arose in favour of the Defendant no.2 as everything had been done by the Defendant no.2 in the sweet will and knowledge of the Plaintiff and the suit value is fictitious. The instant suit is filed malafide and the Plaintiff has no locus standi to file the present suit and Defendant no.2 has no liability in the present suit as the Plaintiff claimed nothing from the Defendant no.2. Hence the instant suit is liable to be dismissed with costs.

On the basis of the pleading of the parties, the court on dt.22.10.2010 framed the following issues :-

- 1) Whether the suit is maintainable in its present form and style ?

- 2) Whether the Defendant no.3 issued work orders in favour of the Plaintiff and the Defendant no.1 ?
- 3) Whether the Defendant no.1 has given the Plaintiff's contract work bill to the Defendant no.2 ?
- 4) Whether the Plaintiff has locus standi to file the suit ?
- 5) Whether the Defendant no.1 and the Plaintiff had made an agreement in the Office of NTUM Aizawl dated 25.02.2010 ? If so, the said agreement be used as a piece of evidence ?
- 6) Whether the Defendants are liable to pay the Plaintiff's contract bills ? If so to what extent ?

The Plaintiff examined three witnesses including himself, while the Defendant no.2 examined himself as a witness.

Issue no. 1: This issue relates to the maintainability of the instant suit. It had been discussed and heard already by the court on 26.11.2010 and decided in favour of the Plaintiff. Hence it does not required to be discussed at this stage as it had been already decided.

Issue no.2 : Whether the Defendant no.3 issued work orders to the Plaintiff and Defendant no. 2 ? In his deposition, the Plaintiff stated that he was allotted two contract works by the Defendant no.1 which are :- (1) Construction of Assam Rifles Quarters of Building No. 19 at Zokhawsang, Aizawl for completion of Plinth 15% dated 23.04.2009 with Tender amount of Rs.9,50,000/- and (2) Construction of Assam Rifles Building no. 19 of Package – III at Zokhawsang Aizawl for completion of column & GF slab 9.5% with tender amount of Rs.10,68,854.50p. While the Defendant no.2 stated in his deposition that he and the Plaintiff were issued two contract works by the Defendant no.1 for construction of Assam Rifles Quarters Type – II building no.19 and another contract work for construction of Building no.2 in his (Defendant no.2) favour. In his deposition, Defendant no.2 stated that he had withdrawn Rs.4,60,000/- (Rupees four lakhs, sixty thousand) only as a running bill from the cashier which were the bills from both the Plaintiff's and his contract works withdrawn on different dates. He added that the Plaintiff also withdraw a bill amount of Rs.16,500/- from the Defendant no.1 as a running bill for construction of building no.19 & 7. All other PWs also stated that the Plaintiff was issued a contract work for construction works of Assam Rifles Building at Zokhawsang, Aizawl by Defendant. Hence on perusal of all the evidences on record, it is clear that the Defendant no.1 issued works orders to the Plaintiff and Defendant no.1 and the contract works were not issued by the Defendant no.3. Hence the issue is decided that the Defendant no.3 did not issue contract works to the Plaintiff and Defendant no.2.

Issue no.3: Whether the Defendant no.1 given the Plaintiff's contract work bill to the Defendant no.2. The Plaintiff in his deposition before the court stated that when he approached the Defendant no.1 in his Office, the Defendant no.1 told him that he had already released his contract bill to the Defendant no.2 as such he has no liability to pay over the Plaintiff's contract bill. In his cross examination, the Plaintiff denied that he and the Defendant no.2 worked together in constructing the Building no.7 and 19. He admitted that he had received an amount of Rs.16,500/- from the cashier of Defendant no.1 – Victor Company. The PW 2 & PW 3 corroborated the evidence deposed by the PW 1 stating that when they approached the Defendant no.1 at his office, the Defendant no.1 told them that he had already released the contract bill of the Plaintiff to the Defendant no.2 thinking that the Plaintiff and the Defendant no.2 are same family because they lived under the same roof, as such he has no liability over the Plaintiff. In their cross examination, the Defendant no.2 and the Plaintiff denied that they deposed before the court as the Plaintiff told them. Defendant no.2 deposed that he was requested by the Plaintiff to take all necessary step including withdrawal of running bill from the Defendant no.1 and accordingly the Defendant no.2 withdraw an amount of Rs.4,16,000/- (Rupees four lakhs, sixteen thousand) only on different dates and the same were spent for labour charge, ration, materials etc. with the Plaintiff. From the evidence on record, it is crystal clear that the Defendant no.1 released money as running bill to the Defendant no.2 from the account of both the contract works of the Plaintiff and the Defendant no.2. Hence, this issue is decided that the Defendant no.1 had released some amount of money as running bills for the contract works to the Defendant no.2.

Issue No.4 : Whether the Plaintiff has locus standi to file the suit ? The evidence on record shows that the Plaintiff and the Defendant no.2 were given contract works for construction of Assam Rifles Quarters Building no.7 and 19 at Zokhawsang, Aizawl. However, the Plaintiff till date had not received full amount of the bills from his contract work. Hence he has a locus standi to file the instant suit and is decided in his favour accordingly.

Issue no.5 : Whether the Defendant no.1 and the Plaintiff had made an Agreement in the Office of NTUM Aizawl dated 25.02.2010 ? If so, the said agreement be used as a piece of evidence. From careful perusal of the evidence on record of the Plaintiff and his witnesses, it is clear that the Defendant no.1 and the Plaintiff had made an agreement dated 25.02.2010 in the Office of NTUM Aizawl for payment of 15% of the total amount of bills by the Defendant no.1 to the Plaintiff on or before 5th March, 2010 and on that very moment, the Defendant no.1 paid Rs.10,000/- to the Plaintiff as part-payment. Hence this issue is decided that the said agreement had been made as mentioned above and the same can be used as a piece of evidence.

Issue no.6 : As the foregoing issues have been decided in favour of the Plaintiff, this issue no.6 does not seem to pose obstacle in granting relief to the Plaintiff. On careful perusal of the evidence on record, this court has held that the Defendant no.1 is liable to pay to the Plaintiff the contract bills amounting to Rs.2,48,770/- (Rupees two lakhs, forty eight thousand, seven hundred seventy) only as prayed for by the Plaintiff.

In his plaint, the Plaintiff exhibited the following documents in support of his claims :-

- 1) Ext-P-I is the plaint copy.
- 2) Ext-P-I (a) is signature of Plaintiff.
- 3) Ext-P-2 is the Affidavit.
- 4) Ext-P-3 is the photo copy of work order with cost of Rs.9,50,000/- for construction of Type –II building (G+3) for 16 units for building no.19.
- 5) Ext-P-4 is photo copy of Revision of work order issued dated 15.05.2009 for building no.19 of package – III at Zokhawsang (Ty II G+3)
- 6) Ext-P-5 is photo copy of Chhatra Bhadur Sunar PICJ-3 No.7 & 19.
- 7) Ext-P-6 is photo copy of Victor and Company.
- 8) Ext-P-7 is photo copy of Labour working charge Record of 3 pages (Sl.No.11,12 &13).
- 9) Ext-P-8 is photo copy of complaint on non-payment of Expenditure amount.
- 10) Ext-P-9 is photo copy of Agreement/Settlement.
- 11) Ext-P-10 is copy of written statement of Defendant no.2.
- 12) Ext-P-10(a) is signature of Defendant no.2 Chhatra Bhadur Sunar.
- 13) Ext-P-10(b) is verification clause and signed by Defendant no.2.
- 14) Ext-P-11 is photo copy of Agreement/Settlement dated 25.02.2010.
- 15) Ext-P-11 (a) is signature of Chhatra Bhadur Sunar.
- 16) Ext-P-12 is copy of Work Order.

On careful perusal of the plaint, it has been found that the Plaintiff, though impleaded Shri Chhotra Bhadur Sunar and Shri OP Swami as the Defendants no.2 and 3 respectively, yet the prayer portion of the plaint claimed the relief only from the Defendant no.1 praying the court to pass an order directing the Defendant no.1 to pay the remaining balance

of bill amounting to Rs.2,48,770/- to the Plaintiff with interest as per agreed to by both at a rate of 12% per annum w.e.f. the date of this order till full realization of the said amount. The issue no.6 is thus decided in favour of the Plaintiff.

Having decided the suit finally, the instant suit is decreed accordingly as below :-

1. The Defendant no.1 is hereby directed to pay contract work bills amounting to Rs.2,48,770/- (Rupees two lakhs, forty eight thousand, seven hundred and seventy) only to the Plaintiff with interest at a rate of 12% per annum (agreed rate of interest) w.e.f. the date of this order till full realization of the aforementioned amount within a period of two months.

Parties are to bear their own cost.

Thus the instant suit is finally disposed of.

Pronounced in open court on this 13th August 2012.

Sd/-R.VANLALENA
Senior Civil Judge – II
Aizawl District : Aizawl.

Memo No. /SCJ-I I(A)/2012: Dated Aizawl the 13th August,2012.
Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.
2. Shri Daniel Subha (Sr.Shubha) S/o Late Jayanda Subha, Tuivamit, House No.148, Chawlhmun, Aizawl, Mizoram through counsel Shri R.Lalhmingmawia.
3. Mr. Sultan Sharma, Manager Victor and Company, Zokhawsang, Zemabawk, Aizawl, Mizoram .
4. Shri Chhotra Bhadur Sunar, Black Smithy under 3rd Bn. MAP Mualpui, Aizawl, Mizoram through Laltanpuia, Advocate.
5. Registry Section.
6. Case record.

PESHKAR

