

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL
DISTRICT, AIZAWL MIZORAM**

Civil Suit No.18/06

Lalmangaihzuali
W/o Zaikima
R/o C-19 Khatla, Aizawl

.....Plaintiff.

-Versus-

1. The Chief Secretary to the Govt. of Mizoram,
Aizawl, Mizoram.
2. The Secretary to the Governor,
Mizoram, Aizawl.
3. The Secretary –cum-
Principal Chief Conservator of Forest,
Mizoram, Aizawl.
4. The Deputy Conservator of Forest (Hqrs)
Mizoram, Aizawl.
5. The Divisional Forest Officer
Aizawl Forest Division,
Aizawl, Mizoram.
6. The Range Officer,
Aizawl Forest Range (Sadar)
Aizawl, Mizoram.

.....Defendant.

BEFORE

R.VANLALENA, Senior Civil Judge-2

For the Plaintiff	:	Shri Robert L.Hnamte, Advocate.
For the Defendants:		Shri B.Lalramenga, Advocate.
Date of Hearing	:	20.7.2012.
Date of Judgment	:	26.7.2012

JUDGEMENT AND DECREE

The facts of the case leading to the filing of the instant as reflected in the plaint may be briefly stated below :-

The plaintiff is a Florist residing at Khatla Aizawl. She maintained a flower garden. She plants, grows and matures various types of seasonal as well as houseplants. She cultivated flowers for the purpose of house beautification and its surroundings and for earning incomes. She used to rent out potted flowers and also used to sell various types of flowers. An individual, Association or the Government Departments used to hire the houseplants on rent when organizing functions for decoration of the functions.

On 14th August 2004, some staffs from the Office of the Divisional Forest Officer, Aizawl Forest Division namely – (1) Shri Vanlalchhana, (2) Shri F. Vanlalzawma (3) Shri Dengzika and (4) Shri R.C.Lalthlamuana had at the instance of the DFO come to the residence of the plaintiff in a Tata 407 truck driven by Sh.Zotea and requested the plaintiff to lend her houseplants for decoration of a function in the Raj Bhavan called “Governor’s At Home” on the occasion of the Independence Day celebration to be held on the next day i.e.15.08.2004. The defendant offered Rs.50/- per potted houseplants per day for borrowing the plaintiff’s houseplants. The office staff from the DFO Aizawl Forest Division selected 41 number of potted houseplants which will cost Rs.2050 per day for borrowing. The plaintiff agreed the offer. Therefore the defendants took 41 (forty one) potted houseplants which were full grown for decoration of the said function. The defendant had in the previous year too borrowed the houseplants on paying rent to the plaintiff at the same rate. However, the defendants did not return all the said houseplants which they had taken this time from the plaintiff even after one day left, i.e. 16.08.2004. The plaintiff therefore enquired about the houseplants which were not returned. The DFO Aizawl Forest Division informed her that His Excellency, the Governor of Mizoram did not want the houseplants to be returned and wanted/desired to retain them for decoration/beautification of the Raj Bhavan. The defendant no.5 requested her to allow the said flowers to be purchased by the Department. Even though the plaintiff never thought of selling the houseplants, she had no other alternative but to agree with the proposal of the defendant no.5. She therefore submitted a bill amounting to Rs.40,550/- on 25.08.2004 to the defendant no.5 through defendant no.6 for the purchase price of the houseplants. To utter surprise of the

plaintiff, the defendants did not pay the bill even after three months had lapsed. The plaintiff therefore made a reminder to the defendant no.6 who in turn told her to resubmit the bill. The plaintiff therefore submitted the bill for the houseplants, but no payment was made by the defendants. She sent a reminder to the defendants, she was told again to submit the bill to the defendant no.5 and thus submitted the bill in December 2004 to the defendant no.5.

The plaintiff was in constant touch with the defendant no.5 who promised her that her bill will be paid but requested at the same time to wait till closing of the Financial Year ending March, 2005. The said Financial year came to an end. The plaintiff approached the defendant no.5 who in turn told her to submit the bill to the Governor's Office for payment as the Forest Department has no money for the payment. The plaintiff approach the Office of the Chief Conservator of Forest, Mizoram but nothing was paid to her except verbal assurance for payment. The plaintiff vide her letter dated 12.08.2005 submitted her bill to the new Divisional Forest Officer, Aizawl Forest Division in which she stated that she may be compelled to take other course of action if her grievances of non-payment of bill was not attended positively who had eagerly waited for it for about one year. On receipt of the said letter, the new Divisional Forest Officer instructed his Range Officer to submit a detailed report into the matter who submitted his report to the former officer on 17.08.2005. The new Divisional Forest Officer by his letter dated 05.09.2005 forwarded the application of the plaintiff alongwith the report of the Range Officer to the Principal Chief Conservator of Forest, Mizoram for necessary action. Later, the plaintiff came to know that the matter was referred to the Governor's Secretariat by the Deputy Conservator of Forest (Hqrs) Mizoram vide his letter dated 27.09.2005 and requested the Secretary to the Governor of Mizoram to make payment for the purchase bill of Rs.40,550/-. However, the concerned authority did not make any payment to the plaintiff.

The plaintiff having learnt that the Forest Department as well as the Governor's Secretariat had failed to perform their obligations of paying the bill for purchasing the 41 potted houseplants, she decided to rescind her waiting for bill of Rs.40,550/-. She thus demanded return of the 41 potted houseplants and for payment of rental charges for lending the houseplants @ Rs.2,050/- per day w.e.f. 14.08.2004 till the potted plants are returned to her. She thus served a Notice on 12.11.2005 through her counsels and the Notice was sent through registered posts. The plaintiff again on 03.02.2006 served a Notice to the defendants demanding return of the said potted houseplants and for

payment of rental charges at a rate of Rs.2050/- per day w.e.f. 14.08.2004 till the houseplants are returned to her alongwith interest @ 16% per annum. A demand was also made for payment of Rs.50,000/- as damages. Consequent to this Notice, the Secretary to the Government of Mizoram, Environment & Forest Department convened a meeting vide dated 24.02.2006 to discuss about settlement of borrowing charges of 41 potted houseplants to the plaintiff. The meeting was attended by the plaintiff and her associates. The officials in the meeting requested her to accept the sum of Rs.40,550/- against her bill. She however was not in any position to accept the offer any more as the defendants had failed for such long period of time to pay her bill for which she has rescinded her demand for the same and had recourse to another way.

She demanded for payment of rental charges. Even after 635 days had lapsed after the defendants borrowed the houseplants of the plaintiff, the defendant neither returned nor paid the rental charges which has become payable amounting to Rs.13,01,750/- . The houseplants are mostly imported as well as gathered from far flung areas. It took lots of time to the plaintiff, energy and money in order to have such types of flowers. She had taken pains so that she may be able to earn income. The plaintiff had been so far doing the business of lending flowers on rent to individuals, groups etc. for special function. She used to charge Rs.50/- per day per plot. The plaintiff had been subjected to much hardship by the wrongful action of the defendants. The plaintiff had been deprived of her income for livelihood. The plaintiff has no other option but to approach the court for redressal of her grievances.

The cause of action arose on 14.8.2004 when the defendants had taken 41 potted houseplants belonging to the plaintiff and on the subsequent days when the defendants refused to make payment to the plaintiff for borrowing the potted houseplants. The value of the suit for the purpose of court fee is Rs.13,51,750/- and the plaintiff had paid Rs.500/- as court fees with leave of court for paying the remaining balance before judgment which had too been paid.

The instant suit is filed bonafide and for the ends of justice. The plaintiff therefore prayed the following reliefs :-

- 1) The defendants are liable to return to the plaintiff the 41 number of potted houseplants they had borrowed from the plaintiff.

- 2) The defendants are liable to pay the rental charges @ Rs.50/- per potted houseplants for the 41 number potted houseplants w.e.f. 14.08.2004 till date i.e. Rs.13,01,750/- alongwith pen dente lite interest @ 12% per annum till realization of the whole amount.
- 3) The defendants are liable to pay an amount of Rs.50,000/- as compensatory damages to the plaintiff to remedy her inconveniences.
- 4) And any other order or direction as the court deems fit and proper.

On the other hand, the defendant no.2 (the Secretary to the Hon'ble Governor of Mizoram) and defendants no.3,4,5&6 (the Environment & Forest Department, Mizoram) submitted their respective written statements and contested the suit stating that the instant suit is not maintainable in its present form and style. There is no cause of action in favour of the plaintiff and against the answering defendants. The suit is hopelessly barred by the principles of estoppel, acquiescence and limitation. It is bad for non-joinder of necessary parties and mis-joinder of parties. The suit is liable to be dismissed in limine due to non-payment of requisite court fee stamps as required by the Court Fees (Mizoram Amendment Act) 1996. Variations of reliefs claimed in the Legal Notice and the plaint on different occasions are contradictory and hence liable to be dismissed.

The defendant no.2 in his objection on merit stated that the then Divisional Forest Officer, Aizawl had agreed to supply the floral pots on the occasion of Independence day celebration 2004 and placed them permanently in the Raj Bhavan as desired by His Excellency, the Governor of Mizoram. Since the necessary arrangement for procurement of the floral pots was done between the Forest Department and the plaintiff for borrowing/supplying of the floral pots, hence the defendant no.2 is not liable to pay to the plaintiff the bill amount of Rs.40,550/-. Defendant no.2 added that no proposal was initiated from the Governor's Secretariat for procurement of floral pots, payment of the bill for the floral pots did not arise at all. The matter was taken up together with the Secretary, Environment & Forest Department who convened a meeting on 24.02.2006 to discuss about the settlement of borrowing charge/bills of 41 nos. of floral pots of the plaintiff. In fact the meeting was attended by the defendant no.2. The officials in the meeting requested the plaintiff and her associate to inform the concerned Forest Department officials of the amount which will be acceptable to them for the 41 potted houseplants/floral pots. However, it was learnt that the plaintiff decided to resort to legal

course of action. The defendant no.2 mentioned that the plaintiff had earlier submitted a bill of Rs.40,550/- on 25.08.2004 to the concerned authority for payment of her 41 potted houseplants while she claimed Rs.9,22,500/- as a relief in her first Legal Notice. Thereafter the plaintiff served Legal Notice through another counsel and claimed Rs.2050/- per day w.e.f. 14.08.2004 till potted plants are returned and claimed Rs.50,000/- as damages for the hardships. However, in the present suit, the plaintiff claimed Rs.13,01,750/- alongwith pendent lite interest @ 12% per annum till realization of full amount and Rs.50,000/- as compensatory damages. It is not possible for the answering defendants to make out what is what and which is which due to variations in the reliefs claimed by the plaintiff. As such the suit is liable to be dismissed outright with exemplary costs.

The defendants no.3-6 in their written statement contested that the defendant no.5 never proposed to the plaintiff to allow them to buy the said plants. In fact the plain reading of the letter dated 25.08.2004 submitted by the plaintiff to the defendants no.6 shows that her plants were actually purchased by His Excellency, the Governor of Mizoram and not the defendants no.3-6. The defendants further stated that the defendants no.6 never told the plaintiff to submit the bill afresh to him nor to the defendant no.5. The plaintiff be put to strict proof of the same. The defendants submitted that the defendant no.5 never promised the plaintiff to make payment and never requested her to wait till closing of the financial year ending March 2005. In fact, it was His Excellency, the Governor of Mizoram who had purchased the said plants therefore, the plaintiff should have approached the Secretary of the Hon'ble Governor of Mizoram for payment of such potted plants. They further stated that Sh. Ramhluna had never given any assurance to the plaintiff for payment. The defendants no.3-6 stated that since the Raj Bhavan has retained the said potted plants, it is again submitted that the Secretariat of the Hon'ble Governor of Mizoram is liable to pay for the same. They further added that all the inconveniences were caused by the defendant no.2.

On the basis of the pleadings of the parties, the court framed the following issues on 22.06.2007.

- 1) Whether the present suit is maintainable in its present form and style ?
- 2) Whether the plaintiff is entitled to the relief claimed? If so, who is liable to pay and to what extent ?

The plaintiff examined as many as three witnesses while the defendants no.1-6 failed to examine their witnesses even after more than sufficient time had been given to them.

Issue No.1 : Whether the instant suit is maintainable in its present form and style ? The instant suit had been filed with required number of photo copies of the plaint for supply to the defendants. The plaintiff had deposited required amount of court fees. The cause of action has been clearly disclosed and the suit is properly valued. It has been filed within time. The issue of maintainability of the instant suit had been discussed on 24.07.2007 and the court had decided to maintain the instant suit on the day. As the issue no.1 had been discussed and decided in favour of the plaintiff, it is not longer necessary to discuss the said issue at this stage.

Issue No.2: Whether the plaintiff is entitled to the relief claimed, If so who is liable to pay and to what extent ? In her deposition, the plaintiff (pw 1) stated that on 14.08.2004, some office staff of the Divisional Forest Officer, Aizawl namely – sh.Vanlalchhana, F.Vanlalzawma, Dengzika and RC Lalthlamuana came to her residence in a Tata 407 truck driven by Zotea and told her that they were sent by the said DFO Aizawl namely Shri Hmingdailova Colney (now deceased) and requested her to lend potted houseplants (floral plants) for decoration of the Raj Bhavan at the “Governor’s at Home” function on the occasion of Independence Day celebration at a rate of Rs.50/- per pot per day as a lending rate. She agreed the request. The staff then selected 41 numbers of the potted houseplants and took them in the vehicle. In the previous year too, the Forest Department had borrowed her potted houseplants at the same rate. This year the Forest Department as had done in the previous year borrowed the 41 potted houseplants to be returned on 16.08.2004 and thus the bill for lending/borrowing came to Rs.2050/- per day for all the pots. However, the said potted houseplants had not been returned till date even after the institution of the instant suit nor the said Department paid the bill. On enquiring the whereabouts of the said potted houseplants, it was learnt that they were retained at the Raj Bhavan. On approaching the authority concerned, the plaintiff was informed to submit the bill afresh. She submitted the bill again but was not paid. She was informed by the Forest Department that the said bill had been forwarded to the Secretariat office of the Hon’ble Governor of Mizoram for necessary payment. The plaintiff then approached the said Secretariat office of the Hon’ble Governor, all was in vain. In her deposition, the plaintiff repeated the statements which she had mentioned in her plaint. In cross examination by the defendant

no. 2, the plaintiff stated that she had not receive any letters from the Governor's Secretariat for lending/borrowing the potted houseplants for decoration of the function "Governor's at Home" on the occasion of the Independence Day celebration. She also stated that she did not receive any letter from the said Secretariat office to retain the houseplants for the Raj Bhavan after the function had been over. She added that she submitted the bills for lending/borrowing charges of the houseplants to the Forest Department, but not yet paid till date.

The plaintiff was cross examined by the counsels for defendants no.3-6. In her cross examination, she stated that the potted houseplants were retained by the Raj Bhavan and were used for beautification of the Raj Bhavan. She stated that she expected that the bill would be paid by the persons who took the potted houseplants. She also stated that at one stage, she was refusing to accept the bill of Rs.40,550/- while the defendants were willing to pay her. Pw 2 namely Smt. V.L.Chhuanawmi deposed that she knew the plaintiff and is the Executive Committee member of the Mizoram Florist Association and also the Secretary of Zo Anthurium Growers' Society Ltd. She stated that on 14.08.2004, while she was in the residence of the plaintiff, some staff member of the DFO, Aizawl came to the said residence and took 41 potted houseplants for decoration of the Raj Bhavan "Governors' at Home" on the occasion of the Independence Day celebration. In her cross examination, she stated she was not familiar with those five persons as she had never seen them before. She did not know the exact number of the potted houseplants which had been taken by those persons. She added that apart from helping the plaintiff loading the potted houseplants in the said truck, she did not know anything about the agreement between the plaintiff and the defendants.

PW3 namely Sh.Engmuana deposed that he was present in the residence of the plaintiff on 14.08.2004 while about 5 staff members of the DFO Aizawl came to the plaintiff's residence by 407 truck and requested the plaintiff to lend the potted houseplants as desired by the DFO Aizawl namely Shri Hmingdailova Colney for decoration of the function "Governor's at Home" in Raj Bhavan on the occasion of the Independence Day celebration and the potted houseplants were to be returned on 16.08.2004. As per the negotiation, the rate of lending will be Rs.50/- per pot per day. In cross examination, PW3 stated that he is a relative of the plaintiff. He also stated that he did not know the names of those persons from the Forest Department who came on 14.08.2004. He added that he did not know what could be the amount of cost of the flower pots.

As had earlier mentioned, the Defendants no.1-6 did not examine any witness but cross examined the PWs. From the depositions and cross examination, one thing very clear had been revealed. The plaintiff lent out the potted houseplant of 41 numbers to the defendants for decoration of the function Governor's At Home" in the Raj Bhavan on the occasion of the Independence Day celebration held on 15.08.2004. The rate of lending was Rs.50/- per pot and all the pots are to be returned on 16.08.2004. However, the pots (floral pots/potted houseplants) were not returned to the plaintiff nor paid the lending charge/rents till date. The plaintiff approached the concerned authorities but all in vain.

Having no other alternatives, the plaintiff approached the court for redressal of her grievances and exhibited the followings in her case:-

- 1) Ext-P-1 is the forwarding letter of the bill dated 25.08.2004.
- 2) Ext-P-2 is the copy of the bill dated 25.08.2004.
- 3) Ext-P-3 is the copy of letter dated 12.08.2005 submitted by the plaintiff to the defendant no.5.
- 4) Ext-P-4 is the report dated 17.08.2005 submitted by the Range Officer, Aizawl Forest Range (Sadar) to the DFO Aizawl.
- 5) Ext-P-5 is the letter dated 05.09.2005 of the said DFO Aizawl addressed to the PCCF, Mizoram.
- 6) Ext-P-6 is the copy of letter dated 27.09.2005 of the Deputy Conservator of Forest (Hqrs) Aizawl addressed to the Secretary, to Hon'ble Governor's Secretariat.
- 7) Ext-P-7 is the copy of Legal Notice served to the PCCF, Mizoram and DFO Aizawl.
- 8) Ext-P-8 is the copy of Postal Receipt.
- 9) Ext-P-9 is a copy of Notice u/s 80 CPC dated 03.02.2006.
- 10) Ext-P-10 is the copy of the Meeting Notice dated 24.02.2006.

On careful perusal of the depositions of the Pw no.1-3 and their cross examinations, it is crystal clear that the defendant no.3-6 borrowed the 41 potted houseplants/floral pots from the plaintiff at a rate of Rs.50/- per day per pot for a part of decoration of the Raj Bhavan Governor's at Home function on the occasion of Independence Day celebration on 15.08.2004. The said floral pots were not returned to the plaintiff till date nor paid the lending/borrowing charges. Hence the issue no.2 is decided in favour of the plaintiff.

Having decided the two issues in favour of the plaintiff, the instant suit is decreed as follows:-

The Defendants no.3-6 are hereby directed to pay Rs.13,01,750/- along with interest at the rate of 6% per annum to the plaintiff as the price of the potted houseplants within a period of two months from the date of this order and further directed that Rs.50,000/- shall be paid to the plaintiff by the said defendants as damages within the aforementioned period.

Parties shall bear their own costs. Having decreed the suit as above, the instant case is disposed of accordingly.

Pronounced in open court on this 20th July 2012.

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

Memo No. /SCJ-I I(A)/2012: Dated Aizawl the 27th July,2012.
Copy to:

1. The District and Sessions Judge, Aizawl District for information.
2. Lalhmangaihzuali, W/o Zaikima, R/o C-19 Khatla, Aizawl through her counsel Robert L.Hnamte, Advocate.
3. The Chief Secretary to the Govt. of Mizoram, Aizawl, Mizoram through counsel B.Lalramenga.
4. The Secretary to the Governor, Mizoram, Aizawl through counsel B.Lalramenga.
5. The Secretary –cum- Principal Chief Conservator of Forest, Mizoram, Aizawl through counsel B.Lalramenga.
6. The Deputy Conservator of Forest (Hqrs) Mizoram, Aizawl through counsel B.Lalramenga.
7. The Divisional Forest Officer, Aizawl Forest Division, Aizawl, Mizoram through counsel B.Lalramenga.
8. The Range Officer, Aizawl Forest Range (Sadar) Aizawl, Mizoram through counsel B.Lalramenga.
9. Registry Section.
- 10 Case record.

Peshkar