

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT, AIZAWL
MIZORAM
Money Suit No.2/2002**

Debu Deb Roy,
S/o Karunamey Deb Roy

.....Plaintiff.

-Versus-

1. The Chief Secretary
(Represented by Govt. of Mizoram)
2. The Secretary to the Govt. of Mizoram
Aizawl.
3. The Director,
Industry Department,
Govt. of Mizoram.

.....Defendant.

BEFORE

R.VANLALENA, Senior Civil Judge-2

For the Plaintiff : Shri MM Ali, Advocate.

For the Defendants: Shri R.K.Malsawmkima and Shri Joseph Lalfakawma,
Asst. Govt. Advocates.

Date of Judgement: 26.3.2012.

JUDGEMENT AND ORDER

26.3.2012

Ld. Counsels Shri MM Ali and Shri H.Lalremruata present on behalf of the plaintiff.

Shri Joseph Lalfakawma and Shri R.K.Malsawmkima, both Asst. Govt. Advocates present on behalf of the State of Mizoram and Industry Department.

Today is fixed for preliminary hearing on maintainability of the instant Money Suit No.3 of 2002.

Shri MM Ali and Shri H.Lalremruata submitted that the instant Money Suit had been tried and disposed of by Smt. R.Vanlalchami, Sr.Civil Judge, Aizawl and passed ex-parte judgment and Decree on 16.08.2010. The said ex-parte Judgement and Decree was passed by the said court as the defendants (State of Mizoram and Industry Department) could not file their written statements within time stipulated by Order 8, Rule 1 of CPC. However, the said judgment and Decree was challenged by the defendants in the Hon'ble Gauhati High Court, Aizawl Bench vide RFA No.2 of 2011. The said Hon'ble Gauhati High Court, Aizawl Bench set aside the judgment and Decree of the Trial court and further directed the Trial Court to decide the suit afresh by giving chance to the defendants 4 (four) weeks twice to file their written statement in the Trial Court.

The instant Money Suit is for recovery of Rs.23,01,207/- together with interest @ 18% per annum from the year 1996 till payment is made from the Industries Department, Govt. of Mizoram. And for a decree for awarding Rs.2,00,000/- as compensation to the plaintiff for unnecessary delay and harassment for creating mental agonies by the defendants.

Ld. Counsel Shri MM Ali assisted by Shri H.Lalremruata submitted that the instant suit may be maintained for further proceeding as per law as there are prima facie grounds for further proceeding. He stated that his client a proprietor of M/s Swarupa Nanda Agro and construction is a registered contractor and was awarded a contract work for supply of Tea seedlings at Central Tea Seed Nursery at Pawlrang village-Luangmual, Aizawl at a rate of Rs.3/- per plant and five lakhs clone seedlings at a rate of Rs.3.90/- per sampling etc. The total bill for the plaintiff comes to Rs.63,53,911/- out of which he received Rs.40,52,704/- only from the Industries Department with balance amount of Rs.23,01,207/- lying unpaid to his client. Hence, the defendants are liable to pay the outstanding amount to his client. Hence, prayed to maintain the instant suit for further trial.

On the other hand, Shri Joseph Lalfakawma and Shri RK Malsawmkima, Asst. Govt Advocates strongly objected to the submission of the learned Counsel Shri MM Ali stating that the Government of Mizoram, Industries Department has issued an excess amount to the plaintiff amounting to Rs.7,13,300,000/-. The plaintiff is liable to refund to the defendants and amount of Rs.7,13,300/-. Hence the instant suit is liable to be dismissed forthwith. The Asstt. Govt. Advocates added that since the instant suit is a Money Suit, the plaintiff has to file the suit within three years of from the date when the cause of action arose as per the law of limitation. In the instant suit the cause of action arose in the year 1996 and continue till 1997. However the suit was filed in the year 2002 i.e. after lapse of three years. Hence the suit may be dismissed outright on point of limitation also.

After hearing rival arguments and on careful perusal of materials available on record, this court is of the considered view to dismiss the instant Money Suit No.3 of 2002 on point of limitation. As the instant suit is to be dismissed, the counter claim of the defendants too is liable to be dismissed since the defendants made their counterclaim with regard to money.

Accordingly, the money Suit No. 3 of 2002 and its counter claim stands dismissed.

Give copy of this order to all concerned parties.

Given under my hand and seal of this court on this 26th March, 2012.

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

Memo No. /SCJ-I I(A)/2012: Dated Aizawl the 26th March,2012.

Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.
2. Debu Deb Roy, S/o Karunamey Deb Roy(L) through counsel Shri MM Ali.
3. The Chief Secretary (Represented by Govt. of Mizoram) through Asst. Govt. Advocates.
4. The Secretary to the Govt. of Mizoram, Aizawl through Asst. Govt. Advocates.
5. The Director, Industry Department, Govt. of Mizoram through Asst. Govt. Advocates.
6. Shri R.K.Malsawmkima and Shri Joseph Lalfakawma, Asst. Govt. Advocates.
7. Shri MM Ali & ors, Advocates concerned.
8. Registry Section.
7. Case record.

PESHKAR

