

IN THE COURT OF SHRI VANLALMAWIA, ADDL. DISTRICT JUDGE- I,

AIZAWL

F.A.O 6/2014, A/O

C.M.A 169/2014, Misc Appln No.186/2014 in DS 23/2014

NEREFS

..... Plaintiff

`Versus

Dengthanga Pachuau & Ors

..... Respondent

BEFORE

Shri.Vanlalmawia
Addl.District Judge-I
Aizawl Judicial District, Aizawl

PRESENT

Appellant : H.Laltanpuia

Respondent : J.C.Lalnunsanga

Date of Order : 9.4.2015

This FAO is filed by the appellant NEREFS Ltd. Represented by the Branch Manager, NEREFS Ltd, Sikulpuikawn, Mission veng, Aizawl against Shri Dengthanga Pachuau H/o Mrs.Hmingmuani of Republic veng, Aizawl, Lalthangmawii, D/o Thatinzuala (L) Bethlehem veng, Aizawl and against the Deputy Director (Planing) Animal Husbandary & Veterinary Department, Aizawl to set aside and quash the impugned order vide memo No.420/SCJ(A)/2014 dated Aizawl the 20th June 2014 passed by Id. Senior Civil Judge-I, Aizawl District Aizawl in connection with Civil Misc Application No.169 of 2014 arising out of Declaratory suit No.23/2014 and to stay the operation of the impugned order till final disposed of the instant appeal.

Also seen vakalatnama duly executed by the appellant in favour of Mr. H.Laltanpuia Advocate and other advocate which is accepted.

Also the appeal is admitted and registered as FAO No.6 of 2014 A/o CMA No.169/2014 & Misc Application No.186 of 2014 in DS 23 of 2014.

Parties are present through counsel. Today is fix for hearing. Accordingly heard both parties.

Counsel for the appellant submitted that Id. Lower court is error in law in as much as the impugned order was passed in violation order XXXIX Rule 3 CPC and the impugned order was passed in connection with CMA No.169/2014 a/o Declaratory Suit No.23/2014.

However the order itself speaks that the Misc Application was registered as CMA No.186/2014 A/o D.S No.23/2014 and it is not clear as to which case the impugned order was passed and therefore the interference of this court is required and prayed the court to set aside the impugned order.

Mr JC Lalnunsanga, Ld. Counsel for the Respondent submits on the following grounds:

1. The present appellant has no right as being Sub-Branch Manager to file this instant appeal. The case was filed against Branch Manager in DS No.23/2014.
2. The impugned order dated 20.6.2014 passed by Senior Civil Judge is not an appealable order by virtue of section 104 CPC and it is also an interlocutory order in which no appeal can be preferred.
3. As per section 96 of CPC, only original decree can be appealed against and the said impugned order dated 20.5.2014 which was being appealed by the appellant is not an original decree, but is only an interlocutory order.
4. The impugned order is not appealable before this court and is barred by section 17 of Mizoram Civil Court Act due to the reason that the amount or value of the subject matter of the original suit or proceeding is not less than five lakhs. The subject matter of the original suit is Rs. 5 lakhs along with its interest at the rate of 2 % P.a with effect from 22.10.2011.
5. In response to Para (6) (a) of Memo of appeal, it is humbly submitted that the Id. Lower Court committed no error in passing the impugned order dated 20th June, 2014.
6. In response to Para (6) (b) of Memo of appeal, the respondent No.1 has every right to file the case against the appellant since he is the aggrieved person by the illegal

deduction of his monthly salary. The said deduction of the monthly salary by the defendant/OP No. 3 is totally illegal and unlawful as per law. The plaintiff/Respondent No.1 was cheated by the defendant No.1/Respondent No.2 who promised to repay the loan taken by her regularly. The plaintiff/Respondent No.1 had trusted the defendant No.1/Respondent No.2 who pretended to be trustworthy when she was fervently requested to be her guarantor. The defendant No.1 has no intention of liquidating the loan taken by her.

7. In response to Para (6) (c) of Memo of appeal, the respondent No.1 would like to state that the said error is bonafide mistake and merely clerical error which might have been committed by either the court clerk or the computer operator. However, the said mistake does not touch the merit of the application and every thing content in the said application and the order remains the same. It does not speak beyond what had been prayed.
8. In response to Para (6) (d) of Memo of appeal, the Id trial court only passed interim order thereby giving chance to challenge the said order on 18.7.2014. There is no question of being bias or passed the same order prejudice to the interest of both the parties. The appellant could have filed WO on the date so fixed for submission of the same objecting the interim order.
9. That in response to Para (6) (e) of Memo of appeal, the respondent has complied with Rule 3 of Order XXXIX of CPC, 1908. The respondent No.1/plaintiff has served all the documents along with copy of order dated 20th June, 2014 to the appellant and copy of acknowledgment receipt was also taken from the authorized signatory of the appellant.
10. That in response to Para (6) (f) of Memo of appeal, the balance of convenience leans in favour of respondent No.1. The defendant No. 2/appellant must have taken action and steps against the defendant No.1 first as per their agreement between them. The defendant No.2/appellant could have filed a case against the defendant No.1 for recovery of the loan as what had been done by the other financial institutions and Banks and also could have forfeited the properties of the defendant No.1 as per law.
11. That in response to Para (6) (g) of Memo of appeal, the Id trial court rightly passed the order dated 20th June, 2014 as the plaintiff/respondent No.1 has been suffered due to the said illegal deduction. The appellant being rich firm in no way suffer from the said order. The plaintiff/respondent No.1 is highly aggrieved and suffered by the said deduction of his salary which is the only source of survival and sustenance. He is the sole-bread earner for her family and deduction of his monthly salary has greatly prejudice the family well being of the plaintiff/respondent no.1. The

plaintiff/respondent No.1 is now penniless and it is unfair not to receive anything from the service he renders for the government in which he has been working for several years. The plaintiff/respondent No.1 is getting a mere sum of little amount of his salary which is insufficient for himself and he has to take loan from others with higher interest which would affect the financial condition in the near future.

12. Strong reliance is placed on the following observations of the Supreme Court in [Wander Ltd. v. Antox India P. Ltd.](#) [1990 Supp SCC 727] in regard to grant of temporary injunction and interference by appellate courts in regard to such discretionary order :

"Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated :

"... is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies."

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in

a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

In the case of **Wander Limited Case (Supra)**, **The Supreme Court held** that the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

The Apex **Court in Pawan Kumar vs Pra & Ors deshiya Industrial and Investment Corporation of UP held that Action against the guarantor cannot be taken** until the property of the principal-debtor is first sold off. As the Appellant has not sold the property of the principal-debtor, the action against the Appellant cannot be sustained.

In this appeal, it is learnt that the Respondent submitted declaratory suit to the Senior Civil Judge, Aizawl on 20.6.2014 the Senior Civil Judge fixed next date for submission of written statement by defendant(here appeallant) on 18.7.2014. But on 18.7.2014, the appeallant absent, and the trial court fixed 15.9.2014 for submission of W/S by appeallant. But the Senior Civil Judge Aizawl make this temporary injunction order on 20.6.2014, against the appeallant NERIFS, restraining from deduction of the monthly salary of the plaintiff Dengthanga Pachuau of Republic Veng, Aizawl. It seem that the petitioner Dengthanga Pachuau submitted petition to the Senior Civil Judge, Aizawl thro his counsel Mr. J.C Lalnunsanga on 20.6.2014, as seen in the Lower case record, and the said court make this order on the date itself on 20.6.2014, as written in the order copy.

Besides that the Lower court fixed 15.9.2014, for submission of written statement, by appeallant. But make order on 20.6.2014 without awaiting the W/S from the appeallant which the court itself fixed the date 15.9.2014,. so, there was

no hearing, and no chance is given to the appeallant(NERIFS) and the order was made as full desire of the petitioner Dengthanga Pachuau of Republic veng.

So, I have no other alternative except to quash the order passed by the Senior Civil Judge Aizawl.

I therefore set aside the order passed by Senior Civil Judge Aizawl dt.20.6.2014, in the Declaratory Suit No.23/2014 dt.20.6.2014.

Case record of Lower court be sent back.

The F.A.O is disposed.

Give copy of this order to all concern.

Sd/- VANLALMAWIA ,
Addl.District & Sessions Judge-I,
Aizawl Judicial District, Aziawl.

Memo No ____ /AD & SJ-I/2015 : Dated Aizawl the,9th April 2015.

Copy to :

1. District Judge, Aizawl Judicial District, Aizawl.
2. Shri Lalramsanga, Sr.Civil Judge, Aizawl. with case record return DS No.23/2014 and Misc Appln. No.186/2014.
3. NEREFS Ltd. Represented by Branch Manager, C/O H.laltanpuia Advocate.
4. Dengthanga Pachuau H/o Hmingmuani Republic C/o J.C.Lalnunsanga Advocate.
5. Lalthangmawii D/o Tinzuala (L) Bethlehem veng, Aziawl.
6. Deputy Director(Planning) AH & Vety Department, Aizawl.
7. Judicial Section.
8. Case record .
9. Guard file.

PESHKAR