

**IN THE COURT OF SENIOR CIVIL JUDGE- 3
AIZAWL DISTRICT: AIZAWL**

Civil Review Petition No. 10 of 2010
[Arising out of Money Suit No. 64 of 2010]

Petitioner/Plaintiff:

Mr. B. Lallungmuana
Proprietor
Zoram Concrete & Allied Products
C/o Lalbiaksanga Miller Building
B- 51, Mc. Donald Hill (2nd Floor), Aizawl

By Advocates : 1. Mr. A. Rinliana Malhotra
2. Mr. Joseph Lalfakawma
3. Mr. T.J. Lalnuntluanga
4. Mr. K. Laldinliana
5. Mr. James Thanghmingmawia

Versus

Respondent/Defendant

Mr. T. Neihlaia
Chanmari- II, Lunglei
Lunglei District: Mizoram

By Advocates : 1. Mr. K. Kawlkhuma
2. Mr. J. Lalremruata Hmar

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. Civil Judge-3

Date of Hearing : 31-01-2011
Date of Order : 02-02-2011

ORDER

GERMINATION OF THE PETITION

This is a civil review petition filed by Mr. T. Neihlaia, defendant in the main suit challenging the impugned order passed by this court Dt. 23-11-2010 in connection with Civil Misc. Appln. No. 296 of 2010 arising out of Money Suit No. 64 of 2010 which passed temporary injunction restraining the defendant not to draw his account/money under Account No. 30506363682 in SBI, Main Branch, Aizawl knowing balance falls Rs. 5,82,363/- unless and until disposal of the main suit so as to avoid futile proceedings by virtue of O. 39, rr. 1 and 2 r/w S. 151 of the Code of Civil Procedure, 1908 (In short CPC). The inter alia grounds of the petitioner is as below-

- (1) The order was made without hearing of the defendant/petitioner inimical to natural justice
- (2) While the suit filed by the plaintiff/respondent is proceedings in the court of SDCC, Aizawl in the same cause of action, the instant injunction is not appropriate

- (3) The said Bank Account is not a subject matter of dispute in the suit
- (4) No locus standi lies with the plaintiff
- (5) While the value of suit claimed by the plaintiff is Rs. 3 lakhs, the money deposited in the restrained Bank Account is Rs. 5,82,363/- and is disproportionate
- (6) Without prayer of mandatory injunction in the main suit, no temporary injunction can not be granted.
- (7) Freezing Bank account of the petitioner badly affected the family management of the petitioner

Per contrary, the plaintiff/respondent objected that-

- (1) While the Money Suit No. 61/'09 lies in the SDCC is for recovery of Rs. 4,06,167/- with interest at Rs. 12% per annum for supply of Hume pipes whereas the instant suit is for claiming Rs. 3 lakhs arisen from agreement Dt. 30/11/2009 signed by the petitioner/defendant before the Notary Public
- (2) Without freezing of the Bank account of the defendant, the suit would be infructuous and no prejudice is caused to the petitioner
- (3) Although permanent injunction is not sought in the plaint, under the inherent power of this court, it is proper to pass temporary injunction for the interest of justice

At the time of hearing of the petitioner, Mr. K. Kawkhuma and Mr. J. Lalremruata, Ld. Advocates for the petitioner reiterated their version in the petition and also went to the merit of the case as urged by the court.

Before going to decision, the facts and circumstances in Money Suit No. 64 of 2010 requires not to eschewed wherein, the plaintiff/petitioner submitted that by Agreement Dt. 30/11/2009, the defendant/respondent is liable to pay the Cheque of Rs. 3 lakhs to the plaintiff. The plaintiff/petitioner thereby received Cheque No. 944058 for the same from the respondent/defendant on 26/3/2010. While trying to withdraw the money, the said Cheque was returned for insufficient balance and hence the said main Money Suit.

Meanwhile, the plaintiff in that Misc. Application prayed to direct the Branch Manager, SBI, Aizawl Branch not to permit withdrawal of any amount from the Bank account of the defendant under No. 30506363682 knowing balance falls Rs. 5,82,363/- unless and until disposal of the main suit so as to avoid futile proceedings by virtue of O. 39, rr. 1 and 2 r/w S. 151 of the Code of Civil Procedure, 1908 (In short CPC).

Mr. A. Rinliana Malhotra orally supplemented that without making such interim measures from the threshold, the efficacious of court will also diminish as the act of the defendant was very flimsy and ironic at the time of passing such interim injunction.

The ratio and operative part of the impugned interim injunction runs as-

*"The respondent/defendant is therefore directed not to withdraw the amount deposited in SBI under A/C No. 30506363682 knowing balance falls Rs. 5,82,363/- unless and until disposal of the main suit by virtue of O. XXXIX, rr. 1 and 2 r/w S. 151 of the CPC towards justice for the deserved persons as held in the case of **Fertilizer Corporation Kamgar Union (Regd.), Sindri & Ors. vs Union Of India And Others (supra)**. I must*

therefore lean above O. XXXIX R. 3 of the CPC for passing temporary injunction at this ab initio as I duly satisfied that balance of convenience in favour of the plaintiff/petitioner can only be met without delaying may be for another 30 days whilst giving manipulation chance to the defendant will cause undue delay of realization of justice meant to protect the petitioner from irreparable loss at this very cogent reasons.

Likewise, the Branch Manager, SBI, Aizawl Main Branch is also kindly directed not to release any amount deposited in A/C No. 30506363682 even by ATM Card process (By mechanical blockage of its withdrawal) hold by the defendant/respondent unless and until disposal of the main suit or further other alternative orders from this court. Without such urgent steps/remedy, I do not have confidence to adjudicate the main suit successfully whether in favour of the plaintiff or not but rather purposeless and useless decree even after disposal of the suit.”

FINDINGS AND REASONS

Upon hearing and on perusal of the facet of the case records, the crux of ingredients of injunction is again quite felt necessary reliance in the following precedents –

In the case of **Shiv Kumar Chadha v. MCD** (1993 (3) SCC 161), wherein it was observed by the Hon’ble Apex Court that injunction is discretionary and that:

"Judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court".

Reference was also made to *Dalpat Kumar v. Prahlad Singh* (1992 (1) SCC 719) in regard to the meaning of the words 'prima facie case' and 'balance of convenience' and observed in *Mahadeo's case* (supra) that:

"It is settled law that no injunction could be granted against the owner at the instance of a person in unlawful possession."

In **Midnapore Peoples' Co-op. Bank Ltd. & Ors. Vs. Chunilal Nanda & Ors.** in connection with Appeal (civil) 1727 of 2002 decided on 25/05/2006 reported in 2006 AIR 2190, 2006 (2) Suppl. SCR 986, 2006 (5) SCC 399, 2006 (6) SCALE 308, 2006 (11) JT 203, the Supreme Court has held that-

“16. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

- (i) Orders which finally decide a question or issue in controversy in the main case.
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
- (iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
- (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.”

In **Premji Ratansey Vs. Union of India** decided on 22/07/1994 reported in 1994 (2) Suppl. SCR 117, 1994 (5) SCC 547, 1994 (3) SCALE 562, 1994 (6) JT 585, the Apex Court has observed that-

“.....Issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest of right not shown to be in existence, cannot be protected by injunction.

5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.”

In **Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd.** decided on 18/08/1999 reported in 1999 AIR 3105, 1999 (1) Suppl. SCR 560, 1999 (7) SCC 1, 1999 (5) SCALE 95, 1999 (6) JT 89, the Supreme Court went on that-

“We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction usually, is at the earliest possible stage so far as the time frame is concerned. The other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunctions are as below:-

- (i) Extent of damages being an adequate remedy;
- (ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason thereof;
- (iii) The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;
- (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case - the relief being kept flexible;
- (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties case;
- (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;
- (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.”

In **Hindustan Petroleum Corporation Ltd. Vs. Sri. Sriman Narayan & Anr.** in connection with Appeal (civil) 3661-62 of 2002 decided on 09/07/2002 reported in 2002 AIR 2598, 2002 (5) SCC 760, 2002 (5) SCALE 132, 2002 (5) JT 335, the Apex Court has held that-

“It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the Court.

While exercising the discretion the Court normally applies the following tests:-

- i) whether the plaintiff has a prima facie case;
- ii) whether the balance of convenience is in favour of the plaintiff; and
- iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to 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. [See Gujarat Bottling Co. Ltd. & Ors. Vs. Coca Cola Co. & Ors. (1995) 5 SCC 544 at 574.]”

In **Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Ors.** decided on September 11, 2009 and reported in (2009) 10 SCC 388, the Apex Court further held that-

“25. Grant of temporary injunction, is governed by three basic principles, i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini trial at the stage of grant of temporary injunction (Vide S.M. Dyechem Ltd. Vs. M/s. Cadbury (India) Ltd., AIR 2000 SC 2114; and Anand Prasad Agarwalla (supra).

....32. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. prima facie case, balance of convenience and irreparable loss. The delay in approaching the Court is of course a good ground for refusal of interim relief, but in exceptional circumstances, where the case of a party is based on fundamental rights guaranteed under the Constitution and there is an apprehension that suit property may be developed in a manner that it acquires irretrievable situation, the Court may grant relief even at a belated stage provided the court is satisfied that the applicant has not been negligent in pursuing the case.”

In the light of the above glaring guiding principles pursuant to interim injunctions in civil proceedings. Further reliance may be taken in the case of **Fertilizer Corporation Kamgar Union (Regd.), Sindri & Ors. vs Union Of India And Others** decided on 13 November, 1980 and reported in 1981 AIR 344, 1981 SCR (2) 52, the Hon'ble Apex Court has observed that-

“We have no doubt that in a competition between courts and streets as dispenser of justice, the rule of law must win the aggrieved person for the law court and wean him from the lawless street. In simple terms, locus standi must be liberalised to meet the challenges of the times. Ubi just ibi remedium must be enlarged to embrace all interests of public-minded citizens or organisations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets.”

In the case of the **Divisional Controller, KSRTC Vs. Mahadeva Shetty and Anr.** decided on 31/07/2003 reported in 2003 AIR 4172, 2003 (2) Suppl. SCR 4, 2003 (7) SCC 197, 2003 (6) SCALE 16, 2003 (6) JT 519, the Hon'ble Apex Court held that-

“The "Rule of Law" requires that the wrongs should not remain unredressed. All the individuals or persons committing wrongs should be liable in an action for damages for breach of civil law or for criminal punishment.

In **P.K. Ghosh, I.A.S. & Anr. Vs. J.G. Rajput** decided on 10/11/1995 reported in 1996 AIR 513, 1995 (5) Suppl. SCR 51, 1995 (6) SCC 744, 1995 (6) SCALE 257, 1995 (8) JT 214, it was observed-

“A basic postulate of the rule of law is that 'justice should not only be done but it must also be seen to be done.'

Again, in **International Airport Authority of India vs K.D. Bali & Another** decided on 29 March, 1988 reported in 1988 AIR 1099, 1988 SCR (3) 370, 1988 SCC (2) 360, JT 1988 (2) 1, 1988 SCALE (1) 631, the Supreme Court has held that-

“While endorsing and fully maintaining the integrity of the principle 'justice should not only be done, but should manifestly be seen to be done', it is important to remember that the principle should not be led to the erroneous impression that justice should appear to be done that it should in fact be done.

See the observations of Slade, J. in R. v. Cambore Justices Ex parte Pearce, [1954] 2 All. E.R. 850 at 855.”

In view of the above, it is impelled to prudent on adjudication of the case whether in favour of the plaintiff or not, balance of convenience can only be reached only through upholding of interim injunction as already passed. Otherwise, the act of the defendant depicted grave doubt even for execution proceedings to uphold the sanctity and efficacy of courts. Without granting of the prayer of the plaintiff, this powers and its exercise of this court will cogently futile and no degradation of the defendant will not also obviously occur to preclude withdrawal of the said amount from the SBI as he voluntarily deposited the said amount may be a motive to earn its interest and safety and security measures. In short, the cause of action in the suit had arisen due to allegation of the defendant to commit tricky and foul play in the infidelity of the Agreement. I am not convinced by the submission of Ld. Counsels for the defendant/petitioner to set aside the said temporary injunction solely to realize justice in a practicable manner as held in **International Airport Authority of India vs K.D. Bali & Another (supra.)**

Thus, the instant review petition is rejected and is dismissed. In view of the peculiarities of the petition, no order as to costs.

Civil Review Pet. No. 10 of 2010 shall stand disposed of accordingly.

Give this order copy to both parties and all concerned.



Dr. H.T.C. LALRINCHHANA
Senior Civil Judge- 3
Aizawl District: Aizawl

Memo No. Civil Rev. Pet./10/2010, Sr. CJ (A)/

Dated Aizawl, the 2nd Jan., 2011

Copy to:

1. Mr. B. Lallungmuana, Proprietor: Zoram Concrete & Allied Products, C/o Lalbiaksanga Miller Building B- 51, Mc. Donald Hill (2nd Floor), Aizawl through Mr. A. Rinliana Malhotra Adv.
2. Mr. T. Neihlaia, Chanmari- II, Lunglei: Lunglei District: Mizoram through Mr. A. Rinliana Malhotra Adv.
3. Branch Manager, SBI, Aizawl Branch through Mr. A. Rinliana Malhotra Adv.
4. Case Record of Money Suit No. 64 of 2010
5. Case Record

PESKAR