

**IN THE COURT OF SENIOR CIVIL JUDGE- 2
AIZAWL DISTRICT: AIZAWL, MIZORAM**

MONEY SUIT NO. 47 OF 2011

Plaintiff:

The State of Mizoram
Through Secretary to the Govt. of Mizoram
Finance Department
Represented by the Director
Institutional Finance & State Lottery
Govt. of Mizoram

By Advocate's : Mr. R.C. Thanga, Govt. Adv.

Versus

Defendants:

M/s Limras Lottery & Trading Co. (P) Ltd.
166, Peter's Road, Royapettah
Chennai- 600 014 represented by its Director

Date of Judgment & Order : 24-06-2011

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 2

JUDGMENT & ORDER

NUCLEUS OF THE CASE

The plaintiff in their plaint submitted that the defendant company is one of the business partners of the plaintiff government for marketing Mizoram State Lottery tickets acting as one of the Sole Distributors since the year 1994. For that purpose, contractual agreement was also executed by parties even for marketing Online Lotteries and Paper Lotteries which binds that the defendant has undertaken to market the said lotteries on the terms and conditions stipulated therein. Agreement dt. 1st July, 2008 is also executed for a period of four years to be effective from the date of the first draw which was held on 1st July, 2008. A copy of the same is also annexed as Annexure- 1. For marketing of the Paper Lotteries, agreement was also signed on 26th May, 2009 for a period of one year to be effective from 13.12.2008 which is also annexed as Annexure- 2. By violating the terms contained in Annexure- 1 by failing to remit sale proceeds at the rate of Rs. 500/- per draw for weekly schemes and Rs. 20,000/- per draw for all schemes other than weekly lotteries including draw expenses, the defendant due to the plaintiff is therefore Rs. 1,63,84,605.98. More so, by violating the terms contained in Annexure- 2 in the plaintiff failing to remit within 30 days after the draw is held and failure to remit advance as fully described in paragraph 13 of the agreement at Annexure- 2, the defendant due to the

plaintiff becomes Rs. 36,55,189.00. The total amount due by the defendant to the plaintiff falls Rs. 2,00,39,794.98. Although taking possible measures like sending of letters and telephonic message for so many times, the defendant blenched on the said liability to be given to the plaintiff. A requisite court fees at Rs. 11,000/- is also paid in full. Thus, prayed a decree (i) declaring that the defendant is liable to the plaintiff for payment of Rs. 2,00,39,794.98 with interest (ii) to pass order (a) directing the defendant to make payment of the decretal amount with interest to the plaintiff within a specified period of time (b) for cost and (c) for any further order/orders for relief/reliefs which this court deem fit and proper.

PROCEEDINGS

While the suit is instituted on 15/4/2011 and served summons and duplicate copies of plaint to the defendant through a registered post, another notice to defendant is also issued and served to the defendant. The defendant fails to submit written statements or appear either in person or a pleader till date without knowing reasons. As enshrined u/s 27 of the General Clauses Act, 1897 whilst the address of the defendant company is very clear, I am satisfied that service of summon is duly served to the defendant but contumaciously fails to reply and cooperate the proceedings.

Hence, impelled to proceed the case in accordance with O. VIII, R. 10 of the CPC as prayed by learned Counsel for the plaintiff and as find fit and proper.

The said inordinate and unexplained delay of written statements called the suit to proceed under O. VIII, R. 10 of the CPC. O. VIII, R. 1 of the CPC will be attracted for the end of justice in the civil proceedings like in the instant case. Due to limitation of time and space, I would go directly to some leading cases rather than mere rhetoric. In **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India** in connection with Writ Petition (civil) 496 of 2002 decided on 02/08/2005 reported in 2005 AIR 3353, 2005 (1) Suppl. SCR 929, 2005 (6) SCC 344, 2005 (6) SCALE 26, 2005 (6) JT 486, the Hon'ble Apex Court held that-

“Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1.”

In **Sreenivas Basudev vs Vineet Kumar Kothari** decided on 17/3/2006 reported in AIR 2007 Gau 5, (2006) 3 GLR 230, Gauhati High Court has observed that-

“9. Order VIII, Rule 1 as well as Order VIII, Rule 10 of the Code, which warrant filing of written statement within a period of 90 days from the date of service of summons on the defendant, are part of the procedural law. The procedural law is handmaid of justice and cannot override the necessity to do justice between the parties to the suit. No part of the procedural law and not even Order VIII, Rule 1 or Order VIII, Rule 10 can, in the absence of any explicit legislative intendment, be treated to have disempowered the Court or can be

said to stand in the way of the Court to make exception in an appropriate case and accept a written statement beyond the period of 90 days, though, ordinarily and except in rare and compelling circumstances, acceptance of written statement beyond the requisite period of 90 days is not permissible.

...14. What crystallizes from the above discussion is that while it is necessary that a defendant is made to file written statement within, at best, the extended time of 90 days from the date of service of the summons, the courts do have the power, in an appropriate case, to accept the written statement beyond the period of 90 days, though such acceptance is not possible except in rare cases and special circumstances.”

It is therefore axiomatic that written statement should be filed within thirty day from the date of service of summons (including duplicate copy of plaint) but extendable for another sixty days with speaking orders. It is further permissible to expand time frame exceeding ninety days where and when exceptional and rare cases/circumstances. Let us again look into the entity of adjournment may be for the purpose of waiting of written statements.

Moreover, in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (supra)**, the Hon’ble Apex Court has further held that-

“In some extreme cases, it may become necessary to grant adjournment despite the fact that three adjournments have already been granted (Take the example of Bhopal Gas Tragedy, Gujarat earthquake and riots, devastation on account of Tsunami). Ultimately, it would depend upon the facts and circumstances of each case, on the basis whereof the Court would decide to grant or refuse adjournment. The provision for costs and higher costs has been made because of practice having been developed to award only a nominal cost even when adjournment on payment of costs is granted. Ordinarily, where the costs or higher costs are awarded, the same should be realistic and as far as possible actual cost that had to be incurred by the other party shall be awarded where the adjournment is found to be avoidable but is being granted on account of either negligence or casual approach of a party or is being sought to delay the progress of the case or on any such reason. Further, to save proviso to Order XVII Rule 1 from the vice of Article 14 of the Constitution of India, it is necessary to read it down so as not to take away the discretion of the Court in the extreme hard cases noted above. The limitation of three adjournments would not apply where adjournment is to be granted on account of circumstances which are beyond the control of a party. Even in cases which may not strictly come within the category of circumstances beyond the control of a party, the Court by resorting to the provision of higher cost which can also include punitive cost in the discretion of the Court, adjournment beyond three can be granted having regard to the injustice that may result on refusal thereof, with reference to peculiar facts of a case. We may, however, add that grant of any adjournment let alone first, second or third adjournment is not a right of a party. The grant of adjournment by a court has to be on a party showing special and extraordinary circumstances. It cannot be in routine. While considering prayer for grant of adjournment, it is necessary to keep in mind the legislative intent to restrict grant of adjournments.”

In **State Bank of India Vs. K.M. Chandra Govindji** decided on 08/11/2000 reported in 2000 (8) SCC 532, 2000 (7) SCALE 354, 2000 (2) Suppl. JT 433, it was further observed that-

“In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournments, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected.”

I therefore must uphold the sanctity of CPC for timely justice and solely for the interest of justice while very *sine quo non* to revamp subordinate judiciary of Mizoram in line with law of the land at the arena of insulation of judiciary from executive so as to restore public faith in the judiciary. The inordinate delay and unexplained delay for filing of written statements by the defendants in the instant case could not be exonerated in view of the socio-economic conditions of the victim so as to restore public faith in the judiciary to avoid achlocracy/mobocracy akin to macabre life.

Pertinently, paragraph 17 of the said Agreement Dt. 1/7/2008, the legal jurisdiction pertaining to Mizoram State Online Lotteries shall be the Civil Courts at Aizawl only.

FINDINGS

So is the betrayal on the part of the defendant, upon hearing of Mr. R.C. Thanga and on perusal of case record, I am satisfied with to deliver judgment and decree as the case is very clear and no doubt had arisen as seriously prayed by Mr. R.C. Thanga.

With regards to quantum of decretal amount, no resorts can be had except the submissions in the plaint. Meanwhile, as a well settled law that interest can be imposed from the date of institution of the suit whilst no specific agreement on the interest as held in **Secretary/General Manager Chennai Central Cooperative Bank Ltd. & Anr. Vs. S. Kamalaveni Sundaram** decided on 4 January, 2011 and in connection with Civil Appeal No. 14 of 2011 (Arising out of SLP (Civil) No. 19305 of 2010), their Lordship of Hon'ble Supreme Court has held that-

“11. Section 34 of the Code of Civil Procedure, 1908 (CPC) empowers the court to award interest for the period from the date of the suit to the date of the decree and from the date of the decree to the date of payment where the decree is for payment of money. Section 34 of the CPC does not empower the court to award pre-suit interest. The pre-suit interest would ordinarily depend on the contract (express or implied) between the parties or some statutory provisions or the mercantile usage.”

It therefore determined that interest may be counted from the date of institution of the suit like in the instant case.

At the last stage, costs of the suit is the essence of justice like in the instant case where the defendants willfully breached the agreement and compelled the plaintiff to approach the law court as very recently held in the case of **Vinod Seth vs Devinder Bajaj & Anr.** disposed of on 5 July, 2010 in connection with Civil Appeal No. 4891 of 2010 [Arising out of SLP [C] No.6736 of 2009], their Lordship of Hon'ble Supreme Court has held that-

“23. The provision for costs is intended to achieve the following goals: (a) It should act as a deterrent to vexatious, frivolous and speculative litigations or defences. The spectre of being made liable to pay actual costs should be such, as to make every litigant think twice before putting forth a vexatious, frivolous or speculative claim or defence. (b) Costs should ensure that the provisions of the Code, Evidence Act and other laws governing procedure are scrupulously and strictly complied with and that parties do not adopt delaying tactics or mislead the court. (c) Costs should provide adequate indemnity to the successful litigant for the expenditure incurred by him for the litigation. This necessitates the award of actual costs of litigation as contrasted from nominal or fixed or unrealistic costs. (d) The provision for costs should be an incentive for each litigant to adopt alternative dispute resolution (ADR) processes and arrive at a settlement before the trial commences in most of the cases. In many other jurisdictions, in view of the existence of appropriate and adequate provisions for

costs, the litigants are persuaded to settle nearly 90% of the civil suits before they come up to trial. (e) The provisions relating to costs should not however obstruct access to courts and justice. Under no circumstances the costs should be a deterrent, to a citizen with a genuine or bonafide claim, or to any person belonging to the weaker sections whose rights have been affected, from approaching the courts.”

And in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India** in connection with Writ Petition (civil) 496 of 2002 decided on 02/08/2005 reported in 2005 AIR 3353, 2005 (1) Suppl. SCR 929, 2005 (6) SCC 344, 2005 (6) SCALE 26, 2005 (6) JT 486, the Hon’ble Apex Court held that-

“...The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court fee, lawyer’s fee, typing and other cost in relation to the litigation.”

Thus, I must impose reasonable cost like in the instant suit towards justice.

DIRECTIVES

I therefore have no option except to pronounce judgment & order forthwith that it is ordered and decreed that the defendant do pay to the Plaintiff’s the sum of Rs. 2,00,39,794.98 (Two hundred lakhs, thirty nine thousand, seven hundred ninety four rupees and ninety eight paisa) with interest thereon at the rate of 12% (percent) per annum to be reckoned from 15.4.2011 when institution of the suit till the date of realization of the said sum, and also pay Rs. 21,000/- (Twenty one thousand rupees) for the costs of this suit (Rs. 11,000/- for court fees + Rs. 10,000 for lawyers fee), with interest thereon at the rate of 12% (percent) per annum from this date till the date of realization. All the said due amount shall be paid within one year from the date of this order/decreed by the defendant to the plaintiff including interest thereon.

The case shall stand disposed of accordingly. Give this copy along with decree to both parties and all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. MS/47/2011, Sr. CJ (A)/

Dated Aizawl, the 24th June, 2011

Copy to:

1. The State of Mizoram Through Secretary to the Govt. of Mizoram, Finance Department Represented by the Director, Institutional Finance & State Lottery- Govt. of Mizoram C/o Mr. R.C. Thanga, Govt. Advocate
2. M/s Limras Lottery & Trading Co. (P) Ltd., 166, Peter’s Road, Royapettah, Chennai- 600 014 represented by its Director C/o Mr. R.C. Thanga, Govt. Advocate
3. P.A. to Hon’ble District & Sessions Judge, Aizawl Judicial District: Aizawl
4. Case Record

PESKAR