

# IN THE COURT OF SENIOR CIVIL JUDGE- 1 AIZAWL DISTRICT: AIZAWL

**MISC. J. NO. 34 OF 2011**

[Arising out of Civil Suit No. 25 of 2011]

*Petitioner/Plaintiff:*

Mr. David Lalmuanpuia  
Prop. F. Hrangvela and Sons, Earth Movers  
Upper Khatla, Aizawl

*By Advocates*

: 1.Mr. Hranghmingthanga Ralte  
2. Mr. F. Lalenglina

Versus

*Respondent/Defendant:*

Mr. R. Lalzamlina  
Khatla South, Aizawl

*By Advocate's*

: Mr. Lalawmpuia Ralte

*Proforma Defendant:*

The Executive Engineer  
Project Division- II  
PWD, Laipuitlang, Aizawl

*By Advocates*

:

**BEFORE**

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 1

Date of hearing : 29-11-2011

Date of Order : 30-11-2011

**ORDER**

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## BRIEF FACTS

The defendant had hired two numbers of earth moving vehicles (JCB) 3 DX Super Bearing registration No. MZ-01/D-3257 and (JCB) 4 DX under Registration No. MZ-01/E-1879 belonging to the plaintiff for the purpose of contract work allotted to the defendant by Minor Irrigation Department, Govt. of Mizoram, Kolasib Division from 2<sup>nd</sup> April, 2009 to 22<sup>nd</sup> April, 2009. Out of the total bill amount, the defendant paid only Rs. 5 lakhs to the plaintiff but remain fails to make payment of the balance amounts at Rs. 2,92,510/- by flimsy grounds. Thus, filed the suit with interest. As no other efficacious measures could be worked out by the plaintiff/petitioner, the instant petition for temporary injunction to direct the defendant to furnish security as the court deems fit and proper. In case of failure, attachment of

the bill for construction of Tourist Lodge at Lengpui remain in the aegis of the proforma defendant unless and until disposal of the suit.

The defendant/respondent in his written objection contended and denied that the machines of the plaintiff could not use for 501 hours due to mechanical defects and other problems. They are not therefore liable to pay Rs. 7,92,510/- to the plaintiff. They had already paid Rs. 5 lakhs which is the exact amount liable to pay.

### POINTS OF RIVALRY

At the time of hearing of the petition, learned counsels of both parties simply submitted that the matter is within the discretion of the court in view of mingling facts in the pleadings.

### LEGAL PRINCIPLES

Before going on merits, I must look into the legality of temporary/interim injunction by taking resorts 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.”

Also vide, **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; **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; **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.

And 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.”

### **FINDINGS**

Upon hearing of both parties and on perusal of case records and findings on visiting of the spot, the following findings on the basis of the aforementioned well settled ingredients/legal principles emerged as -

#### **Prima facie case**

Recently in **Deepali Designs & Exhibits Pvt. Ltd. vs Pico Deepali Overlays Consortium & Ors.** decided on 22 February, 2011 in connection with IA Nos.16915-16916/2010 & IA No.1218/2011 in CS(OS) No.2528/2010, Hon'ble Justice Gita Mittal for Delhi High Court by taking reliance in the pronouncements of H.L. Anand, J on 23rd May, 1973 reported at 1973 RLR 542 **Gopal Krishan Kapoor Vs. Ramesh Chander** termed that-

“18. On a consideration of the ordinary meaning of the term 'prima facie' and the trend of judicial pronouncement it appears to me that "prima facie case" would mean a case which is not likely to fail on account of any technical defect and is based on some material which if accepted by the tribunal would enable the plaintiff to obtain the relief prayed for by him and would, therefore, justify an investigation.”

In the light of the above well settled legal principles, the suit is already trial and processed required to investigation as admitted.

#### **Balance of convenience**

Balance of convenience also lies in favour of the plaintiff. But whether restraining bill amount lies in the proforma defendant will cause problems in their rules of business towards stipulated financial year is rather important to note.

#### **Irreparable injury**

The defendant is known as usually engaged with government contract, without restraining the bill amount lies in the aegis of the proforma defendant, he may be able to make payment of the claimed liabilities. Pertinently, learned counsels of parties fails to submit the exact pending bill

amount lies in the proforma defendant with their rules of business like whether mature to make payment/disbursement or not.

### **ORDER**

So is the factual matrix and legal principles, there may be some efficacious measures without restraining the bill amount of the respondent/defendant in the aegis of the proforma defendant as it requires to caution on rules of business having limited stipulated period for transaction of business with regards to finance whilst learned counsels of parties fails to submit the exact pending bill amount lies in the proforma defendant with their rules of business like whether mature to make payment/disbursement or not and when it will be feasible to withdraw. Thus, the petition is rejected for the interest of the defendant as well as the plaintiff.

With this order petition shall stand disposed of accordingly.

Give this order copy to all concerned.

**Dr. H.T.C. LALRINCHHANA**

Senior Civil Judge- 1  
Aizawl District: Aizawl

Memo No. Misc. C/34/2011, Sr. CJ (A)/

Dated Aizawl, the 30<sup>th</sup> Nov., 2011

Copy to:

1. Mr. David Lalmuanpuia Prop. F. Hrangvela and Sons, Earth Movers, Upper Khatla, Aizawl through Mr. Hranghmingthanga Ralte, Advocate
2. Mr. R. Lalzamlia, Khatla South, Aizawl through Mr. Lalawmpuia Ralte, Advocate
3. The Executive Engineer, Project Division- II, PWD, Laipuitlang, Aizawl through Miss Bobita Lalhmingmawii, AGA
4. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District, Aizawl
5. Case record.

PESKAR