

**IN THE COURT OF SENIOR CIVIL JUDGE- 1
AIZAWL DISTRICT: AIZAWL, MIZORAM**

MONEY SUIT NO. 26 OF 1993

Plaintiff:

Mr. Hmingthanga
S/o Vaisata
Class I Contractor
Electric Veng, Aizawl

By Advocates

: 1. Mr. W. Sam Joseph
2. Mr. H. Laltanpuia

Versus

Defendant:

1. The State of Mizoram
Through the Chief Secretary to the Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
Public Works Department
3. The Chief Engineer
Public Works Department
Govt. of Mizoram
4. The Superintending Engineer
Aizawl East Circle
Public Works Department
Govt. of Mizoram
5. The Executive Engineer
Public Works Department
Saitual Division, Saitual- Aizawl District
Govt. of Mizoram
6. The Sub-Divisional Officer
Public Works Department
Saitual Sub-Division, Saitual
Govt. of Mizoram

By Advocates

: 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

Date of Arguments : 03-11-2011

Date of Judgment & Order : 04-11-2011

BEFORE

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

JUDGMENT & ORDER

INTRODUCTORY

WHEREAS timely justice is mandate as incorporated within the part and parcel of fundamental rights, undue pending case almost twenty years like in the instant case only with monologue each of parties occurred which may lead traduce of the whole gamut. Sincerely apologized to the parties for failure of prim but hopes successful litigants by abiding of this order for the needy.

GERMINATION OF THE CASE

The plaintiff is the Class I Contractor in the Public Works Department, Govt. of Mizoram and allotted the construction of widening Ratu-Saungpuilawn – Khawlian STC Road Sec- 1 (15.00 Km – 16.00 Km) under Work Order No. NIT-6/81/2521 Dt. 10.11.1982 by the defendants. After he completed the said construction, Mr. Lalhmingthanga, the then SDO, PWD took measurement of the said work and submitted Running Bill to him on 20.7.1983 and was again passed by Mr. Liansanga, the then EE, PWD, Saitual on 16th Nov., 1983 but the cheque/bill amounting to Rs. 3,79,708/- (Rupees three lakhs, seventy nine thousand, seven hundred and eight) incurred on the said contract work could not be paid to the plaintiff due to non availability of funds. Mr. Satinmana, the then EE, PWD, Saitual again passed the said bill but remains non est. Inspite of repeated demands of the said bill amount, security deposits and others including the interest have been kept pending illegally by the defendants. For the purpose of approaching the defendants by the plaintiff to Saitual etc. he spends around Rs. 90,000/-. The plaintiff therefore prayed to direct the defendants to pay Rs. 3,79,708/- + Rs. 90,000/- (= Rs. 4,69,708/-) + Rs. 5,00,000/- with 20% pendente lite interest per annum till realization.

The defendants in their written statements contended that there is no original bill copies filed by the plaintiff and no records lies in the office of the defendants on such alleged construction works with the bills. Thus, there is no cause of action in favour of the plaintiff and against the defendants. The defendants therefore prayed to dismiss of the suit.

ISSUES

To arrive correct findings and by virtue of O. XIV of R. 5 of the CPC, the issues already framed on 06.06.2006 is amended and the amended form of issues are as follows-

- (1) Whether the suit is maintainable or not
- (2) Whether the suit is barred by law of limitation or not.
- (3) Whether the plaintiff has cause of action against the defendants or not

- (4) Whether the plaintiff is entitled to the relief claimed or not. And if so, to what extend

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced only one witness namely- Mr. Hmingthanga S/o Vaisata, Electric Veng, Aizawl (Hereinafter referred to as the lone PW). Being the plaintiff he reiterated the contents of the plaintiff supplemented that legal notice as required u/s 80 of CPC is duly served to the defendants. Ext. P- 1 is a copy of Work Order Dt. 10.11.1982. Ext. P- 2 is a copy of Bill observation sheet Vide, Bill No. RF- II/241 Dt. 20.7.1983.

In his cross examination he denied that the contract work was not allotted to him by the defendants. And also denied that the claimed amount is excessive in nature.

For the defendant:

The defendants also produced only one witness namely- Mr. Henry Lalmuakima, S.E. Public Works Department, Eastern Circle (Hereinafter referred to as the lone DW). In his examination in chief, he deposed that there is no evidence to elicit that the Bill was passed by Mr. Liansanga, the then concerned E.E, PWD on 16.11.1983 and cheque was passed by Mr. Satimana, the later concerned E.E. PWD. More so, as per clause 8 of the Contract Agreement, the Bill is to be submitted by the contractor. The plaintiff will therefore liable to submit the same. There is no pending bills lies in their office in favour of the plaintiff. Ext. D-1 is the written statement, Ext. D- 1 (a) is the signature of Mr. Sanghrima Chawngthu, the then Under Secretary to the Govt. of Mizoram, PWD (Technical).

In his cross examination, he deposed that he was not associated with the case. He is not aware of the claim amount of the plaintiff in the instant case. He admitted that the plaintiff is the class- 1 contracted under their department. He also admitted that Ext. P- 1 and Ext. P-2 were the work allotted to the plaintiff by the then E.E. Mr. Liansanga. He admitted that in the Observation sheet, the official who had issued the work order stated that “may be passed within S.E and E.E power to sanction deviation statement. However, the D/Statement may be sanctioned and payment made only in the next financial year as fund is already short for 83-84” signed by Mr. Liansanga, the then E.E. PWD, Saitual Division. He did not deny that the plaintiff had worked as per the Work Order. He suggested that a fresh measurement has to be taken in conformity with the Work Order and the amount should be paid as they did not find the bill submitted by the plaintiff in the record.

ARGUMENTS

At the time of arguments, Mr. R. Lalremruata, learned AGA fairly submitted that if the work is duly performed by the plaintiff, the defendants are willing to make measurement afresh and pay the correct amount to the plaintiff as the connected documents like the bills etc. are not available with the offices of the defendants. They will therefore be in a position to process the bill.

Learned counsel for the plaintiff do not have any diverse arguments except evidences led by them on the basis of the contents of the plaint.

FINDINGS

Issue No. 1

Maintainability of the suit

The suit was filed on 5th Sept., 1993 in accordance with the provisions under the Rules for the Regulation of the Procedure of Officers Appointed to Administer Justice in the Lushai Hills, 1937 chalked out under the Scheduled District Act, 1874. Proper verification of the suit was also done. Thus, by virtue of the unique provisions under the Rules for the Regulation of the Procedure of Officers Appointed to Administer Justice in the Lushai Hills, 1937 and under section 1 of the Code of Civil Procedure, 1908 which directed to apply only the spirit of the Code of Civil Procedure, 1908 is applicable in the terrain. There can be no technical lacunae in the suit.

With regards to another task on requisite court fees in the instant suit, whilst the suit is filed in 1993, the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) is made effective from 22nd April, 1997 vide, Notification No. G. 17013/8/96- FFC, the 21st July, 1997 published in the Mizoram Gazette, Vol. XXVI, 25.7.1997, Issue No. 30 [Part- II (A) p. 3]. Thus, there will be no question of lacunae on requisite court fees in the plaint

Issue No. 2

Whether the suit is barred by law of limitation or not.

Admittedly, the Limitation Act, 1963 will be applicable in the instant case as held by the Hon'ble Gauhati High Court in the case of **Lalchawimawia & Ors. Vs. State of Mizoram** decided on 5-5-1999 in connection with WP (C) No. 4 of 1996 reported in 1999 (3) GLR 100 and later in **L. Biakchhunga vs State Of Mizoram And Ors.** decided on 1/8/2005 and reported in (2006) 2 GLR 610. Meanwhile, the suit was filed during 1993. Howsoever, the cause of action had firstly arisen on 20.7.1983 and will obviously continuously running when the defendants might be failed to make payment when the plaintiff preferred repeated request to the defendants for the same. Pertinently, the Hon'ble Gauhati High Court, Aizawl Bench was also silent on the maintainability of the instant suit in the order passed by their Lordship on 5.8.199 in F.A.O No. 3 of 1999. The instant issue is therefore decided in favour of the plaintiff.

Issue No. 3

Whether the plaintiff has cause of action against the defendants or not

As admitted by the deposition of the lone DW and submissions of learned AGA at the time of oral arguments that there is no denial of the contract work allotted to the plaintiff by the defendants and his bills pending therein except no record is available with them. The plaintiff will therefore have cause of action in the instant case in the light of the ratio laid down in **Swamy Atmananda & Ors. Vs. Sri Ramakrishna Tapovanam & Ors.** decided on 13/04/2005 in connection with Appeal (Civil) 2395 of

2000 and reported in 2005 AIR 2392, 2005 (3) SCR 556, 2005 (10) SCC 51, 2005 (4) SCALE 117, 2005 (4) JT 472.

Issue No. 4

Whether the plaintiff is entitled to the relief claimed or not. And if so, to what extend

In that Ext. P-1, the deposit amount is at Rs. 5200/- (Rupees five thousand two hundred) and with further conditions that (i) the said works should be completed within six months from the date of issuance of Work Order (ii) the work should be started within 15 days from the date of issuance of Work Order failing on which liable to cancellation and (iii) the estimate amount is at Rs. 3,29,110/- (Three lakhs, twenty nine thousand, one hundred and ten rupees)

No submissions in the written statements and the evidence adduced by the defendants disclosed the fault of the plaintiff on the said covenanted terms and conditions.

As per the said Ext. P-1 viz. Work Order dt. 10.11.1982, it can be seen the particulars and contract amounts as follows-

<i>Item No.</i>	<i>Item of work</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
1	Clearance of jungles of all types etc.	10,000 m ²	Rs. 1/m ²	10,000/-
2	Earthwork in all classes of soil etc.	72,527 m ³	Rs. 7/m ³	5,07,689/-
3	Side drain	1,000 Rm	Rs. 1/Rm	1,000/-

Total = Rs. 5,18,689/- (Rupees five lakhs, eighteen thousand, six hundred and eighty nine)

Although the plaintiff claimed additional relief like costs incurred on his travelling expenses for the purpose of withdrawal of the bill amount and huge rate of interest @ 20% per annum during pendency of his bill. I am unable to justify such excessive rate of interest and travelling expenses as all the contractors are bound to pursue their respective bills although not in a written form.

It is a well settled law that where the agreement/contract is silent on rate of interest, pendente lite interest alone can be awarded under section 34 of the Code of Civil Procedure, 1908 as recently observed 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), wherein, the 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.”

Moreover, the rate of interest should be reasonable and depends on case to case as decided in **M/S Msk Projects (I)(Jv) Ltd. vs State Of Rajasthan & Anr.** decided on 21 July, 2011 in connection with Civil Appeal No. 5416 of 2011, the Supreme Court has held that-

“18. In H.U.D.A v. Raj Singh Rana, AIR 2008 SC 3035, this Court considered various earlier judgments of this Court including Ghaziabad Development Authority v. Balbir Singh, AIR 2004 SC 2141; Bihar State Housing Board v. Arun Dakshy, (2005) 7 SCC 103; Haryana Urban Development Authority v. Manoj Kumar & Anr., (2005) 9 SCC 541; H.U.D.A v. Prem Kumar Agarwal & Anr., JT 2008 (1) SC 590 and came to the conclusion:the rate of interest is to be fixed in the circumstances of each case and it should not be imposed at a uniform rate without looking into the circumstances leading to a situation where compensation was required to be paid.”

As the above is the well settled principles of law, while the contract agreement is presumed silent on payment of interest and its rate on pending of the contract bills, interest rate at 9% per annum with effect from 5th September, 1993 till realization will be reasonable like in the instant case.

For the avoidance of impropriety and financial transaction in the Rules of Business, as submitted by learned AGA at the time of oral arguments, a fresh measurement within the ambit of the Ext. P-1 viz. Work Order and within the amount covenanted in the said Ext. P-1 may be allowed while the plaintiff evidence/the case proof that the plaintiff is allotted Work Order as per Ext. P-1 and completed and performed the said work in compliance with the terms and conditions imposed in the said Ext. P-1.

ORDER

As per the above lengthy discursive and reliance so taken, the defendants are directed to conduct a fresh measurement of the work allotted to the plaintiff and duly performed by the plaintiff in accordance with Ext. P-1 viz. the construction of widening Ratu- Saungpuilawn – Khawlian STC Road Sec- 1 (15.00 Km – 16.00 Km) under Work Order No. NIT-6/81/2521 Dt. 10.11.1982. Bill amount for the same should be prepared and processed only as per the terms and conditions set forth in the said Ext. P-1 with interest rate @ 9% per annum with effect from 5th September, 1993 till realization. The defendants are further directed to complete all the said process/task including full payment of the contract amount to the plaintiff within six months from the date of this order or from the date of receiving this order.

On the other hand, the plaintiff is also directed to assist the defendants for compliance of this order as and when requested by them including fresh submission of his bill(s). Parties are directed to bear their own costs.

The case shall stand disposed of accordingly.

Give this copy including decree to all concerned.

Given under my hand and seal of this court on this 4th November, 2011 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 1

Aizawl District: Aizawl

Memo No. MS/26/1993, Sr. CJ (A)/

Dated Aizawl, the 4th Nov., 2011

Copy to:

1. Mr. Hmingthanga S/o Vaisata, Electric Veng, Aizawl through Mr. W. Sam Joseph, Advocate
2. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Public Works Department through Mr. R. Lalremruata, AGA
4. The Chief Engineer, Public Works Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. The Superintending Engineer, Aizawl East Circle, Public Works Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. The Executive Engineer, Public Works Department, Saitual Division, Saitual- Aizawl District, Govt. of Mizoram through Mr. R. Lalremruata, AGA
7. The Sub-Divisional Officer, Public Works Department, Saitual Sub-Division, Saitual, Govt. of Mizoram through Mr. R. Lalremruata, AGA
8. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District: Aizawl
9. Case Record

PESKAR

IN THE COURT OF SENIOR CIVIL JUDGE- I AIZAWL DISTRICT: AIZAWL

FORM NO. (J) 23
MONEY DECREE
[Section 34 of CPC]

MONEY SUIT NO. 26 OF 1993

Plaintiff:

Mr. Hmingthanga
S/o Vaisata
Class I Contractor
Electric Veng, Aizawl

By Advocates

: 1. Mr. W. Sam Joseph
2. Mr. H. Laltanpuia

Versus

Defendant:

1. The State of Mizoram
Through the Chief Secretary to the Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
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6. The Sub-Divisional Officer
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Govt. of Mizoram

By Advocates

: 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

Date of Arguments : 03-11-2011
Date of Judgment & Order : 04-11-2011

BEFORE

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

This suit coming on this 4th Nov., 2011 for final disposal before Dr. H.T.C. Lalrinchhana, Sr. Civil Judge- 1, it is ordered and decreed that the defendants are directed to conduct a fresh measurement of the work allotted to the plaintiff and duly performed by the plaintiff in accordance with Ext. P-1 viz. the construction of widening Ratu- Saungpuilawn – Khawlian STC Road Sec- 1 (15.00 Km – 16.00 Km) under Work Order No. NIT-6/81/2521 Dt. 10.11.1982. Bill amount for the same should be prepared and processed only as per the terms and conditions set forth in the said Ext. P-1 with interest rate @ 9% per annum with effect from 5th September, 1993 till realization. The defendants are further directed to complete all the said process/task including full payment of the contract amount to the plaintiff within six months from the date of this order or from the date of receiving this order.

On the other hand, the plaintiff is also directed to assist the defendants for compliance of this order as and when requested by them including fresh submission of his bill(s). Parties are directed to bear their own costs.

Given under my hand and seal of the Court, this 4th day of November, 2011.

Seal of the court

Judge