

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

FAO NO. 01 OF 2008

Appellant:

Smt. Vanlalremi (Theri)
Eureka Restaurant
Treasury Square, Aizawl
R/O H. No. C/6, Model Veng, Aizawl

By Advocates

- : 1. Mr. W. Sam Joseph
2. Mr. Zochhuana
3. Mr. F. Lalenglina
4. Mr. Hranghmingthanga Ralte
5. Mr. Francis Vanlalzuala
6. Mr. C. Lalfakzuala

Versus

Respondent:

Mr. H. Ngurliana
S/o H. Liandawla (L)
C/o H. Lalthianghlina
Tlangnuam, Aizawl

By Advocates

- : 1. Mr. C. Lalramzauva, Sr. Adv.
2. Mr. A. Rinliana Malhotra
3. Mr. Joseph Lalfakawma
4. Mr. T.J. Lalnuntluanga

Date of hearing : 25-04-2012

Date of Judgment & Order : 26-04-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge-1
Aizawl District: Aizawl

JUDGMENT AND ORDER

INTRODUCTORY

As per the Notification issued by the Govt. of Mizoram under No. A. 51011/3/06- LJE Dated Aizawl, the 1st Dec., 2011 in pursuance of the resolution adopted by the Hon'ble Administrative Committee of Gauhati High Court dt. 1/11/2011 and in accordance with the later circular issued

by the Hon'ble District Judge, Aizawl Judicial District, Aizawl under No. A. 22017/14/2009- DJ (A), Aizawl, the 5th Dec., 2011, case record being pending appellate case in the previous District Council Court, Aizawl is endorsed to me and proceed in this court. These all are the outcome of the nascent insulation of judiciary from the executives in Mizoram towards meeting globalization era in the very competitive globe where malfunctioning of the government is a sine quo non to vanish.

BRIEF FACTS

This appeal is directed against the order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 04.12.2007 in Misc J. No. 31 of 2006 arising out of Civil Suit No. 65 of 2006. Wherein, the learned Magistrate passed interim injunction directing that the monthly rents amounting to Rs. 6700/- plus Rs. 1000/- collected by the appellant shall be deposited with effect from the rent of April, 2006 till final settlement of the disputes. So far as the arrear rent is concerned, the same shall be deposited to the court on or before 14/12/2007. The appellant was further directed to deposit the on going monthly rent as stated above on or before the 10th of every month, starting from the month of December, 2007 till further orders.

Mr. W. Sam Joseph submitted that the impugned temporary injunction is beyond the entity of O. 39, Rr. 1 and 2 of the CPC whilst status is only required to maintain for temporary injunctions and whilst the status quo is collection of rent by the appellant at the time of filing of the lis.

On the other hand, Mr. C. Lalramzauva, learned senior counsel for the respondent contended that as the accruing rent is from the disputed property, without passing the impugned order, the whole proceedings of the lis will be futile and non est for maintaining status quo. Thus, prayed to uphold/maintain the impugned order as tenable in law.

FINDINGS

The provision of O. 39, Rules 1 and 2 of the CPC is firstly excerpt for ready reference

“1. Cases in which temporary injunction may be granted—
Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach— (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may be order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.”

The very meaning and purpose of interim order is clearly elucidated in **Purshottam Vishandas Raheja & Anr. vs Shrichand Vishandas through Lrs & Ors.** decided on 6 May, 2011 in connection with Civil Appeal No. 4005 of 2011, the Supreme Court has held that-

“13. The grant of interim order would mean discontinuance of the scenario on the spot as it existed at that point of time.”

On that point alone, the submission of Mr. W. Sam Joseph is tenable and rather attractive of O. 38, R. 5 of the CPC as held by the Apex Court in a judgment of **Raman Tech. & Process Engg. Co. & Anr. Vs. Solanki Traders** reported in (2008) 2 SCC 302, 2007 (12) SCR 409, 2007 (13) SCALE 419, their Lordship was pleased to hold as follows:

"4. The object of supplemental proceedings (applications for arrest or attachment before judgment, grant of temporary injunctions and appointment of receivers) is to prevent the ends of justice being defeated. The object of Order 38 Rule 5 CPC in particular, is to prevent any defendant from defeating the realisation of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to dispose of, or remove from the jurisdiction of the court, his movables. The scheme of Order 38 and the use of the words "to obstruct or delay the execution of any decree that may be passed against him" in Rule 5 make it clear that before exercising the power under the said Rule, the court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the

defendant. This would mean that the court should be satisfied that the plaintiff has a prima facie case. If the averments in the plaint and the documents produced in support of it, do not satisfy the court about the existence of a prima facie case, the court will not go to the next stage of examining whether the interest of the plaintiff should be protected by exercising power under Order 38 Rule 5 Code of Civil Procedure. It is well settled that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. Equally well settled is the position that even where the defendant is removing or disposing his assets, an attachment before judgment will not be issued, if the plaintiff is not able to satisfy that he has a prima facie case.

5. The power under Order 38 Rule 5 Code of Civil Procedure is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out-of-court settlements under threat of attachment."

In another horizon, 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 200 AIR 2190, 2006 (2) Suppl. SCR 986, 2006 (5) SCC 399, 2006 (6) SCALE 308, 2006 (11) JT 203, their Lordship of Hon'ble Supreme Court went on 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 the above observations, under sub para (ii) and (v), the impugned order is tenable towards convenience to a party for the efficaciousness of the final decree in the lis meant to avoid cumbersome and complexity for realization. The law on interim injunction is governed by the principles enunciated in **Raja Khan vs U.P.Sunni Central Wakf Board & Anr** observed on 26 November, 2010 in connection with SLP (Civil) No. 31797 of 2009, the Supreme Court observed thus-

“It is well settled that by an interim order the final relief should not be granted, vide U.P. Junior Doctors Action Committee vs. Dr. B. Sheetal Nandwani, AIR 1992 SC 671 (para 8), State of U.P. vs. Ram Sukhi Devi, JT 2004(8) SC 264 (para6), etc.”

And in **Anand Prasad Agarwalla Vs. Tarkeshwar Prasad & Ors.** in connection with Appeal (civil) 882-883 of 2001 decided on 09/05/2001 reported in 2001 AIR 2367, 2001 (4) SCALE 149, 2001 (1) Suppl. JT 139

“It may not be appropriate for any Court to hold mini trial at the stage of grant of temporary injunction.”

And also 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-

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- (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.”

The trial court itself also fails to analyze and adjudicate the Misc Application for temporary injunction in terms of the above well settled principles on the basis of (i) prima facie case (ii) balance of convenience and (iii) Irreparable injury by adversely simply arriving in the impugned order without making reason on prima facie case, balance of convenience and the crux on irreparable injury to the parties.

To conclude, the submission of Mr. W. Sam Joseph is correct, although the respondent may have any plausible reasons, their entry point under O. 39 of the CPC is not appropriated as held in **Raman Tech. & Process Engg. Co. & Anr. Vs. Solanki Traders (supra.)** as the impugned order is nothing but attachment of property before finality of the lis.

ORDER

Due to the aforesaid reasons, the instant appeal case is a fit case to warrant the interference in the impugned order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 04.12.2007 in Misc J. No. 31 of 2006 arising out of Civil Suit No. 65 of 2006 and is hereby set aside and quashed by leaving liberty to the respondent to file appropriate fresh application/petition to the learned trial court in the light

of findings and discussion above from the correct and right entry point under the candid of the Code of Civil Procedure, 1908. No order as to cost.

Give this copy to all concerned.

With this order, the case shall stand disposed of.

Given under my hand and seal of this court on this 26th April, 2012 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. FAO/1/2008, Sr. CJ (A)/

Dated Aizawl, the 26th April, 2012

Copy to:

1. Smt. Vanlalremi (Theri), Eureka Restaurant, Treasury Square, Aizawl through Mr. W. Sam Joseph, Adv.
2. Mr. H. Ngurliana S/o H. Liandawla (L) through Mr. C. Lalramzauva, Sr. Adv.
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Mr. F. Rohlupaia, learned Civil Judge-1, Aizawl
5. Case record

PESKAR