

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

*REVISION CASE NO. 05 OF 2007*

*Petitioner:*

Smt. Ramliani  
W/o Devasia  
Republic Veng, Biakin Mual  
Aizawl, Aizawl District

*By Advocates*

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

*Versus*

*Respondent's:*

Smt. Thankimi  
W/o Liankunga  
Diakkawn, Kolasib

*By Advocate's*

: Smt. Dinary T. Azyu

Date of hearing : 17-04-2012

Date of Judgment & Order : 17-04-2012

**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 1<sup>st</sup> 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 5<sup>th</sup> 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 STORY**

This instant petition is directed against the order passed by the learned Magistrate, Additional Subordinate District Council Court, Kolasib dt. 04.06.2007 in Money Suit No. 4 of 2007. Wherein, the learned ASDCC entertained the said Money Suit No. 4 of 2007.

Mr. W. Sam Joseph, learned counsel for the petitioner vehemently submitted that whilst the defendant is a permanent resident of Aizawl and the cause of action had arisen at Aizawl, the then Additional Subordinate District Council Court, Kolasib did not have territorial jurisdiction in the suit in terms of rule 21 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953. More so, cause of action which had arisen in 1994, the learned Additional Subordinate District Council Court, Kolasib could not entertain the suit due to barred by law of limitation in tune with either Articles 15 or 16 of the Limitation Act, 1963 which stipulated time for institution of suit like in the instant transaction of supply of goods for 3 years only.

On the other hand, Smt. Dinari for the respondent contended that the instant revision petition is premature in nature as embodied under Section 21 of the Code of Civil Procedure, 1908. More so, cause of action had arisen at Kolasib where the present learned Civil Judge, Kolasib is having territorial jurisdiction. The provision of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 is obsolete at present. Even in the contentions on law of limitation, it is premature as the learned trial court duly given a chance to the petitioner being defendant to file written statements.

### **FINDINGS AND REASONS**

The points to be determined in the instant petition are-

- (1) Whether the instant Revision Petition under Rule 33 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 is premature or not. And If not.
- (2) Whether the trial court at Kolasib is having territorial jurisdiction to entertain and dispose of the instant Money Suit or not.
- (3) Whether the trial court at Kolasib is barred by law of limitation to entertain and dispose of the instant Money Suit or not.

#### ***Point No. 1***

***Whether the instant Revision Petition under Rule 33 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 is premature or not.***

The provision of Section 21 of the Code of Civil Procedure, 1908 for ready reference is excerpt as below-

**“21. Objections to jurisdiction—** (1) No objection as to the place of suing shall be allowed by any appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.”

In one angle, the proviso to clause (b) of sub-section (3) of section 1 of the Code of Civil Procedure, 1908 remains unaltered. Rule 48 of the *Lushai Hills Autonomous District (Administration of Justice) Rules, 1953* for ready reference may be quoted as-

“48. In civil cases, the procedure of the District Council Court or the Subordinate District Council Court, shall be guided by the spirit, but not bound by the letter, of the Code of Civil Procedure, 1908 in all matters not covered by recognized customary laws or usages of the district”

It may be Pertinent to express the pretext of application of only the spirit of the Code in Mizoram, it would meant that whenever and wherever the provisions of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 is silent for proceedings of the *lis*, the fundamental provisions of the CPC will be applied in the court established/constituted under the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953. Abuse of the process and travelled without basis will be beyond the spirit of the Code. The relevancy is already settled in **Rasiklal Manickchand Dhariwal & Anr. vs M/S M.S.S. Food Products** decided on 25 November, 2011 in connection with Civil Appeal No. 10112 of 2011 (Arising out of SLP (Civil) No. 27180 of 2008), wherein, the Supreme Court has held that-

“70. The doctrine of proportionality has been expanded in recent times and applied to the areas other than administrative law. However, in our view, its applicability to the adjudicatory process for determination of 'civil disputes' governed by the procedure prescribed in the Code is not at all necessary. The

Code is comprehensive and exhaustive in respect of the matters provided therein. The parties must abide by the procedure prescribed in the Code and if they fail to do so, they have to suffer the consequences. As a matter of fact, the procedure provided in the Code for trial of the suits is extremely rational, reasonable and elaborate. Fair procedure is its hallmark. The courts of civil judicature also have to adhere to the procedure prescribed in the Code and where the Code is silent about something, the court acts according to justice, equity and good conscience. The discretion conferred upon the court by the Code has to be exercised in conformity with settled judicial principles and not in a whimsical or arbitrary or capricious manner. If the trial court commits illegality or irregularity in exercise of its judicial discretion that occasions in failure of justice or results in injustice, such order is always amenable to correction by a higher court in appeal or revision or by a High Court in its supervisory jurisdiction.”

In this catena, the provision of Rule 33 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 which vested Revisional power to the District Council Court says in two conditions for interference in the proceedings in its Subordinate Courts that (i) a fair and impartial inquiry or trial is susceptible and (ii) some question of law, tribal or otherwise, of unusual difficulty is likely to arise. The petitioner in the instant case appears apprehended to proceed the said Money Suit in the disfavor of the petitioner. Hence the instant case. Due to overhauling of justice delivery system at present by implementing the Mizoram Civil Courts Act, 2005 by redundant of the archaic Lushai Hills Autonomous District (Administration of Justice) Rules, 1953, interference by adjudicating the instant petition on merit will rather meet justice and timely justice to both parties for their convenience.

### ***Point No. 2***

#### ***Whether the trial court at Kolasib is having territorial jurisdiction to entertain and dispose of the instant Money Suit or not.***

The petitioner in her petition stated that the petitioner ran business at Aizawl namely M/S Southern Trading Agencies, the food stuff already brought by the son of the respondent from Bairabi was again taken by the petitioner at Aizawl, cause of action itself also arose at Aizawl. The provision of Section 20 of the Code of Civil Procedure, 1908 for ready reference is again excerpt as below-

**“20. Other suits to be instituted where defendants reside or cause of action arises—** Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit,

actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

**[Explanation].**—A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

### **Illustrations**

(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.”

The crux is also recently held in **A.V.M. Sales Corporation vs M/S Anuradha Chemicals Pvt. Ltd.** decided on 17 January, 2012 in connection with SLP (C) No.10184 of 2008, the Supreme Court has held that-

“8. It has often been stated by this Court that cause of action comprises a bundle of facts which are relevant for the determination of the lis between the parties. In the instant case, since the invoices for the goods in question were raised at Vijayawada, the goods were dispatched from Vijayawada and the money was payable to the Respondent or its nominee at Vijayawada, in our view, the same comprised part of the bundle of facts giving rise to the cause of action for the Suit. At the same time, since the Petitioner/ Defendant in the Suit had its place of business at Calcutta and the Agreement for supply of the goods was entered into at Calcutta and the goods were to be delivered at Calcutta, a part of the cause of action also arose within the jurisdiction of the Courts at Calcutta for the purposes

of the suit. Accordingly, both the Courts within the jurisdiction of Calcutta and Vijayawada had jurisdiction under Section 20 of the Code of Civil Procedure to try the Suit, as part of the cause of action of the Suit had arisen within the jurisdiction of both the said Courts.”

In this task, the provisions under Rule 21 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 is also very clear that the SDCC/ASDCC shall have an original jurisdiction in all suits and cases in which both the parties do not fall within the local jurisdiction of the same village court, but within the areas under the jurisdiction of the SDCC/ASDCC and in cases and suits referred to it by a village court under rule 18. For that purpose, the territorial jurisdiction of Additional Subordinate District Council Court, Kolasib is deemed extend to the administrative district of Kolasib. Thus, Section 20 of the Code of Civil Procedure, 1908 affirmative in favour of the petitioner.

### ***Point No. 3***

#### ***Whether the trial court at Kolasib is barred by law of limitation to entertain and dispose of the instant Money Suit or not***

The law is already settled in the case of **Vinod Seth vs Devinder Bajaj & Anr.** decided on 5<sup>th</sup> July, 2010 in connection with Civil Appeal No. 4891 of 2010 [Arising out of SLP [C] No.6736 of 2009], the Supreme Court has held that-

“Order 7 Rule 11 of the Code provides for rejection of plaint, if the plaint does not disclose a cause of action or is barred by any law. Order 14 Rule 2 of the Code enables the court to dispose of a suit by hearing any issue of law relating to jurisdiction or bar created by any law, as a preliminary issue.”

In **Balasaria Construction (P) Ltd. v. Hanuman Seva Trust & Ors.** (2006) 5 SCC 658, stated the law thus:

“After hearing counsel for the parties, going through the plaint, application under Order VII Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order VII Rule 11(d) of the Code of Civil Procedure.”

Thus, question of limitation is a mixed question of law and fact which is requiring to deal by the trial court cautiously and judiciously and left the

crux to the trial court as per the above two observations of Hon'ble Supreme Court.

Thus, the impugned order passed by the learned Magistrate, Additional Subordinate District Council Court, Kolasib dt. 04.06.2007 in Money Suit No. 4 of 2007 with its entire proceeding is liable to set aside and quash.

### **ORDER**

In view of the above lengthy discussions and findings, the impugned order passed by the learned Magistrate, Additional Subordinate District Council Court, Kolasib dt. 04.06.2007 in Money Suit No. 4 of 2007 with its entire proceeding is hereby set aside and quashed. No order as to costs.

Send back lower court case record to learned Civil Judge, Kolasib by virtue of Rule 34 of the Mizoram Family Courts Rules, 2008

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 17<sup>th</sup> 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. Rev. C/5/2007, Sr. CJ (A)/      Dated Aizawl, the 17<sup>th</sup> April, 2012

Copy to:

1. Smt. Ramliani W/o Devasia, Republic Veng, Biakin Mual, Aizawl, Aizawl District through Mr. W. Sam Joseph, Adv.
2. Smt. Thankimi W/o Liankunga, Diakkawn, Kolasib through Mrs. Dinari T. Azyu, Adv.
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Pesker to Learned Civil Judge, Kolasib along with case record of the trial court.
5. Case record.

PESKAR