

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

CIVIL SUIT NO. 73 OF 2012

Plaintiff:

Smt. Lalchawimawii
D/o Lamkunga (L)
Armed Veng, Aizawl

By Advocate's

: Mr. Reuben L. Tochhawng

Versus

Defendants:

1. Mr. K. Jiten Singh
S/o K. Chauba Singh
H/o Chawngmawii
Chanmari, Aizawl
Business at Itkhola, Manipuri Para
Silchar- 1
2. Smt. Chawngmawii
D/o Zosangliana
Chanmari, Aizawl
Business at Itkhola, Manipuri Para
Silchar- 1

By Advocates

: _____

Date of hearing : 06-12-2012

Date of Judgment & Order : 06-12-2012

BEFORE

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

JUDGMENT & ORDER

BRIEF FACTS

This is a suit for recovery of Rs. 18,50,000/- (Rupees eighteen lakhs and fifty thousand) with pendente lite interest rate @ 12 % per annum from the defendant till full and final realization. The defendants being a registered pharmaceutical products supplier having office at Silchar were given Rs. 18,50,000/- (Rupees eighteen lakhs and fifty thousand) as an advance amount by the plaintiff who is a registered proprietor of M/S Albert Marketing, ABC Lane, new Market for supply of medicines and drugs by executing Deed of Agreement Dt. 19/6/2012. Since the defendants fails to supply the same in time and also further failed to repay the said amount. The plaintiff filed the instant suit for (i) a decree directing the defendants to repay Rs. 18,50,000/- (Rupees eighteen lakhs and fifty thousand) with pendente lite interest rate @ 12 % per annum from the defendant till full and final realization (ii) a decree directing the defendants to pay monetary compensation as damages for breach of the contract (iii) any other relief which this court deems fit and proper and (iv) costs of the suit.

Although summons were duly served even by substituted service of summons through Vanglaini Daily Newspaper Dt. 25th August, 2012 and by receiving postal receipt in the court, the defendants neither appeared nor filed written statements till 20/9/2012 while the suit is filed on 22/07/2012, thus, by virtue of O. VII, R. 10 of the CPC, ex parte proceedings is drawn.

POINTS FOR DETERMINATION

Although ex parte proceedings as held in **Ramesh Chand Ardawatiya vs Anil Panjwani** decided on 5 May, 2003 and reported in AIR 2003 SC 2508, 2003 (4) ALD 10 SC, the following points should determine the case such as-

1. Whether the suit is maintainable or not.
2. Whether the Deed of Agreement Dt. 19th June, 2012 is lawfully executed or not. If so under what conditions.
3. Whether the plaintiff is entitled to the relief claimed or not if so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

Although the suit is ex parte proceedings, evidence of the plaintiff is called upon for the satisfaction of the court as held in **Smt. Sudha Devi vs M.P. Narayanan & Ors** decided on 26 April, 1988 and reported in 1988 AIR 1381, 1988 SCR (3) 756, it was held that-

“6. On the failure of the defendants to appear in the suit, the learned trial Judge decided to proceed with the case ex-parte. Even in absence of a defence the court cannot pass an ex-parte decree without reliable relevant evidence. The fact that the plaintiff chose to examine some evidence in the case cannot by itself entitle her to a decree.”

The plaintiff had produced the following witnesses namely-

1. Smt. Lalchawimawii D/o Lamkunga, Armed Veng, Aizawl (Hereinafter referred to as PW-1)
2. Mr. Jonathan Chhakchhuak S/o C. Liankunga (L), ITI Veng, Aizawl (Hereinafter referred to as PW-2)

The **PW-1** being the plaintiff mainly affirmed the contents of the plaint being the plaintiff

The **PW-2** deposed that he witnessed the liabilities as submitted in the plaint and the story of the case as knowing well of both parties in the case

FINDINGS

Point No. 1

Whether the suit is maintainable or not.

The plaintiff affirmed the contents of the plaint in terms of the provisions of sub- rule (4) of rule 15 under Order VI of the CPC and other formalities were complied with. No laches which vitiate the proceedings is found in the format of the plaint. This issue is therefore decided in favour of the plaintiff.

Point No. 2

Whether the Deed of Agreement Dt. 19th June, 2012 is lawfully executed or not. If so under what conditions.

Suffice evidence was adduced by producing two witnesses to testify the validity of Deed of Agreement Dt. 19th June, 2012. Wherein, parties agreed to pay earnest money by the plaintiff to the defendants, in case of default on the part of the defendants, plaintiff will have right to sue against the defendants to reclaim earnest money and compensation on breach of contract. This issue is therefore again decided in favour of the plaintiff.

Point No. 3

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

In the corollary of the above findings, the plaintiff will be entitled to receive back of Rs. 18,50,000/- (Rupees eighteen lakhs and fifty thousand) with interest rate @ 12 % per annum with effect from 22/7/2012 (When institution of the suit) till full and final realization.

More so, as per their Deed of Agreement Dt. 19th June, 2012, the plaintiff will also entitled to decree compensation amounting to Rs. 50,000/- (Fifty thousand rupees) on breach of contract in view of inconvenience caused to the plaintiff in their business which will cogently leads loss of profit as a time gap.

ORDER

In the mingling substance of the above findings, the defendants are directed to pay Rs. 18,50,000/- (Rupees eighteen lakhs and fifty thousand) with interest rate @ 12 % per annum with effect from 22/7/2012 (When institution of the suit) till full and final realization.

The defendants are further directed to pay compensation amounting to Rs. 50,000/- (Fifty thousand rupees) on breach of contract to the plaintiff with interest rate @ 12% per annum with effect from this day.

As mandatorily held by the Hon'ble Supreme Court in **Ramrameshwari Devi & Ors. vs Nirmala Devi & Ors.** decided on 4 July, 2011 in connection with Civil Appeal Nos. 4912-4913 of 2011 (Arising out of SLP(C) Nos. 3157-3158 of 2011) and in **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], the defendant is further directed to pay costs of the suit at Rs. 20,000/- (Rupees twenty thousand) as lawyer's fee with an interest rate at 12 % per annum with effect from today to the plaintiff.

With this order, the case shall stand disposed of

Given under my hand and seal of this court on this 6th Dec., 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. CS/73/2012, Sr. CJ (A)/

Dated Aizawl, the 6th Dec., 2012

Copy to:

1. Smt. Lalchawimawii D/o Lamkunga (L), Armed Veng, Aizawl through Mr. Reuben L. Tothhawng Adv.
2. Mr. K. Jiten Singh S/o K. Chauba Singh H/o Chawngmawii, Chanmari, Aizawl, Business at Itkhola, Manipuri Para, Silchar- 1 through Mr. Reuben L. Tothhawng Adv.
3. Smt. Chawngmawii D/o Zosangliana, Chanmari, Aizawl, Business at Itkhola, Manipuri Para, Silchar- 1 through Mr. Reuben L. Tothhawng Adv.
4. P.A. to Hon'ble District Judge, Aizawl
5. Case record

PESKAR