

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

CIVIL APPEAL NO. 01 OF 2008

Appellant:

Inspector Engkunga
1st Bn. MAP
Bawngkawn, Lunglei Road
Aizawl- Mizoram

By Advocate's : Mr. James Vanlalhruaia

Versus

Respondent's:

Mr. R.L. Dinpuia
S/o Rinawma
Bawngkawn, Lunglei Road
Aizawl- Mizoram

By Advocates : 1. Mr. Benjamin L.Z. Pautu
2. Mr. S. Lalthanliana
3. Mr. Robert L. Hnamte

Date of hearing : 21-02-2012
Date of Judgment & Order : 24-02-2012

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 judgment & order passed by learned Magistrate, Additional Subordinate District Council Court, Aizawl dt. 18.02.2008 in Money Suit No. 15 of 2006. Wherein, the respondent was decreed to receive Rs. 50,000/- from the appellant with an interest rate @ 9% per annum with effect from 15.1.2005 till realization as the appellant cheated the respondent at the disguise of recruitment of the respondent as Police Constable in the 1st Bn. MAP and thereby paid the said Rs. 50,000/- to the defendant/appellant by the said respondent for the same.

Assailed in the impugned judgment & order, the appellant challenged that (i) without withdrawal of the engaged advocates, the respondent/plaintiff engaged with the other advocates in the trial court (ii) the learned lower court is erred in law and facts for not considering the written statements and the documents for evidence (iii) for not considering whether the question of giving and receiving a large amount of money without interest and without written statement.

The respondent contended that the learned trial court was just and fair, equitable in passing the impugned judgment & decree dt. 18.2.2008 which is fit to uphold. The respondent also admitted that he engaged with another advocates other than the previous Mr. R. Laltanpuia and Mrs. H. Lalremruati. Meanwhile, the respondent denied the grounds of appeal like erred in law and facts for not considering the written statements and the documents for evidence and for not considering whether the question of giving and receiving a large amount of money without interest and without written statement.

TERMS OF RIVALRY

At the time of hearing, Mr. James Vanlalhruaia entered into factual matrix by denying the findings of the trial court as the appellant never indulge with the instant allegation by producing transfer out order of the appellant outside the alleged place of occurrence. In this regard, without making prayer for additional evidence as appellate court which is permissible in a limited ground and without challenging the mode of appreciation of evidence by the trial court, I find no grounds to depend at this stage on that Xerox document.

On the otherhand, Mr. Robert L. Hnamte for the respondent vehemently prayed to uphold the impugned judgment & order as evidence was properly taken and appreciated including the Departmental Enquiry report against the appellant which was incorporated as evidence. Thus, he prayed to dismiss the appeal due to lack of merit by upholding the impugned judgment & decree.

FINDINGS AND REASONS

In respect of the grounds that without withdrawal of the engaged advocates, the respondent/plaintiff engaged with the other advocates in the trial court. No need to go into details as parties in the lis can engage additional advocates in their lis when the court permits to do so.

The other grounds of appeal like the learned lower court is erred in law and facts for not considering the written statements and the documents for evidence, evidence produced by both parties were taken up on perusal of the case record of the learned lower court and properly appreciated all for reaching adjudication as the facet of the judgment & order speaks itself. I find no grounds to interfere in this regard.

With respect to the last memorandum of appeal viz. for not considering whether the question of giving and receiving a large amount of money without interest and without written statement. Evidence clearly elicited that for the purpose of nepotism for recruitment of the respondent as police constable, money was taken by the appellant, no rate interest and written documents can be had. Meanwhile, the learned trial court imposed interest rate at 9% per annum with effect from 15.01.2005. In this catena, the suit was filed by the respondent in the trial court on 21.2.2006 as the lower court case record clearly revealed. In the instant case, there was no contract imposing interest rate, if it be so, the rate of interest can only be imposed with effect from the date of filing the suit as held 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), 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.”

With regards to the rate, it is reasonable and appropriate as coping with the ratio laid down in **H.U.D.A v. Raj Singh Rana**, AIR 2008 SC 3035, **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, but requires to modify the date for counting payment of interest in the light of the decisions of Hon'ble Apex Court in **Secretary/General Manager Chennai Central Cooperative Bank Ltd. & Anr. Vs. S. Kamalaveni Sundaram** (supra.)

ORDER

In view of the above findings and reasons, the impugned judgment & order passed by learned Magistrate, Additional Subordinate District Council Court, Aizawl dt. 18.02.2008 in Money Suit No. 15 of 2006 is hereby upheld subject to modification of the date for payment of interest by appointing only with effect from 21.2.2006 and the other remains the same. The appeal lacking merits is hereby dismissed but no order as to costs.

If I am in a position to embark the truth, the act of the respondent is lascivious and rather more severe lascivious of the act of the appellant by intending shameful serious corruption. The respondent abetted the satanic planned of the appellant and no justification can be made in the morale and rational ground. How to combat and ameliorate the menace of corruption like the act of both parties is the alarming moot point.

Send back the lower court case record to learned Civil Judge-1, Aizawl District, Aizawl

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 24th Feb., 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. CA/1/2008, Sr. CJ (A)/

Dated Aizawl, the 24th Feb., 2012

Copy to:

1. Inspector Engkunga, 1st Bn. MAP, Bawngkawn, Lunglei Road, Aizawl-Mizoram through Mr. James Vanlalhruaia, Adv.
2. Mr. R.L. Dinpuia S/o Rinawma, Bawngkawn, Lunglei Road, Aizawl-Mizoram through Mr Robert L. Hnamte, Adv.
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Mr. F. Fohlupuia, Civil Judge-1, Aizawl District, Aizawl with trial court case record
5. Case record.

PESKAR