

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

*FAO NO. 03 OF 2007*

*Appellant:*

Smt. Lalthiamsangi  
D/o Vanlalrova  
Zemabawk, Aizawl

*By Advocates* : 1. Mr. A. Hussain  
2. Mr. P.C. Prusty

*Versus*

*Respondent:*

Mr. Rosangzuala  
S/o F. Lalsanga (L)  
Chawnpui- Aizawl

*By Advocate's* : Mr. L.H. Lianhrima

Date of hearing : 10-02-2012

Date of Judgment & Order : 10-02-2012

**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 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 FACTS**

This appeal is directed against orders passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 11.9.2007, dt. 24.9.2007, dt. 17.9.2007, dt. 15.10.2007 and dt. 19.10.2007 in Civil Suit No. 37 of 2007. Wherein, the proceedings can be summarized as follows-

On 11.9.2007, plaint for repayment of debt amount of Rs. 20 lakhs was filed by the respondent and thereby forthwith passed an order for attachment of Truck vehicles B/R Nos. MZ-01/C-2023 and MZ-01/C-1215 by producing original documents of the same and further directed the defendant to vacate the mortgaged building under LSC No. Azl. 2919 of 1990 located at Zemabawk, Aizawl.

On 17.9.2007 when the defendant was absent, an order was passed to produce original documents Truck vehicles B/R Nos. MZ-01/C-2023 and MZ-01/C-1215 by the defendant/appellant, failing on which ex parte order will be passed against her.

On 24.9.2007, the defendant appeared in the learned trial court and admitted her liabilities as Rs. 20 lakhs and thereby made undertakings that (i) Rs. 7 lakhs will be deposited in the court on 28/9/2007 (ii) the remaining balance will be repaid on or before 15/10/2007.

On 15.10.2007, since the defendant was absent in the court, order for warrant of arrest was issued and directed the Officer in Charge of Bawngkawn Police Station to seize all the documents Truck vehicles B/R Nos. MZ-01/C-2023 and MZ-01/C-1215 along with the said vehicles.

On 19-10-2007, it was reflected in the order of proceedings that warrant of arrest was not executed by the police. Further order was passed that the Officer in Charge of Bawngkawn Police Station shall seize all the documents Truck vehicles B/R Nos. MZ-01/C-2023 and MZ-01/C-1215 along with the said vehicles and release the same to the plaintiff/respondent on Zimanama. The appellant/defendant was directed to repay Rs. 20 lakhs with interest rate at 10% per annum as per the agreement Dt. 20/10/2006 and 2/2/2007 within a period of 15 days, failing on which the mortgaged vehicles will be forfeited in favour of the plaintiff/respondent.

## **FINDINGS**

Learned counsel for the respondent/plaintiff is also heard and the findings of the court can be epitomized as follows-

With respect to an order passed on 11.9.2007, plaint for repayment of debt amount of Rs. 20 lakhs was filed by the respondent and thereby forthwith passed an order for attachment of Truck vehicles B/R Nos. MZ-01/C-2023 and MZ-01/C-1215 by producing original documents of the same and further directed the defendant to vacate the mortgaged building under LSC No. Azl. 2919 of 1990 located at Zemabawk, Aizawl. Whether the

impugned order was ad interim measure or interim injunction is beyond the minutes of the proceedings. In a nutshell, no reason was highlighted in the said impugned order in the aegis of O. XXXIX of the CPC as observed in **Shiv Kumar Chadha v. Municipal Corpn. of Delhi** (1993) 3 SCC 161. In regards to the the mortgaged land and building under LSC No. Azl. 2919 of 1990 located at Zemabawk, Aizawl, without following at least the spirit of O. XXXIV of CPC, how justice can be administered is also another horizon. For the purpose of ad interim ex parte injunction, the law recently settled 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) by the Hon'ble Supreme Court is inimical by the said impugned order. Furthermore, the impugned order is beyond the observations of Hon'ble Apex Court 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, wherein, 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.”

In view of the finality of the impugned order, it is also arbitrary in the light of law settled 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.”

With regards to an order passed on 17.9.2007 when the defendant was absent, an order was passed to produce original documents Truck vehicles B/R Nos. MZ-01/C-2023 and MZ-01/C-1215 by the defendant/appellant, failing on which ex parte order will be passed against her. There was no vigilance on summons were duly served to the defendant/appellant or not in terms of O. IX R. 6 of the CPC.

With regards to an order passed on 24.9.2007, the defendant appeared in the learned trial court and admitted her liabilities as Rs. 20 lakhs and thereby made undertakings that (i) Rs. 7 lakhs will be deposited in the court on 28/9/2007 (ii) the remaining balance will be repaid on or before 15/10/2007. If there is an admission, cogently, final judgment can be passed under O. XII, R. 6 of the CPC, but no such finality of the suit was made by the learned trial court which is capricious and requires to cure in the appellate court.

With regards to an order passed on 15.10.2007, since the defendant was absent in the court, order for warrant of arrest was issued and directed the Officer in Charge of Bawngkawn Police Station to seize all the

documents Truck vehicles B/R Nos. MZ-01/C-2023 and MZ-01/C-1215 along with the said vehicles, as it is a matter of execution of decree for money, S. 56 of the CPC is violative for arresting the appellant/defendant in the impugned order.

With regards to an order passed on 19-10-2007, it was reflected in the order of proceedings that warrant of arrest was not executed by the police. Further order was passed that the Officer in Charge of Bawngkawn Police Station shall seize all the documents Truck vehicles B/R Nos. MZ-01/C-2023 and MZ-01/C-1215 along with the said vehicles and release the same to the plaintiff/respondent on Zimanama. The appellant/defendant was directed to repay Rs. 20 lakhs with interest rate at 10% per annum as per the agreement Dt. 20/10/2006 and 2/2/2007 within a period of 15 days, failing on which the mortgaged vehicles will be forfeited in favour of the plaintiff/respondent. In this crux, the rate of interest imposed for the borrowed money is excessive in terms of the Usurious Loans Act, 1918. The well settled law is that even on the basis of the agreement of parties, no valid agreement can be had contrary to laws and arbitrary in nature. More so, statutory law is very binding in the courts Vide, **K.T. Plantation Pvt. Ltd. & Anr. vs State Of Karnataka** decided on 9 August, 2011 in connection with Civil Appeal No.6520 of 2003.

All the crux can be answered 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 was pleased to hold as follows:

“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.”

Since the right to fair hearing is a guaranteed right as held by their Lordship of Hon’ble Supreme Court in the case of **Kanwar Natwar Singh vs Directorate Of Enforcement & Anr.** decided on 5 October, 2010 in connection with Civil Appeal No. 8601 of 2010 and also in **Maneka Gandhi vs Union Of India** decided on 25 January, 1978 and reported in 1978 AIR 597, 1978 SCR (2) 621, the impugned orders passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 11.9.2007, dt. 24.9.2007, dt. 17.9.2007, dt. 15.10.2007 and dt. 19.10.2007 in Civil Suit No. 37 of 2007 are hereby set aside and quashed. The well known legal dictum while justice

delay is justice denied, excessive speedy justice can buried justice become true in the instant case.

Pertinently, application of spirit of the Code in Mizoram 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.”

The value of the suit is no doubt beyond the pecuniary jurisdiction of Civil Judge as per the Mizoram Civil Courts Act, 2005, in view of the on going process of systematization of civil courts in the state of Mizoram in line with the nascent insulation of judiciary from the executives, instead of remanding back of the case to the learned lower court viz. Civil Judge for de novo trial, parties are at liberty to file a fresh suit/case in the appropriate court of law having subject matter, pecuniary and territorial jurisdiction as it will be convenient for parties as well as adjudicating court meant to avoid procedural lapse.

Send back the lower case record

In the aforesaid terms, the case shall stand disposed of

Give this copy to all concerned.

Given under my hand and seal of this court on this 10<sup>th</sup> 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. FAO/3/2007, Sr. CJ (A)/

Dated Aizawl, the 10<sup>th</sup> Feb., 2012

Copy to:

1. Smt. Lalthiamsangi D/o Vanlalrova, Zemabawk, Aizawl through Mr. A. Hussain, Adv.
2. Mr. Rosangzuala S/o F. Lalsanga (L), Chawnpui- Aizawl through Mr. L.H. Lianhrima, Adv.
3. Pesker to Mr. F. Rohlupaia, learned Civil Judge-1, Aizawl District, Aizawl for kind necessary action along with lower court Case record
4. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Case record

PESKAR