

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

MONEYSUIT NO. 25 OF 2011

Plaintiff:

Shri David Lalmuanpuia,
Prop: F. Hrangvela and Sons, Earth Movers
R/o. Upper Khatla, Aizawl.

By Advocates : 1. Mr. Hranghmingthanga Ralte, Adv
2. Mr. F. Lalenglina, Adv.

Versus

Defendant's:

Shri R. Lalzamlina
R/o. Khatla South, Aizawl.

By Advocate's : Mr. Lalawmpuia Ralte, Adv.

Proforma defendant:

The Executive Engineer,
Project Division II, PWD,
Laipuitlng, Aizawl.

By Advocates : 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

Date of Judgment & Order : 02-07-2012

BEFORE

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

JUDGEMENT & ORDER

NUCLEUS OF THE CASE

The plaintiff in his plaint submitted that he is the proprietor of F. Hrangvela & Sons Earth Movers and owner of two number of earth moving vehicles (JCB) 3DX Super bearing registration No. MZ 01 D 3257 and JCB 4DX bearing registration No. MZ 01 E 1879. The defendant had hired the said two vehicles for the purpose of his contract work named Land Development Works using Mechanical Means which was allotted by Minor

Irrigation Department, Government of Mizoram, Kolasib Division. The defendant hired the vehicle bearing registration No.MZ 01 D 3257 from 14th February 2009 to 22nd April 2009, and the other bearing registration No.MZ 01 E 1879 from 2nd April 2009 to 22nd April 2009 respectively. The total bill of JCB 3DX Super was Rs. 6,06,510/- and the total bill of JCB 4DX was Rs. 1,86,000/-, out of which the defendant paid a sum of Rs. 5,00,000/- to the plaintiff on three installment which was written on the bill of 3DX Super bearing registration No.MZ 01 D 3257 dated 24.4.2009. the defendant refused to pay the remaining bill amount due amounting to Rs. 2,92,510/- by making flimsy excuses even after repeated demand by the plaintiff. On 7.5.2010 the plaintiff had sent the said bill amount due to the defendant which was accepted and received by the defendant by giving his signature on the said bill. However, defendant still fails to pay the same till date. Accordingly the plaintiff had approached the Hon'ble Court to make an order for payment of Rs. 2,92,520/- with interest @ 10% per annum till payment of the entire amount due against the defendant.

The defendant in his written statement stated that there was no agreement between the plaintiff and himself in connection with the hiring of the involved vehicles for the said excavation of contract work. Further the plaintiff issued bill of the said vehicles without the consent and consultation of the answering defendant and, therefore cannot accept the total amount of bill i.e. Rs. 7,92,510/- and also that the said vehicles cannot work within 501 hours due to mechanical defects and any other problems and as such there is no travelling charge in connection with the said contract work. He also denied accepting the bill dated 7.5.2010 and submitted that the plaintiff is to strict proof of the said bills.

The proforma defendant did not contest in the instant case.

ISSUES

The following issues were framed on 8.9.2011 such as -

1. Whether the suit is maintainable in its present form and style
2. Whether the plaintiff has cause of action against the defendants
3. Whether the plaintiff is entitled to the relief claimed. If so, to what extent.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Mr. David Lalmuanpuia Prop. F. Hrangvela & Sons, Earth Movers, Upper Khatla, Aizawl (Hereinafter referred to as **PW-1**)
2. Shri R. Vanlalmalsawma S/o R. Vanlalawia, R/o Khatla, Aizawl (Hereinafter referred to as **PW-2**)

The **PW-1** being plaintiff mainly reiterated the contents of the plaint and he further deposed that -

Ext P-1 is a copy of bill dated 24.4.2009 issued by F. Hrangvela and Sons Earth Movers in respect of 3DX Super (JCB) bearing registration No.MZ 01 d 3257.

Ext P-1 (a) is plaintiff's signature.

Ext P-2 is a copy bill dated 24.4.2009 issued by F. Hrangvela and Sons Earth Movers in respect of 4DX (JCB) bearing No.MZ 01 E 1879.

Ext P-2 (a) is plaintiff's signature.

Ext P-3 is a copy of bill issued by F. Hrangvela and Sons Earth Movers dated 7.5.2010.

Ext P-3 (a) is plaintiff's signature.

During his cross examination by the learned counsel for the defendant, the plaintiff stated that there was no written agreement between him and the defendant in connection with the hiring of the two vehicles. He also denied that the bill was made without the consent of the defendant.

The **PW-2** stated in his examination in chief that he is working as a Manager of F. Hrangvela & Sons Earth Movers and used to collect bill amount from different customers and further deposed that all their customers except the defendant paid their bill amount and that nobody except the defendant made any objection in respect of the bill amount issued to them. He also deposed that the bill dated 7.5.2010 was handed over by him to the defendant which the defendant accepted by giving his signature on the said bill.

During his cross examination by the learned counsel for the defendant, deposed that he has been working at F. Hrangvela & Sons Earth Movers from 25th Nov 2002 till date. He is not aware of any agreement between the defendant and the plaintiff regarding hiring of the vehicles. He never visited the place where the vehicles were put to use. Further, he stated that the said bill was not made by him but by the plaintiff; he merely acted as a delivery boy for the plaintiff. He also stated denied that the plaintiff made the bill in excess of the actual amount.

Although the defendant is directed to produce his evidence if any for 8/5/2012, 4/6/2012 and 2/7/2012, the defendant remain fails to produce his evidence without knowing reasons. Thus, by virtue of O. XVI, R. 20 of the CPC, judgment & decree is forthwith passed on today.

FINDINGS

Issue No. 1

Whether the suit is maintainable in its present form and style

A requisite court fees is at Rs. 5000/- but the plaintiff only paid Rs. 1000/- of court fees. Meanwhile, paragraph wise verification with supporting affidavit is made by the plaintiff by complying with the provisions of sub- rule (4) of rule 15 under Order VI of the CPC. However, by

virtue of S. 149 of the CPC, the plaintiff is mandated to direct for make up of deficiency of his court fees.

Issue No. 2

Whether the plaintiff has cause of action against the defendants

In **Swamy Atmananda & Ors. Vs. Sri Ramakrishna Tapovanam & Ors.** decided on 13/04/2005 in connection with Appeal (Civil) 2395 of 2000 and reported in 2005 AIR 2392, 2005 (3) SCR 556, 2005 (10) SCC 51, 2005 (4) SCALE 117, 2005 (4) JT 472, it was held that-

“A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

As corroborated averments and submissions in the plaint by oral evidences of the plaintiff which is not negated by the defendant. I have no other reliance except on the version of the plaintiff.

Issue No. 3

Whether the plaintiff is entitled to the relief claimed. If so, to what extent.

As per the findings of various issues of the above, the plaintiff will be entitled to receive Rs. 2,92,510/- (Rupees two lakhs, ninety two thousand, five hundred and ten) with interest rate @ 10% per annum with effect from 21/3/2011 (viz. date of institution of the suit) till realization. Although the plaintiff solicited rate of interest with effect from 7.5.2010, taking reliance 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.”

Thus, rate of interest will be made with effect from 21/3/2011 (viz. date of institution of the suit). But deserved no order as to costs.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, it is hereby ORDERED and DECREED that the defendant is directed to pay Rs. 2,92,510/- (Rupees two lakhs, ninety two thousand, five hundred and ten) with interest rate @ 10% per annum with effect from 21/3/2011 (viz. date of institution of the suit) till realization. No order as to costs.

However, by virtue of section 149 of the CPC, the plaintiff is further directed to make up deficiency of requisite court fees before filing of his execution case.

With this order, the case shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 2nd July, 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. MS/25/2011, Sr. CJ (A)/

Dated Aizawl, the 2nd July, 2012

Copy to:

1. Shri David Lalmuanpuia, Prop: F. Hrangvela & Sons, Earth Movers, R/o Upper Khatla through Mr. Hranghmingthanga Ralte, Adv.
2. Shri R. Lalzamliaana, R/o Khatla South, Aizawl through Mr. Hranghmingthanga Ralte, Adv.
3. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Case record

PESKAR