

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

*FAO NO. 01 OF 2009*

*Appellant:*

Smt. Doremi  
Zarkawt, Aizawl

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

*Versus*

*Respondent:*

Mr. Laltanpuia Sailo  
S/o Lalzuala Sailo  
Electric Veng, Aizawl

*By Advocates* : \_\_\_\_\_

Date of hearing : 01-03-2012

Date of Judgment & Order : 01-03-2012

**BEFORE**

Dr. H.T.C. LALRINCHHANA, MJS  
Senior Civil Judge  
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.

Learned counsel for the appellant is appeared, the respondent's remain fails to appear nor file written objections till date although summon order were duly served to him for two times. Thus, by virtue of O. XLI, R. 17

(2) of the CPC, the appeal is heard ex parte subject to dealing with the case on merit.

### **BRIEF FACTS**

This appeal is directed against the order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 11.05.2009 in Misc J. No. 23/09 arising out of Declaratory Suit No. 14 of 2008. Wherein, the learned Magistrate set aside his dismissal order dt. 20<sup>th</sup> March, 2009 by virtue of O. IX, Rule 8 of the CPC in the said Declaratory Suit No. 14 of 2008. As the appellant was not served a copy of restoration application and was not duly served summons, assailed in the impugned order.

### **FINDINGS**

On perusal of the case records, it can be found that the learned Magistrate, dismissed the suit in default and on the basis of the said Misc J. No. 23/09, the suit was restored as found sufficient reasons but not mentioned the reasons in the impugned order except presumed admission of the appellant/respondent as fails to file written objections.

In the said application in Misc J. No. 23/09, when 12.2.2009 was fixed for framing of issues in the main suit, learned counsel for the plaintiff/respondent was also appeared by well preparations. But the case record was misplaced and learned counsel for the plaintiff enquired the same. Later known that court date was fixed on 19.3.2009 for framing of issues. On the said day, although learned counsel for the plaintiff appeared in the court room but again fails to locate the case record. Surprisingly, on 26<sup>th</sup> March, 2009, a copy of order for dismissal in default was received. No intentional or negligence for failure to appear in the court was found.

In the order sheet of Misc J. No. 23/09, on 3.4.2009 it was filed, summon order was passed forthwith even for fixing the next date for written objections if any to the appellant. On 27.4.2009 although the appellant was absent, summon order was again passed even for written objections if any to the appellant. For the third time on 11.5.2009, the impugned order was passed.

The law is very clear that it is at the discretion of the court to take evidence for restoration application as held by the Hon'ble Kolkata High Court in the case of **Durga Kanta Sarma vs Anto Koch And Anr.** decided on 3/8/1917 and reported in 42 Ind Cas 649. However, although there is sufficient cause or not is the main onus like in the instant case. In this terminology, In **Parimal vs Veena @ Bharti** decided on 8 February, 2011 in connection with Civil Appeal No. 1467 of 2011 (Arising out of S.L.P.(C) NO. 19632 of 2007), their Lordship of Hon'ble Supreme Court has observed that-

“10. In *Arjun Singh v. Mohindra Kumar & Ors.*, AIR 1964 SC 993, this Court observed that every good cause is a sufficient cause and must offer an explanation for non-appearance. The only difference between a "good cause" and "sufficient cause" is

that the requirement of a good cause is complied with on a lesser degree of proof than that of a "sufficient cause". (See also: Brij Indar Singh v. Lala Kanshi Ram & Ors., AIR 1917 P.C. 156; Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee & Ors., AIR 1964 SC 1336; and Mata Din v. A. Narayanan, AIR 1970 SC 1953).

11. While deciding whether there is a sufficient case or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it. (Vide: State of Bihar & Ors. v. Kameshwar Prasad Singh & Anr., AIR 2000 SC 2306; Madanlal v. Shyamlal, AIR 2002 SC 100; Davinder Pal Sehgal & Anr. v. M/s. Partap Steel Rolling Mills (P) Ltd. & Ors., AIR 2002 SC 451; Ram Nath Sao alias Ram Nath Sao & Ors. v. Gobardhan Sao & Ors., AIR 2002 SC 1201; Kaushalya Devi v. Prem Chand & Anr. (2005) 10 SCC 127; Srei International Finance Ltd., v. Fair growth Financial Services Ltd. & Anr., (2005) 13 SCC 95; and Reena Sadh v. Anjana Enterprises, AIR 2008 SC 2054).

12. In order to determine the application under Order IX, Rule 13 CPC, the test has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a strait-jacket formula of universal application."

Also in **G.P. Srivastava vs Shri R.K. Raizada & Ors** disposed of on 3 March, 2000 in connection with Special Leave Petition (civil) 17942-43 of 1999, the Supreme Court has held that-

"The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to erring party."

Howsoever, whether passing of the impugned order would meet justice or buried justice is another task to look into whilst the well settled principles is that procedure is the handmaid of justice Vide, **The State of Punjab and Anr. v. Shamlal Murari and Anr.** (1976) 1 SCC 719: **Shreenath & Another vs Rajesh & Others** decided on 13 April, 1998 reported in 1998 AIR 1827, 1998 (2) SCR 709, 1998 (4) SCC 543, 1998 (2) SCALE 725, 1998 (3) JT 244: **Sushil Kumar Sen v. State of Bihar** (1975) 1 SCC 774: **M.S. Grewal v. Deep Chand Sood** reported in (2001) 8 SCC 151.

Very clear no harm will be caused to either of parties except to disposal of the suit on meritorious while 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 meant to achieve disposal of *lis* on merit as the well settled legal notions.

### **ORDER**

Due to the aforesaid reasons, I find that the interference of this court is not called for in the impugned order and therefore upheld accordingly. Smt. Lalrochami Ralte, learned Civil Judge, Aizawl is therefore kindly instructed to resume the proceedings of Declaratory Suit No. 14 of 2008 on the basis of the order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 11.05.2009 in Misc J. No. 23/09 arising out of Declaratory Suit No. 14 of 2008.

Send back case record of Misc J. 23 of 2009 to Smt. Lalrochami Ralte, learned Civil Judge, 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 1<sup>st</sup> March, 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/1/2009, Sr. CJ (A)/

Dated Aizawl, the 1<sup>st</sup> March, 2012

Copy to:

1. Smt. Doremi, Zarkawt, Aizawl through Mr. L.H. Lianhrima, Adv.
2. Mr. Laltanpuia Sailo S/o Lalzuala Sailo, Electric Veng, Aizawl
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Pesker to Smt. Lalrochami Ralte, Learned Civil Judge, Aizawl along with Misc case record
5. Case record

PESKAR