

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

MONEY SUIT NO. 20 OF 2012

Plaintiff:

Mr. H. Chinzapau
Prop. John L.T. Mawia
Drug Store Cum General Enterprise
Upper Bazaar, Dawrpui- Aizawl
Through Power of Attorney Holder
Mr. Robert Hauzel

By Advocates

: 1. Mr. Zochhuana
2. Mr. Lalchhanliana Khiangte
3. Mr. R. Zothansanga

Versus

Defendant:

Taj Pharmaceuticals Ltd.
434, Laxmi Plaza
Laxmi Industrial Estate
New Link Road, Andheri West
Mumbai- 400053 (India)
Represented by
Its Chief Executive Officer Mr. Abhishek Kumar

By Advocates

: _____

Date of hearing : 15-11-2012
Date of Judgment & Order : 15-11-2012

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. 48,50,000.00 (Rupees forty eight lakhs and fifty thousand) with an interest rate @ 12 % per annum with effect from 12th March, 2011 till realization with costs of the suit. The plaintiff being drug seller paid advance amounting to the said amount to the defendant through Central Bank of India in different dates from 12th March,

2011 for purchasing some medicines from the defendant. The defendant in turn failed to supply the medicine and rather flout the quality matters. Hence the instant suit for return of amount deposited by the plaintiff to the defendant.

Although summons were duly served by receiving postal receipt in this court, the defendants neither appeared nor filed written statements till 05/10/2012 while the suit is filed on 31/01/2012, thus, by virtue of O. VIII, 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 plaintiff had deposited an amount in favour of the defendant. If so, to what extent and under what conditions and whether the defendants committed breach of agreement or not
3. Whether the plaintiff is entitled to the relief claimed or not if so, to what extent.

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 lone PW namely- Mr. Robert Hauzel merely reiterated and affirmed the contents of the plaint, none remain contested to cross examine and to hear further from the defendant.

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. Ad-valorem court fee is also paid. 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 plaintiff had deposited an amount in favour of the defendant. If so, to what extend and under what conditions and whether the defendants committed breach of agreement or not

No other evidence which can extenuate evidence of the plaintiff supported averments and submission in the plaint is found. The plaintiff is therefore satisfied to deposit Rs. 48,50,000.00 (Rupees forty eight lakhs and fifty thousand) to the defendant in different dates with effect from 12th March, 2011 for the purpose of supply of various medicines.

All the crux were found as affirmative in favour of the plaintiff on perusal of the letter of the defendant wrote to the plaintiff Dt. 21-06-2011 promising to dispatch the product on the following week with whole quantity as per their given order with company which is annexed in the plaint. But the defendant contumaciously committed breach of the said supply agreement causing loss of the plaintiff.

Point No. 3

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

As per the findings under point no. 2, the plaintiff will be entitled to receive back Rs. 48,50,000.00 (Rupees forty eight lakhs and fifty thousand) with an interest rate @ 12 % per annum with effect from 12th March, 2011 till realization with reasonable costs of the suit.

ORDER

In the corollary of the above findings, the defendant is directed to pay Rs. 48,50,000.00 (Rupees forty eight lakhs and fifty thousand) with an interest rate @ 12 % per annum with effect from 12th March, 2011 till realization to the plaintiff. The defendant is further directed to pay costs of the suit at Rs. 25,000/- (Rs. 20,000/- as lawyers fee + Rs. 5,000/- as court fees) with an interest rate at 12% per annum with effect from today till realisation. The defendant is also directed to realize the said amount within two months from the date of this order.

With this order, the case shall stand disposed of

Given under my hand and seal of this court on this 15th Nov., 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

Copy to:

1. Mr. H. Chinzapau Prop. John L.T. Mawia Drug Store Cum General Enterprise, Upper Bazaar, Dawrpui- Aizawl through Mr. Zochhuana, Adv.
2. Taj Pharmaceuticals Ltd., 434, Laxmi Plaza, Laxmi Industrial Estate, New Link Road, Andheri West, Mumbai- 400053 (India) through Mr. Zochhuana, Adv.
3. P.A. to Hon'ble District Judge, Aizawl
4. Case record

PESKAR