

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

RTI NO. 43 OF 2009

Appellant:

Mr. Khualluna
H/o Rohmingthangi (L)
Khatla 'S', Aizawl

By Advocate's : Mr. A. Rinliana Malhotra

Versus

Respondent:

Mr. Lalinmawia
Chekkawn Village
Serchhip District

By Advocate's : Mr. R. Lalhmingmawia

Date of hearing : 28-09-2012

Date of Judgment & Order : 01-10-2012

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.

This is an appeal against the impugned judgment and order Dt. 08-10-2009 in Money Suit No. 28 of 2007 passed by the learned Magistrate, Additional Subordinate District Council Court, Aizawl.

BRIEF FACTS

The respondent being the plaintiff claimed to release Rs. 1,80,000/- (Rupees one lakh and eighty thousand) from the defendant/respondent on the basis of "Hnathawhna tur Inremsiamna" Dt. 18/1/2005 executed by the respondent/plaintiff and Smt. Rohmingthangi, Khatla South. On that agreement, it was mentioned that the work of Smt. Rohmingthangi viz. 'Thalbul Diversion' is assigned to Mr. Lalinmawia @ Rs. 3 lakhs. As already received all the amount out of the said Rs. 3 lakhs, the respondent claimed Rs. 1,80,000/- (Rupees one lakh and eighty thousand) in the learned trial court. The learned trial court after delving on merit of the case adjudicated the lis in favour of the plaintiff/respondent.

The appellant inter alia aggrieved on the impugned judgment & order on the grounds that (i) on the plain reading of the impugned judgment & order, the trial court had concluded that the evidence on record was not conclusive enough to give either party a slight upper hand on the fact as to whether the appellant really owed the respondent a sum of Rs. 1,80,000/- (Rupees one lakh and eighty thousand).... the onus of proof lies to the respondent but adjudicate in favour of the plaintiff/respondent is liable to set aside (ii) the learned trial court relied on 'Hnathawhna tur Inremsiamna' Dt. 18/1/2005 which did not embark liability to the appellant to pay in full of Rs. 3 lakhs to the respondent without completion of the work assigned to the respondent (iii) in the said 'Hnathawhna tur Inremsiamna' Dt. 18/1/2005, the respondent entered into agreement with the late wife of the appellant, without appointing as legal representative, filing of the suit against the appellant is not maintainable in law.

Learned counsels of both parties appeared and heard the case in their presence. Learned counsel for the appellant reiterated their memorandum of appeal whilst learned counsel for the respondent contended that evidence of the plaintiff/respondent proof that the plaintiff completed the work assigned to him by the wife of the appellant and thereby entitled to receive the whole amount of Rs. 3 lakhs from the appellant.

FINDINGS

Learned counsels of both parties admitted the authenticity of 'Hnathawhna tur Inremsiamna' Dt. 18/1/2005 and also not disputed that it was executed by the respondent/plaintiff and Smt. Rohmingthangi, Khatla South.

With regards to filing of the suit against the appellant merely because of the wife of Smt. Rohmingthangi without appointing the appellant as the legal representative, application of the spirit of the CPC will not cure such malady. In one angle, the proviso to clause (b) of sub-section (3) of section 1 of the Code of Civil Procedure, 1908 remains unaltered. Rule 48 of the

Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 for ready reference may be quoted as-

“48. In civil cases, the procedure of the District Council Court or the Subordinate District Council Court, shall be guided by the spirit, but not bound by the letter, of the Code of Civil Procedure, 1908 in all matters not covered by recognized customary laws or usages of the district”

It may be Pertinent to express the pretext of application of only the spirit of the Code in Mizoram, it 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.”

More so, recently in **Sinnamani & Anr. vs G. Vettivel & Ors.** decided on 9th May, 2012 in connection with Civil Appeal No. 4368 of 2012 @ SLP (Civil) No.11825 of 2008, Hon'ble Supreme Court has held that-

“11. A suit can be instituted by presentation of a plaint and Order IV and VII C.P.C. deals with the presentation of the

plaint and the contents of the plaint. Chapter I of the Civil Rules of Practice deals with the form of a plaint. When the statutory provision clearly says as to how the suit has to be instituted, it can be instituted only in that manner alone, and no other manner.”

On perusal of the plaint in the original suit, the respondent/plaintiff spelt out anything about legal representative of late Smt. Rohmingthangi which is not tenable in law. However, as deposed by the appellant as DW in his examination in chief that as he was over-busy for prayer healing work without having a time to work for his family, the then Hon’ble Minister H. Rammawi sanctioned the work of Diversion Weir, Thalbul Minor Irrigation Project, Chekawn. Moreover, DW Mr. V.S. Laldinpuia for the appellant also deposed that the appellant sent them for the said work with other which is corroborated by the other DW Mr. Lalchhandama. Thus, in the instant case, although the late wife of the appellant entered into agreement, suing against the appellant being the survive husband and who actually done the disputed work as sanctioned to him, such irregularities will not vitiate the proceedings.

Learned counsels of parties are not also disputed that ‘Hnathawhna tur Inremsiamna” Dt. 18/1/2005 alone did not embark liability to the late wife of the appellant to pay Rs. 3 lakhs but subject to timely completion of assignment by the plaintiff/respondent. In the plaint, the plaintiff fairly admitted that he had already received Rs. 1,20,000/- from the appellant/defendant and the remaining liability is only Rs. 1,80,000/- (Rupees one lakh and eighty thousand). For that purpose, under para. 5 of the plaint, the plaintiff claimed that he completed the work in March, 2005. But during his cross examination as PW, he deposed that he completed the said work on 21st May, 2005. The other PW Mr. H. Vanlalnunthiama merely deposed that the respondent completed the work without any complaints from any corner during his examination in chief and cross examination. The other PW Mr. Kroskawia being sub-contractor also merely stated that without any complaint from any corner, the plaintiff completed the work.

In the meantime, although the appellant as DW in the original suit claimed in his examination in chief that the liabilities of the respondent were directly paid by them when they drawn advance bill amount to the seller/supplier which is aggrieved by the plaintiff/respondent but no supported documentary evidence is found on the record of learned trial court. The appellant claimed that the plaintiff/respondent could not completed the work in a stipulated time and they continued the work in their own expenditure by paying Rs. 1,20,000/- to the plaintiff/respondent to meet labour cost, balu and rora as deposed in his examination in chief. The other DW Mr. V.S. Laldinpuia deposed that the appellant sent them with one Mr. Lalchhandama and other four non-Mizo Mistiri to work in the said work in April, 2005, they completed the work in the middle of June, 2005 but in his examination in chief he deposed that the respondent often supervised their work as boss but not execute the work in the real sense by them. He is not shaken during cross examination. The other DW Mr.

Lalchhandama for the appellant also corroborated the deposition of the said Mr. V.S. Laldinpuia.

As found by the learned trialing Magistrate, both the cases of the plaintiff/respondent or the appellant/defendant were very weak and could not be relied on their evidence whilst the plaintiff/respondent also contradicted in his statement in respect of the time of completion of the work in his plaint and during cross examination.

The submission of Mr. A. Rinliana Malhotra for the appellant is correct to say that if the court may rely on 'Hnathawhna tur Inremsiamna" Dt. 18/1/2005, it is subject to completion of the work for receiving full amount of Rs. 3 lakhs by the plaintiff/respondent which the plaintiff failed to prove whilst onus of proof lies on the plaintiff/respondent as he claimed the full amount arising out of 'Hnathawhna tur Inremsiamna" Dt. 18/1/2005. In other terms, completion of the government contract work is a matter of official documents which require to obtain completion certificate from the concerned authority which the plaintiff/respondent lacked/failed to exhibit or produce in the proceedings of the learned trial court including in this court to support of his claims like in the instant case creating the case in hazy position.

Thus, the impugned judgment and order Dt. 08-10-2009 in Money Suit No. 28 of 2007 passed by the learned Magistrate, Additional Subordinate District Council Court, Aizawl which decreed in favour of the plaintiff/respondent is without any supporting evidence and is therefore liable to set aside and quash.

ORDER

In view of the above findings and reasons, the impugned judgment and order Dt. 08-10-2009 in Money Suit No. 28 of 2007 passed by the learned Magistrate, Additional Subordinate District Council Court, Aizawl which decreed Rs. 1,80,000/- (Rupees one lakh and eighty thousand) in favour of the plaintiff/respondent is hereby set aside and quashed.

Give this copy to all concerned. Return back of the original case record of Money Suit No. 28 of 2007 to the Record room from where it is transmitted to this court.

With this order, the case shall stand disposed of.

Given under my hand and seal of this court on this 1st October, 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. RFA/43/2009, Sr. CJ (A)/ Dated Aizawl, the 1st Oct., 2012

Copy to:

1. Mr. Khualluna H/o Rohmingthangi (L), Khatla 'S', Aizawl through Mr. A. Rinliana Malhotra
2. Mr. Lalinmawia, Chekkawn Village, Serchhip District through Mr. R. Lalhmingmawia, Adv.
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Case record

PESKAR