

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE  
AIZAWL JUDICIAL DISTRICT : AIZAWL**

**P R E S E N T**

Mrs. Helen Dawngliani  
Addl.District & Sessions Judge

RFA No.34/2013

Smt.Laldinpuii D/o Rualchhawna  
R/o Republic Veng, Aizawl                      ...      Appellant

Versus

R.Lalbiakzuala S/o Zaivawra  
R/o Chanmari West, Aizawl                      ...      Respondent

Date of Hearing                                      ...      21.5.2014  
Date of Order                                      ...      29.5.2014

**A P P E A R A N C E**

For the Appellant	...	Mr. B. Lalramenga Mr. J.C. Lalnunsanga Ms. Rosie M.S. Tluangi Ms. Zothanpari Sailo Mr. Roshal Subedi, Advocates
For the Respondent	...	Mr. J. Lalremruata Hmar Mr. Lalbiaknunga Mr. Roger C. Lalmangaiha Mr. Lalbiakkima, Advocates

**J U D G M E N T & O R D E R**

1. This appeal u/s 17(2) of the Mizoram Civil Courts Act, 2005 r/w section 96 CPC, 1908 against the Judgment & Order dt.25.3.2013 passed by the Ld. Senior Civil Judge-I (Dr. HTC Lalrinchhana), Aizawl District, Aizawl in Money Suit No.101/2012.

By the impugned Judgment & Order, the appellant have been directed to pay a sum of Rs. 2,30,000/- with interest @ 12%per annum w.e.f 5/11/2012 i.e date of institution of suit within sixty days alongwith Rs.20,000/- as cost of the suit and Rs.5000/- as lawyer's fees with interest @ 12% per annum.

2. Case record of the Ld. Trial Court is received. Heard the Ld. Counsels.

Mr .B. Lalramenga Ld. Counsel for the Appellant submitted that the Order dt.7.11.12 was served to the husband of the Appellant as the Appellant was out of

station in connection with her business. Not knowing what it was, the husband of the Appellant did not tell her anything when she returned. Accordingly, the Appellant did not attend Court on 6.12.12, on which date notice was ordered to be issued but was not actually issued. As the Appellant did not have any knowledge of pending litigation against her, there was no question of her attending the Court on the subsequent dates. The Id. Counsel argued that vide Order dt.1.12.13 the case was proceeded under Order VIII Rule 10 CPC. If that be so, it is only just and proper that chance is given to cross-examine the witnesses as the Id. Trial Court failed to pronounce Judgment/Order upon deciding to proceed under Order VIII Rule 10 CPC. According to the Id. Counsel, the Impugned Order is clearly inconsistent with Order 20 Rule 5 CPC which mandates the Court to record its finding or decision with reasons, for each separate issue. It is further submitted by the Id. Counsel that examination-in-chief alone does not constitute evidence. Reverting back to the manner of service of summons, the Id. Counsel submitted that the Respondent went to her house only once and served a copy to her husband. They did not make sincere effort to serve summons and that the manner of service is in compliance with Order V Rule 15 CPC. The Id. Counsel argued that no Order was passed under Order V Rule 9A CPC allowing personal service. The Id. Counsel argued that it will be denial of justice if they are not allowed to file their pleadings. It is submitted by the Id. Counsel that the prayer for recovery of money as well as foreclosure cannot go together but it should be either of them. Imposition of cost with interest, according to the Id. Counsel, is manifestation of bias and favourism and thus pray to set aside and quash the Impugned Judgment & Order.

On the other hand, Mr. Lalbiaknunga Hnamte, Id. Counsel for the Respondent submitted that as the Appellant herself admitted that she was out of station on 28.11.12, it is only reasonable that they serve summons to her husband. The manner of service does not violate the mandate of Order V Rule 15 CPC. The Id. Counsel referred to a copy of the summons enclosed to the Memo of Appeal as Annexure-3 and submitted that the contents of the summons is clear and the Appellant cannot plead ignorance. According to the Id. Counsel, the Appellant is only playing delay tactics to defer payment to the Respondent. The Id. Counsel submitted that Appellant returned to Aizawl on 1.12.12 and as such there was ample time for her to appear in the Court. Her husband deliberately failed to tell her about the summons. Turning to the Impugned Judgment & Order, the Id. Counsel submitted that the Id. Trial Court had duly assigned reasons and there is

no infirmity about it. It is also submitted by the Id. Counsel that the prayer was for recovery of money and that foreclosure was only as alternative relief prayed. It is submitted by the Id. Counsel that verbal instruction was received from the Court to cause personal service to the Appellant. The Id. Counsel submitted that there is no irregularity in the procedure adopted or in the decision itself and that the Appellant is trying to delay payment by bringing out minor technicalities which does not effect substantial justice. The Id. Counsel therefore prays to dismiss the Appeal.

3. Upon hearing the parties and on perusal of the memorandum of appeal, the main grievance, inter alia, appears to be that the appellant was not aware of the existence of any litigation against her, the manner of service of summon was improper and that it was not proper to pass an order against her without affording reasonable opportunity to contest the case.

4. In this regard, Annexure-3 of the memo of appeal which is the summon issued to the appellant/defendant shows that the same was received by Rualchhawna H/o Laldinpuii on 28.11.2012. It is asserted by the appellant that she returned to Aizawl on 1.12.2012 and also enclosed a copy of her air ticket. Her husband did not communicate the summon/letter received by him on her behalf. This is purely a communication gap between the husband and wife, it may also not be proper to take the plea that because he did not know what he received he did not communicate to his wife. As adult persons are expected to act with responsibility and reasoning, it appears that even the legislature in its wisdom have provided that in a situation envisaged under Order V Rule 15 CPC, summon could be served to an adult member of the family.

On the other hand, if it is presumed that the irregular service of notice is only a technique for delaying the payment, a person capable of such scheming can also be reasonably expected to know the consequences not contesting a case. Further it is a settled principle of law that ignorance of law is not an excuse.

5. The Ld. Counsel for the appellant also argued that in order to cause personal service upon the defendant there has to be an Order from the Court under Order V Rule 9A CPC allowing such personal service. According to the Ld. Counsel the same is missing in the instant case. Perused the record, I am unable to find any specific order allowing the plaintiff to cause personal service upon the defendant. The defendant/respondent also fairly admitted that they received verbal instruction from the Court but there may not be any written permission.

6. What ultimately matters is whether there is miscarriage of justice due to such procedural lapse and technicalities? The honb'le Apex Court as well the various hon'ble High Court in a number of decisions have held that procedure is the handmaid of justice and not its master. In the case at hand, I have carefully gone through the record, it appears therein that the appellant/respondent has not entered appearance even once. Accordingly, the decision could not but be based on the materials and evidence placed before it by only one party/plaintiff/respondent. The need to hear all the parties cannot be over emphasized in order to reach a just decision and for proper adjudication of a case. For the said purpose the record as well as the memo of appeal are examined.

7. In the present case, from the enclosures to the memo of appeal, it is seen that summon was received by the husband of the appellant on 28.11.2012 and the appellant returned from her business trip on 1.12.2012. It therefore appears that at the time of service of summon, the husband of the appellant was not asked when his wife, defendant, was supposed to return. The second part of Order V Rule 15 CPC requires that summon can be served to the adult member of the family, whether male or female, residing with the defendant in the absence of any agent appointed by the defendant after the server satisfies himself that "*there is no likelihood of his being found at his residence within a reasonable time*". As the documents placed on record shows that the defendant returned on 1.12.12 and the court date as per the said summon was 6.12.12, she could have been served summon after her return. Accordingly, considering the date of arrival of the appellant and the court date, I am convinced by the submission of the Ld. Counsel for the appellant that no attempt was made to know the time of arrival of the appellant in her residence as mandated by the later part of Order V Rule 15 CPC.

8. It is also noticed from the record that when the appellant/defendant did not appear on 6.12.12, the Ld. Trial Court fixed 1/2/2013 for submission of written Statement and issued notice to the defendant/appellant. But it appears from the record that the said order was not issued as directed. It was only thereafter that the matter was proceeded under Order VIII Rule 10 CPC. It appears that the Ld. Trial Court without first satisfying itself as to whether notice issued on 6.12.12 for 1.2.13 was actually issued and acknowledgement duly returned proceeded the matter ex-parte/under Order VIII Rule 10 CPC.

9. Without going into the other grounds of appeal, I am of the considered view that there was irregularity in the manner of service of summon and that prejudice was caused due to non issuance of notice dt.6.12.2012 which affected the rights of the appellant/defendant to contest the suit.

10. Hence, impugned Judgment & Order dt.25.3.2013 passed by the Ld. Senior Civil Judge-I Aizawl in Money suit No.101 of 2012 is set aside and quashed.

The matter is remanded back to the Ld. Trial Court for de-novo trial from the stage of submission of written statement by the defendant/appellant.

11. Parties are directed to appear before the Court of Pu Lalbiakzama, Senior Civil Judge, Aizawl on 9.6.2014. It is expected that the matter will be disposed off expeditiously.

12. Send back the case record of Money Suit No.101 of 2012 to the Court of Pu.Lalbiakzama, Senior Civil Judge, Aizawl.

13. With the above Order, the appeal stands disposed off.

**Sd/- HELEN DAWNGLIANI**  
Additional District Judge  
Aizawl Judicial District, Aizawl

**Memo No:...../AD&SJ(A)/2014 : Dated Aizawl, the 29<sup>th</sup> May, 2014**

**Copy to: -**

1. Laldinpuii D/o Rualchhawna R/o Republic Veng, Aizawl through Counsel Mr. B. Lalramenga, Advocate.
2. R. Lalbiakzuala S/o Zaivawra R/o Chanmari West, Aizawl through Counsel Mr. Lalbiaknunga Hnamte, Advocate.
3. Pu Lalbiakzama, Senior Civil Judge, Aizawl.
4. Registration Section.
5. Guard File.
6. Case Record.
7. Calendar Judgment.

**P E S H K A R**