

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

MONEY SUIT NO. 30 of 2016

Vanlalthachunglura,

S/o Liansawta,

R/o Lawipu, Aizawl.

...

Plaintiff

Vs

Laldengi,

W/o LalnuntluangaPautu,

Lawipu, Aizawl.

...

Defendant

B E F O R E

**Shri T. Lalhmachhuana, Civil Judge-1,
Aizawl Judicial District, Aizawl.**

P R E S E N T

For the Plaintiff :Mr. Lalbiakdika Sailo (Legal Aid Counsel).

For the Defendant :Mr. H. Lalchhuanawma (Legal Aid Counsel).

Date of hearing :17.08.2017

Date of Judgment & Order :13.09.2017

J U D G M E N T A N D O R D E R

Dated Aizawl, the 13th September, 2017

1. This is a suit filed by Shri Vanlalthachunglura S/o Liansawta (L) of Lawipu, Aizawl, Mizoram for recovery of Rs. 27,000/- with interest @ 10 % per annum from the defendant Smt. Laldengi w/o Lalnuntluanga Pautu of Lawipu, Aizawl, Mizoram.

2. The Plaintiff claimed that he is the owner of two vehicle i.e. LPK 407 B/R No. MZ-01-F/1150 and MZ-01-D/9586 and he was engaged by the defendant to carry cubic stones at the rate of Rs. 1,400/- and Rs. 1,500/- per trip with payment and due respectively. Hence, he had carried 31 loads of cubic and out of which the

defendant paid only for 13 loads and no payments have been made with the remaining 18 loads amounting to Rs. 27,000/- only. After repeated request by the plaintiff the defendant refused to pay till date and hence this petition and the plaintiff prays for –

- (a) A decree be passed declaring that the plaintiff is entitled to receive the find bill amount of Rs. 27,000/- with 10% without per annum.*
- (b) The cost of the suit be decreed in favour of the plaintiff and against the defendant and*
- (c) Any other relief to which the plaintiff is entitled.*

3. The petition is also accompanied with the appointment of Mr. Lalbiakdika Sailo as Legal Aid Counsel and the same is accepted.

4. Process have been issued and the defendant was given ample time for filing written statement or counter claimed but after failing to file her W/S her chance has been closed. Thereafter, Mr. H. Lachhuanawma was appointed as legal aid Counsel for the defendant and the following issues are framed and amended from time to time for consideration –

- (i) Whether the suit is maintainable in its present form and style or not ?*
- (ii) Whether there is any verbal agreement between the parties for carrying cubic stones at the rate of Rs. 1,400/- per load, on payment or Rs. 1,500/- per load if payment is due or not ?*
- (iii) Whether the plaintiff had actually complied with their verbal agreement or not ?*
- (iv) Whether the plaintiff is entitled to the relief claimed against the defendant or not ?*

Findings and reasons thereof-

5. ***For determination of Issue No. 1 as to whether the suit is maintainable in its present form and style or not*** the plaintiff stated in his plaint that verbal agreement have been made between the parties in the year of 2014 for carrying cubic stones within the territorial jurisdiction of this court and the suit is valued at Rs. 27,000/- (Rupees twenty seven thousand) only and court fee of Rs 2,199/- is deposited along with the plaint.

6. The present suit is filed on 16.5.2016 i.e. within time and all the actions have been taken at Aizawl with the value of Rs. 27,000/-. Therefore, this court have territorial as well as pecuniary jurisdiction and this issue is decided in a positive.

7. ***For determination of Issue No. 2 as to whether there is any verbal agreement between the parties for carrying cubic stones at the rate of Rs. 1,400/- per load, on payment of Rs. 1,500/- per load if payment is due or not*** the plaintiff Vanlalthachunglura himself is examined as plaintiff witness No. 1 in which he had affirmed his plaint that as the defendant Pi Laldengi has cubic stone supply order to Pu Zohminga, sub-contractor for constructions of retaining wall at New Secretariat Complex, both the plaintiff and the defendant made verbal agreement that the plaintiff shall carry 200 cubic stones at the rate of Rs. 1,400/- per load on payment and Rs. 1,500/- per load if payment is due. However, there is no relevant point for the present issue at the time of cross examined by the Ld. defence Counsel and PW-2 is also silent about this issue.

8. Although the defendant does not filed any written statement she had examined three witnesses including herself wherein DW-1 and DW-2 are silent about this issue while the defendant herself deposed as DW-3 and during cross examined by Ld. Counsel for the plaintiff she had stated that she had used two trucks of the plaintiff for supplying cubic stones to Pu Zohminga.

9. Considering available evidence of the plaintiff and the defendant with pleadings of the plaintiff this Court is of the considered opinion that there is verbal agreement between the parties which is not contest or question by the defendant at the time of evidences or even during cross examination of the plaintiff witnesses, and therefore, this point is decided in a positive.

10. ***For determination of Point No. 3 as to whether the plaintiff had actually complied with their verbal agreement or not***, the plaintiff in his deposition as PW-1 stated that as per their verbal agreement he had supplied 31 loads/trips of cubic stones from 8.12.2014 to 2.6.2015. On cross examined by the Ld. Counsel for the defendant, PW-1 agrees that 31 trips/loads of cubic stones were carried by the vehicles of the plaintiff.

11. PW-2 Lalnunziri deposed that she knows all the details about the plaintiff's vehicle used by defendant and she used to kept the details in writing. When she is cross examined by the counsel the details in writing. When she is cross examined by Ld. Counsel for the defendant, the PW-2 stated that she knows the details because she was told by her husband, (the plaintiff) and they used to kept in writing.

12. Vanlalhrualtuanga is examined as DW-1 and stated that he was working as Head Mistiri-cum-work supervisor under contractor Zohminga and while they were constructing retaining wall at New Capital Complex, the plaintiff had requested them for supply of boulders and the same is agreed after consultation with the present defendant and further the parties also agreed that payment for supply of cubic stone and boulders will be made from the payment of the contractual works.

13. While the evidence of Lalnuntluanga as DW-2 is mainly concentrated on the supply of boulders by the plaintiff through the defendant (his wife) he does not have any evidence regarding used of plaintiff vehicle by the defendant. But when he is cross examined by the Ld. counsel for the plaintiff vehicle by the defendant. But when he is cross examined by the Ld. Counsel for the plaintiff. DW-2 agreed the suggestion that his wife (the defendant) Laldengi had used the vehicles of the plaintiff of supply of cubic stones to contractor Zohminga.

14. The defendant Laldengi deposed as DW-3 and stated that she had used the vehicle of the plaintiff for supply of 31 trips of cubic stones to the contractor and in the meantime the plaintiff himself had supply 325 trips of boulders to the contractor. On cross examined by the Ld. Counsel for the plaintiff, DW-3 stated that she had used two nos. of trucks of the plaintiff for supply of cubic stones to Pu Zohminga and she had also agreed and accepted about the documents and date and time as submitted by the plaintiff before the court.

15. On plain reading of the evidences adduced by both the parties it is not disputed that on the relevant date and time the defendant used two vehicles (LPK Trucks) of the plaintiff for supply of 31 trips/loads of cubic stones to the contractor i.e. Pu Zohminga. And, therefore, there is no need for lengthy discussion about this issue and on the basis of undisputed facts for both the parties this point is decided in a positive.

16. ***For determination of Point No. 4 as to whether the plaintiff is entitled to the relief claimed or not*** the plaintiff stated in his deposition as PW-1 that out of 31 trips/loads he had delivered, the defendant had paid only for 13 trips but refused to pay the remaining due amounting to Rs. 27,000/- (i.e. $1500 \times 18 = 27000$) till date. In support of his evidence PW-1 exhibited copy of payment details as Ext P-4. On cross examined by the Ld. Counsel for the defendant, PW-1 stated that the defendant had paid only for 13 trips and the remaining amount due is Rs. 27,000/-. PW-1 further agreed the suggestion that he had received Rs. 27,000/- from the contractor for hire of his vehicle.

17. Lalnunziri deposed as PW-2 and stated that she went to meet the defendant three or four times at their residence and their shop and also spoke several times through telephone requesting her to pay her debt amounting to Rs. 27,000/- but the defendant refused to pay with lame excuses all the time.

18. Whereas the evidences of DW-1, DW-2 and DW-3 are mainly regarding the supply of 325 trips of boulders by the plaintiff to be same contractor in which the defendant is having a share of Rs. 100/- each per trips amounting to Rs.32,500/- which was paid by the plaintiff to the defendant. Further, the defendant in her deposition as DW-3 stated in paragraph 8 & 9 that as the plaintiff refused to pay her share of Rs. 32,500/- she had also refused to pay Rs. 27,000/- to the plaintiff for hire of his vehicle and the defendant suggested that let the plaintiff paid her (the defendant) share of Rs. 32,500/- and she will also subsequently Rs. 27,000/- to the plaintiff.

19. While considering the evidence of both parties, I have also carefully perused available documents on records in which "copy of payment details" exhibited by the plaintiff as Ext P-4 contains about the payment and dues made between the parties from 8.12.2014 to 2.6.2015 and it is found that out of 31 hired of two vehicles payments have been made for 13 times and the remaining 18 times were marked as dues. The contents of this Ext-P-4 is corroborated with the evidence of the plaintiff that out of 31 trips he had delivered the defendant had paid only 13 trips but refused to pay the remaining due amounting to Rs. 27,000/- (i.e. $18 \times 1500 = 27,000$).

20. However, regarding the claim of the defendant i.e. DW-3 for payment of Rs. 32,500/- by the plaintiff first and she will subsequently pay her debt of Rs 27,000/- to the plaintiff could not be considered with this instant case on the ground inter-alia that the evidence of the defendant is not in support of her pleadings or counter claim. In the present case the defendant is having no pleadings or counter claim to be considered with this case.

21. In the case of ***Narendra Majumder Vs Sushil Bari and Ors.*** as reported in ***(2017)2 GLR 742*** the ***Hon'ble Gauhati High Court*** observed that -

"15 To be a substantial question of law, there must be first, a foundation for the question laid in pleadings. Secondly, question should emerge from sustainable findings of facts arrived at by Court of fact and it must be necessary to decide that question of law for a just and proper decision between the parties."

22. With regards to the plaintiff claim of an interest at the rate of 10% per annum, the ***Hon'ble Supreme Court of India*** in the case of ***Ramesh Chandra Vs Asruddin in Civil appeal No. 8427 of 2014*** as decided on 6.10.2015 that -

"9. In the above facts and circumstances of the case and the Judicial Principle discussed above we are of the opinion that it is a fit case where instead of granting decree of specific performance, the plaintiff can be compensated by directing the appeal that to pay a reasonable and sufficient amount to him. We are of the view that were refund of Rupees 4 lakhs with interest at the rate of Rs. 8% Per annum, as directed by the trial Court, would be highly insufficient. In our considered opinion, it would be just and appropriate to direct the appellant to repay Rupees 4 lakhs along with interest @ Rs. 18% per annum from 21.6.2004 till date within three months from today."

23. Hence, on the basis of the above facts and circumstances of the case with the Hon'ble Supreme Court of India and this point is decided in favour of the plaintiff.

ORDER

24. The Defendant Smt. Laldengi W/o Lalnuntluanga Pautu R/o Lawipu, Aizawl shall pay the final bill amounting to Rs. 27,000/- (Rupees twenty seven thousand) only to the plaintiff within three (3) months from the date of this order with an interest at the rate of 10% per annum with effect from the month of June, 2015 until full realization of the amount dues.

25. Further, the defendant Smt. Laldengi shall also pay Rs. 5000/- (Rupees Five thousand) only to the plaintiff as cost of the suit under the provision of Section 35 of the Code of Civil Procedure.

26. Given under my hand and Seal of the Court on this 13th September, 2017 within the premises and during the working hour of the Court and is pronounced in an open Court.

(T. LALHMACHHUANA),

Civil Judge-1

Aizawl Judicial District, Aizawl.

Memo No. _____ CJ-1(A)/2017 : Dated Aizawl, the 13th September, 2017.

Copy to :

1. Shri Vanlalthachunglura, S/o Liansawta (L), R/o Lawipu, Aizawl through Shri Lalbiakdika Sailo, Advocate.
2. Smt. Laldengi, W/o Lalnuntluanga Pautu, R/o Lawipui, Aizawl through H. Lalchhuanawma, Advocate.
3. Shri Lalbiakdika Sailo, Advocate (Legal Aid Counsel).
4. Shri H.Lalchhuanawma, Advocate (Legal Aid Counsel).
5. District & Sessions Judge, Aizawl.
6. Registration Section.
7. Guard file
8. Case record.

P E S H K E R

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**Shri T. Lalhmachhuana, Civil Judge-1,
Aizawl Judicial District, Aizawl.**

P R E S E N T

For the Plaintiff :Mr. LalbiakdikaSailo (Legal Aid Counsel).

For the Defendant :Mr. H. Lalchhuanawma (Legal Aid Counsel).

Date of Judgment & Order :13.09.2017

Date of Decree :13.09.2017

DECREE

Dated Aizawl, the 13th September, 2017

1. This Money Suit No. 30 of 2016 coming on this 13th September, 2017 for final disposal before T. Lalhmachhuana, Civil Judge-1, Aizawl Judicial District, Aizawl. It is ordered and decreed that the defendant The Defendant Smt. Laldengi W/o Lalnuntluanga Pautu R/o Lawipu, Aizawl shall pay the final bill amounting to Rs. 27,000/- (Rupees twenty seven thousand) only to the plaintiff within three (3) months from the date of this order with an interest at the rate of 10% per annum with effect from the month of June, 2015 until full realization of the amount dues.
2. Further, the defendant Smt. Laldengi shall also pay Rs. 5,000/- (Rupees Five thousand) only to the plaintiff as cost of the suit under the provision of Section 35 of the Code of Civil Procedure.

3. Given under my hand and seal of the Court on this 13th September, 2017 within the premises and during the working hour of the Court and is pronounced in an open Court.

Seal of the Court

Judge

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Money Suit No. 30/2016.

A. List of Exhibits

1. For the Plaintiff:

- (a) Ext. P-1 to Ext. P-3 are signatures of PW.No.1
- (b) Ext. P-4 is copy of payment receipt recorded by PW.No.1.

2. For the Defendants : NIL

B. List of Witnesses

1. For the Plaintiff

- (a) PW-No.1 Sh. Vanlalthanchunglura R/o Lawipu, Aizawl.
- (b) PW No.2 Smt. Lalnunziri R/o Lawipu, Aizawl.

2. For the Defendant

- (a) DW-No.1 Sh. Vanlalhrualtuanga R/o Chawnpui, Aizawl.
- (b) DW-No.2 Sh. Lalnuntluanga R/o Lawipu, Aizawl.
- (c) DW-No.3 Smt. Laldengi R/o Lawipu, Aizawl.