

IN THE COURT OF LALRAMSANGA CIVIL JUDGE-III

AIZAWL JUDICIAL DISTRICT : AIZAWL

MONEY SUIT 60/2009

1. Vanlalruati **Plaintiff**

W/o Vanlallawma

R/o Sairang.

2. Lalmangaihi
W/o Vanlalhlana
R/o Sairang

By Advocates: Lalrinkima Advocate

Vrs

H. Lallianzuala **Defendant**

Principal, Young Pioneer School

R/o Edenthar veng, Aizawl

By Advocates: Laltanpuia & R.K Malsawma Advocates

Date of hearing **30.8.2013**

Date of Judgment **30.9.2013**

BEFORE

LALRAMSANGA

Civil Judge, Aizawl District, Aizawl

JUDGMENT & ORDER

1. The story of the case as alleged by the plaintiff is that the defendant used to indulge in selling teak timber to other state as a part of his profession and the plaintiff No. 2 used to supply teak timber to the defendant since 2008 for his further supply/sell to other state and the plaintiff No. 2 also used to

received money from the defendant for the cost of supply of teak timber. The plaintiff No. 1 being the mother of plaintiff No. 2 used to help her in procuring teak from other persons. That on 18.2.2009 both the plaintiffs supplied 580.53 cubic of teaks timber to the defendant at the rate of Rs. 280 per cubic at the request of the defendant. The defendant is totally liable to pay a sum of Rs. 1,64,750 /- for the cost of supply of teak timber by the plaintiffs. (The details quantity of teak timber supplied by the plaintiffs are appended and mark as Annexure 1-15)

2. When the plaintiffs asked for payment of the said above sum the defendant wrote a cheque amounting to Rs. 1,62,550/- in favour of the plaintiff No. 2 to be drawn at the Bank of Baroda. But when the plaintiffs enquired the said cheque at the Bank of Baroda, there is no any money to meet the cheque except Rs. 5,000/- at the account of the defendant which clearly revealed that the defendant negligently unwilling to make payment which he owed from the plaintiffs and cheated both the plaintiffs. The action of the defendant against the plaintiffs in writing and giving a false cheque amounts to cheating and the defendant is criminally liable for prosecution. (The said false cheque No. CA/2007/ADHOC.E is annexed and marked as annexure -16)

3. That the plaintiffs again approach the defendant for payment of the said money, the defendant made some lame accused to the plaintiffs saying that he will pay the said money in the near future and till today not a single rupee is paid to the plaintiffs by the defendant in spite of a repeated request made by the plaintiffs.

4. The claim of the plaintiffs is to pass a decree declaring that the defendant owes a sum of money of Rs. 1,64,750/- from the plaintiffs along with pendent-lite interest at the rate of 12 % per annum and to direct the defendant to pay the decreetal amount and cost of the suit to the plaintiffs.

5. The Defendant submitted his written statement. Besides his preliminary objection he stated that in the month of November, 2009, the plaintiff No. 2 approached the defendant and asked whether he want to buy Teak timber and the defendant orally agreed the offer since the present plaintiff No. 2 told the defendant that there will be no problem regarding Square Long Transit Pass which is compulsory for selling teak timber. The defendant further stated that there is no written agreement regarding the alleged agreement of sale. However, the defendant, wants to buy Teak timber from the plaintiffs, hence, defendant paid Rs. 53,000/- on different dates i.e Rs. 20,000/- on 4.11.08, Rs. 30,000/- on 14.1.09 and Rs. 3,000/- on 13.2.09 in advance as requested by the plaintiffs. He also annexed a copy of first payment receipt and marked as Annexure-III. He also stated that the plaintiffs had supplied teak timber to him on 18.2.2009. The defendant further stated

that the plaintiffs did not inform him that there was no Square Log Transit Pass regarding their supply of teak timber. The defendant willfully accepted their supply and intended to pay the cost of those teak timbers believing that plaintiffs should furnish Square Log Transit pass at the time when final payment is made. However, during this time, he is not in a position to pay the whole amount of the cost of those timbers since his wife was intending to go to Manipur for medical check up and to have surgical operation. The Plaintiffs on the other hand, urged him to pay the whole amount of money for the cost of supply of teak timber. There defendant also told the plaintiffs to sell Timber Logs already supplied to him except the cost of already paid in advance but they refused to do so. Then, the defendant in good faith wrote a cheque amounting to Rs. 1,62,550/- favors of the plaintiff No. 2 to be drawn at the Bank of Baroda, telling her that there was no enough money to be drawn at that time and to draw when the defendant told him to draw only after the defendant's partner who is living in Hyderabad deposited a handsome money in his account since he and his wife is leaving for Aizawl to Manipur in order to have surgical operation on his wife. However, the plaintiffs hypocritically went for withdrawal of money through the said cheque even though they realized that there was no enough money as the defendant had already told them. With regard to the alleged false cheque, the defendant did not mean that he willfully evade from paying the cost of teak timber if the plaintiff complied with their oral agreement.

6. The Defendant also stated that when the plaintiffs approached the defendant for payment of the said money, the defendant demanded Square Log Transit Pass without which no timber logs could be transported to other state since the defendant is a valid license holder duly registered under the State of Mizoram for trading in selling teak timber, the plaintiff had no Transit Pass to produce which they should have as a seller in accordance with the Supreme Court's Order dated 12.5.2001 in Writ Petition © No. 202/95. The defendant further stated that he realized the plaintiffs had no felling permit regarding the said Timber Logs as per guidelines made in compliance of the said Supreme Court's Order. Hence, the defendant just declined to pay the whole amount of money until and unless they furnish teak timber Transit pass to him as agreed in the oral agreement made between the parties. He also annexed copies of Registration Certificate and Guidelines for felling of trees from Non forest areas issued in compliance of Supreme Court's Order dt. 12.5.2005 in Writ Petition © No. 202/95 and marked as Annexure IV and V Respectively.

7. The Defendant made counter claim and that he had already paid Rs. 53000/- to the plaintiffs in advance. So he prays the court to make the plaintiffs to furnish Square log Transit Pass before the Court in order to make full payment of the cost of supply of teak timber in compliance of oral agreement made between the parties or to make order directing the plaintiffs to return money already paid to them for the cost of supply of teak timber.

8. Upon the pleadings of the parties, the following issues were framed:

- 1. Whether the suit is maintainable in its present form and style?**
- 2. Whether there is a cause of action in favour of the plaintiff and against the answering defendant?**

3. *Whether the suit is barred by the principle of laches, acquiescence and limitation?*
4. *Whether the plaintiff supplied teaks to the defendant or not?*
5. *Whether the defendant received teak from the plaintiff or not?*
6. *Whether the Plaintiff made written agreement or not?*
7. *Whether the plaintiff furnish square log transit pass or not?*
8. *Whether the defendant has liability against the plaintiff? If so, to what extend?*
9. *Whether the defendant is entitle to get counter-claim? If so to what extend?*

9. After the aforementioned issues were framed Court, the plaintiffs called upon their witnesses and adduced their evidences in the court. The plaintiffs cited themselves and Shri.Lalhnehzuala as witness. The Defendant did not lead any evidence.

10. The suit was dismissed on 12.4.2013 and then restored on the application of the Plaintiff. I took up the case on 21.5.2013.

11. Now, I try to decide the issues considering the materials on record, evidence adduced and the arguments advanced.

12. **ISSUES NO. 1,2&3.**

Issues No. 1,2&3 are already decided during pre-hearing and they were decided in favour of the Plaintiff.

13. **ISSUES NO. 4&5**

For the sake of convenience issues No 3&4 are taken together. The plaintiff in their plaint stated that on 18.2.2009 they had supplied 580.53 cubic of teak timbers to the defendant at the rate of Rs 280 per cubic. The plaintiff witnesses also support the plaint of the plaintiff. Moreover, the defendant also admitted in his written statement that on 8.2.2009 the plaintiffs supplied teak timber to him. From the above points it is clear that the plaintiff supplied teaks to the defendant and the defendant received teak from the plaintiff. Hence, issues No 4&5 are decided in favour of the plaintiffs.

14. **ISSUE NO. 6**

Issue No. 6 is “Whether the Plaintiff made written agreement or not?” Regarding this issue both the parties admitted that no written agreement was made between the plaintiffs and the defendant.

15. **ISSUE NO. 7**

Regarding issue No. 7, the plaintiff denied that plaintiffs did not furnish any Square log Transit Pass to him. The other hand the plaintiff No 1 on cross-examination stated that she did not posses any Transit Pass. Hence, it is clear that plaintiff did not furnish square log transit pass and the Issue No 7 is decided in favour of the defendant.

16 **ISSUE NO. 8**

The plaintiffs in their plaint stated that on 18.2.2009 both the plaintiffs supplied 580.53 cubic of teaks timber to the defendant at the rate of Rs. 280 per cubic at the request of the defendant. The defendant is totally liable to pay a sum of Rs. 1,64,750 /- for the cost of supply of teak timber by the plaintiffs. They also stated that the defendant wrote a cheque amounting to Rs. 1,62,550/- in favour of the plaintiff No. 2 to be drawn at the Bank of Baroda for the cost of teak timbers. But when the plaintiffs enquired the said cheque at the Bank of Baroda, there is no any money to meet the cheque except Rs. 5,000/- at the account of the defendant. The plaintiffs also exhibited the said cheque No. CA/2007/ADHOC.E as Exhibit P-3. The plaintiffs' witnesses also supported the plaint of the Plaintiffs. The defendant also admitted that the plaintiffs supplied teak timber to him on 18.2.2009 and he also admitted that he wrote a cheque amounting to Rs. 1,62,550/- in favour of the plaintiff No. 2 to be drawn at the Bank of Baroda. Hence it can be presumed that the defendant has liability against the plaintiff and he also accepted it. On the other hand the defendant contended that the plaintiffs did not furnish Square log Transit Pass to the defendant as per their oral agreement so he has no liability against the plaintiff. But the defendant neither adduces any evidence nor exhibits any document to support his contention. So the court is of the opinion that defendant has liability against the plaintiff to pay the cost of supply of teak timber by the plaintiffs and cost of transportation with interest. Hence, issue No 8 is decided in favour of the plaintiff.

17. **ISSUE NO 9.**

Issue No 9 is 'whether the defendant is entitled to get counter-claim? If so to what extend'. The defendant in his written statement made counter claim that he had already paid Rs. 53000/- to the plaintiffs in advance. So he prays the court to make the plaintiffs to furnish Square log Transit Pass before the Court in order to make full payment of the cost of supply of teak timber in compliance of oral agreement made between the parties or to make order directing the plaintiffs to return money already paid to them for the cost of supply of teak timber. The Defendant also stated that the plaintiffs with the defendant in their oral agreement stated that the plaintiff should supply teak timber to the defendant, in return the defendant should pay the cost of teak timber supply amounting to Rs. 164750/- excluding Rs. 53000/- already paid in advance to the defendant and the plaintiffs shall furnish Square log Transit Pass to the defendant as a part of seller as Guidelines made in compliance with the Supreme Court's Order dt 12.5.2001 in Writ petition © No. 202/95, but the plaintiffs did not furnish the said document regarding supply of teak timber.

18. Though the Defendant made his counter claim he did not produce any witness or document in support of his claim. The defendant fails to prove whether he and the plaintiff made agreement the plaintiff shall furnish Square log Transit Pass to the defendant. Moreover the defendant wrote a cheque amounting to Rs. 1,62,550/- in favour of the plaintiff No. 2 to be drawn at the Bank of Baroda for the cost of teak timbers and can be presumed that the Defendant did not pay Rs. 53000/- in advance to the Plaintiffs. Hence, the counter claim of the Defendant can not be granted and issue No 9 is decided in favour of the Plaintiff.

19. From the light of the discussion on merit of the case above, the suit is decreed.

ORDER

20. It is hereby ordered and decreed that the Defendant is directed to pay a sum of Rs Rs. 1,64,750 /- to the Plaintiffs with interest at the rate of 9 % as provided by Section 34 CPC. The Defendant is directed to pay the decretal amount within 60 days from the date of this order.

21. Parties shall bear their own cost.

Given under my hand and seal on this the 30th day of September, 2013.

Sd/- LALRAMSANGA
Civil Judge,
Aizawl District, Aizawl.

Memo No. _____/CJ (A) 2013: Dated Aizawl the, 30th September 2013.

Copy to :-

1. Vanlalruati W/o Vanlallawma of Sairang, Aizawl.
2. Lalmangaihi W/o Vanlalhlana of Rairang, Aizawl.
3. H. Lallianzuala, Principal Young Pioneer School, Edenthaveng, Aizawl.
4. District & Session Judge, Aizawl District, Aizawl.
5. I/C Registration, Judicial Branch.
6. Trial Magistrate, Lalramsanga, Magistrate Ist Class.
7. Case Record.

PESHKAR