

IN THE COURT OF ADDITIONAL DISTRICT JUDGE
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional District Judge,
Aizawl Judicial District, Aizawl.

Regular First Appeal No. 26 of 2014
arising out of Money Suit No. 100 of 2012.

1. Shri C.Lalhmunsanga
S/o Dorema (L),
R/o Zemabawk, Aizawl.
2. Shri F.Lalrokima
S/o Aivela,
R/o Zemabawk, Aizawl. Appellants

-Versus-

Smt Zarzokimi
W/o Lalkima (L),
R/o Chandmari, Aizawl Respondent

APPEARANCE

For the appellant : Shri F.Lalengliana, Advocate.
For the respondent : Shri A.R.Malhotra, Advocate,
Shri K.Laldinliana, Advocate.

Hearing : 26.3.2015
Order delivered on : 24.4.2015

ORDER

1. The appeal petition is filed against the judgment and order dated 4.7.2014 passed by the learned Senior Civil Judge-1, Aizawl in Money Suit No. 100 of 2012.

2. By the judgment and order, the learned Trial Court directed the appellants to pay the respondent a sum of Rs. 1,50,000/- each with interest at the rate of 9% per annum from the date of filing of the suit i.e. 23.10.2012 till final payment to the respondent.

3. The facts and circumstances of the case leading to the filing of this appeal are that on 20.4.2011 the rival parties made a written agreement before Shri R.Thankanglova, Notary Public, Aizawl, Mizoram to work together and would share equal net profit arising out of the contract works under North East Vision Infra Pvt. Ltd. i.e. Serchhip to Bungtlang Road Chainage 122+000 to 125+000 or 27 kms. It is further stated in the agreement that in the event of any unforeseen problem that might arise in the execution of the said contract causing the parties unable to perform the works, then the appellants agreed to repay the respondent Rs. 1,50,000/- each towards the money amounting to Rs. 4,50,000/- already spent by the respondent. It is submitted by the respondent that she issued a cheque for Rs. 4,50,000/- on 20.4.2011 in favour of Shri Thangliana, the Proprietor, North East Vision Infra Pvt. Ltd for the contract works and the cheque was encashed on 23.4.2011. However, the respondent spent Rs. 4,50,000/- for the contract works, unforeseen problem arose beyond the control of the parties which compelled them unable to carry out the contract works since Shri Thangliana, Proprietor of North East Vision Infra Pvt. Ltd. absconded. According to the respondent, the appellants are bound to pay a sum of Rs. 1,50,000/- to her in terms of the agreement made on 20.4.2011. The respondent also submitted that the appellants had raised an objection to the extent that Rs. 4,50,000/- was not handed over to Shri Thangliana by the respondent. In the circumstances, the respondent filed a money suit for a decree directing the appellants to pay Rs. 1,50,000/- each to the respondent along with pendente lite interest at the rate of 12% per annum and the same was disposed by the Court of the learned Senior Civil Judge-I, Aizawl.

4. A written statement was jointly filed by the appellants. Apart from the preliminary objection, the appellants challenged the validity of the Deed of Agreement made on 20.4.2011 in the written statement. The appellants submitted that they had not received any benefit out of the said contract even though the work order was issued in the name of the Appellant No. 1. They further submitted that they had also paid Rs. 2,10,000/- to Shri Thangliana, the Proprietor of North East Vision Infra Pvt. Ltd, but could not recover the said amount from him since he absconded. They also stated they had no liability towards the respondent and prayed for dismissal of the suit.

5. I heard the learned Counsels Shri F.Lalengliana and Shri A.R.Malhotra appearing for the rival parties.

6. The learned Counsel Shri F.Lalengliana strenuously argued the case by submitting that the learned Lower Court had passed the impugned judgment and order without giving sufficient chance to the appellants to adduce their evidence and prayed for setting aside and quash the judgment and order and remand back the case for trial denovo . It was also submitted by him that the learned lower Court had not served proper notice upon him before closing the stage of evidence and his counsel had also not given him proper information. According to the learned Counsel, it is not just and proper to pass the judgment and order without taking evidence of the appellant.

7. I have carefully perused the records of the learned Lower Court and found that sufficient chance was given to the appellants to adduce evidence in the presence of his counsel. Finally, the case was heard on 4.6.2014. Hence, I cannot accept the contention of the learned Counsel Shri F. Lalengliana that the learned Lower Court did not give sufficient chance to the appellants to adduce evidence. There is no irregularity in passing the judgment and order by the learned Senior Civil Judge on 4.7.2014 without taking evidence of the appellants.

8. It was next contended by the learned Counsel Shri F.Lalengliana challenged the validity and genuineness of the deed of agreement dated 20.4.2011. According to the learned Counsel, the respondent had not proved that an amount of Rs. 4,50,000/- had been paid to Shri Thangliana, Proprietor of North East Vision Infra Pvt. Ltd.

9. On perusing the records of the learned Lower Court, I found that the appellants and the respondent had made a written agreement on 20.4.2011 i.e. **'Contract Hnathawk Tura Inremna'** at Ext. P-1 which proved their agreement to work together and would share equal net profit arising out of the contract works under North East Vision Infra Pvt. Ltd. i.e. Serchhip to Bungtlang Road Chainage 122+000 to 125+000 or 27 kms. In paragraph 3 of the said Agreement, the parties agreed that in the event of any unseen problem which might arise in the execution of contract causing them unable to perform the works, then the appellants agreed to pay the respondents Rs.1,50,000/- each towards the money of Rs. 4,50,000/-

already spent by the respondent. In the written statement, the stand of the appellants is that the agreement dated 20.4.2011 was not enforceable under the law, but since the appellants did raise objection while exhibiting the agreement as Ext. P-1 at time of recording the evidence of the respondent and also did not adduce evidence. Hence, the agreement dated 20.4.2011 is valid. It is proved from the evidence on record that the respondent issued cheque for Rs. 4,50,000/- to Shri Thangliana, Proprietor, North East Vision Infra Pvt. Ltd. on 20.4.2011 for the contract works and the cheque was encashed on 23.4.2011, and a certificate to this effect was given by Shri Lalrozama on 18.8.2012 who was working for Thangliana, Proprietor, North East Vision Infra Pvt. Ltd. Subsequently, the appellants and the respondent were unable to execute the contract works. Hence, the contention of the appellants that the respondent had not given money to Shri Thangliana, Proprietor, North East vision Infra Pvt. Ltd. cannot be accepted.

10. Finally, it was contended by the learned Counsel appearing for the appellants that the learned Senior Civil Judge was bias and arbitrary in the course of trial and in passing the judgment and order by the learned Lower Court. According to the learned Counsel, the learned lower Court did consider about the misjoinder of necessary party though it was mentioned in the written statement.

11. While perusing the records of the learned Lower Court, I do not find any irregularity in the course of trial and in passing the judgment and order by the learned Trial Court. Since, the agreement was made among the appellants and the respondent, I do not find any necessity to implead Shri Thangliana in the case.

12. In view of aforesaid, I find no merit in the appeal. The same is hereby dismissed. The judgment and order in Money Suit No. 26 of 2014 passed by the learned Senior Civil Judge, Aizawl is upheld.

13. Send back the Lower Case Record.

14. There shall be no order to cost.

Sd/- VANLALENMAWIA

Addl. District Judge
Aizawl Judicial District
Aizawl, Mizoram

Memo No. _____/ADJ(A)/2015 : Dated Aizawl, the 24th April, 2015

Copy to: -

1. District Judge, Aizawl Judicial District, Aizawl.
2. Shri C. Lalhmunsanga & Ors. through Counsel Shri F. Lalengliana, Advocate.
3. Smt. Zarzokimi through Counsel Shri A. Rinliana Malhotra, Advocate.
4. Ld. Senior Civil Judge, Aizawl.
5. Registration Section.
6. Guard File.
7. Case Record.
8. Calendar Judgment.

P E S H K A R