

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRP (C.R.P. Art.227) No. 61 of 2022

Khundongbam Jiban

Petitioner

Vs.

Wahengbam Freemental @ Freemental Singh

Respondent

**BEFORE
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

05.10.2023

Heard Mr. H. Nabachandra, learned counsel appearing for the petitioner and Mr. T. Rajendra, learned senior counsel assisted by Md. Sakir Khan, learned counsel appearing for the respondent.

The present petition had been filed challenging the order dated 02.09.2022 passed by the Court of Civil Judge (Sr. Division), Imphal East, Manipur in Judicial Misc. Case No. 154 of 2022 [Ref: Original (Money) Suit No. 66 of 2018].

The said Judicial Misc. Case No. 154 of 2022 (hereinafter referred to as Misc. Case for short) was filed by the present petitioner under Order XXXVII Rule 4 of the C.P.C. praying for setting aside ex-parte judgment and decree dated 07.01.2019 passed in Original (Money) Suit No. 66 of 2018.

In the said application, the 3 (three) grounds were advanced on behalf of the petitioner for setting aside ex-parte decree which are as under:-

""[3] Ground put forward for setting aside the ex-parte decree are as under:

- (i) Judgment and Decree dated 07.01.2019 is against Khundrakpam Giban alias Kiran Singh of Porompat Thawanthaba Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur whereas name of petitioner is Khundongbam*

Jiban Singh, aged about 42 years, son of Khundongbam Mijao Singh of Porompat Thawanthaba Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur thereby claiming that petitioner is not the same person against whom Judgment and Decree dated 07.01.2019 was passed in Original (Money) Suit No. 66 of 2018.

- (ii) Burden of proof lies on the plaintiff that defendant has taken the claim amount from plaintiff.*
- (iii) Promisory Note dated 21.12.2015 on the basis of which Original (Money) Suit No. 66 of 2018 was decree was executed by Khundongbam Giban alias Kiran and not the present petitioner."*

After recording the submission made on behalf of the petitioner that he is not the same person against whom the Original (Money) Suit No. 66 of 2018 was decreed ex-parte, the Trial Court rejected the said application on the ground that the petitioner has no locus standi to make the said application for setting aside ex-parte decree.

When this Court put the question to the counsel for the petitioner as to what is the reply to the finding/observation made by the Civil Judge (Sr. Division), in para 4 of the impugned order, the counsel for the petitioner fail to give any reply.

After hearing the submission advanced by the learned counsel appearing for the parties and taking into consideration, the stand of the present petitioner that he is not the judgment debtor in the said Original (Money) Suit, this Court find no grounds for interfering with the order impugned in the present petition. It goes without saying that if the petitioner is not the judgment debtor, naturally he has no locus standi to file the said Misc. Case for setting aside the ex-parte decree.

In view of the above, this Court finds no grounds for interfering with the impugned order.

Accordingly, the present petition is hereby dismissed as being devoid of merit.

JUDGE

Sapana