

GAHC030004652022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/6/2022

Sh. Lalnuntluanga
Khatla, Aizawl, Mizoram

VERSUS

Sh. C.Rotluanga and Anr.
Keifang, Mizoram 2:Executive Engineer
Construction Division
Power and Electricity Dept.
Tuikual South
Kaisa Road
Aizawl
Mizora

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Ms. Mary Lalruatkimi Khiangte (Addl.AG/GA, Mizoram) for R2

ORDER

Date : 09.03.2023

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

Heard Mr. A.R. Malhotra, learned counsel for the petitioner and Mr. C. Zoramchhana, learned Addl. Advocate General for the respondent No. 2 (Proforma respondent). None appears for the respondent No. 1 despite service of notice.

2. The petitioner, who was the defendant No. 1 in Money Suit No. 36/2018 has filed the instant revision petition under Section 115 of the Code of Civil Procedure (CPC) read with Section 151 of the same Code for revision of the Order dated 06.09.2022 passed by the Senior Civil Judge-II, Aizawl in Money Suit No. 36/2018. By the said impugned order, the learned Trial Court had proceeded to entertain the Money Suit despite the objection of the petitioner/defendant No. 1 that the Money Suit was time barred.

3. It is the case of the plaintiff/respondent No. 1 that he and the instant petitioner are good friends and close neighbors and serving in the same Church. Therefore, the plaintiff/respondent No. 1 lent a sum of Rs. 15 Lakhs to the present petitioner out of his savings from the Mizoram Rural Bank, Keifang Branch Account No. 2504603913-3 on 08.07.2014 and that no document of agreement was executed between the parties initially. However, on 18.09.2017, the petitioner/defendant No. 1 signed a written acknowledgement to the effect that he had borrowed a sum of Rs. 15 Lakhs from the plaintiff/respondent No. 1 and that he would repay the same within the year 2017. Since the petitioner failed to repay the loan, the plaintiff approached the Court of Senior Civil Judge-II, Aizawl through Money Suit No. 36/2018, seeking a direction for repayment of the money lent by him to the petitioner. The petitioner as defendant No. 1 raised objection regarding the maintainability of the money suit as time barred, but the learned Trial Court through the impugned Order dated 06.09.2022 decided to entertain the Money Suit and proceeded with the case. The defendant No. 1, being aggrieved has filed the instant revision petition.

4. Mr. A.R. Malhotra, learned counsel for the petitioner submits since the money was claimed to be borrowed by the petitioner on 08.07.2014 and

therefore, Money Suit ought to have been filed within the period of limitation of 3 (three) years as stipulated by Article 19 of the Limitation Act, 1963. He submits that as for the acknowledgement dated 18.09.2017, the same is of no consequence, in view of the fact that as per Section 18 of the Limitation Act, such acknowledgement has to be made before the expiration of the prescribed period for filing the suit. The same having not being done, the acknowledgement dated 18.09.2017 cannot be acted upon for any purpose. He submits that although the same was the submission made before the learned Trial Court, but the learned Trial Court proceeded to pass the impugned order by taking into account the submission made by the learned counsel for the plaintiff that the petitioner/defendant No. 1 undertook to return the money by the year 2017 and therefore, the Money Suit was not time barred. The learned counsel in support of his submission has relied upon the Apex Court decision rendered in *Sesh Nath Singh and Another Vs. Baidyabati Sheoraphuli Co-Operative Bank Limited and Another*, reported in (2021) 7 SCC 313. The learned counsel therefore submits that the revision petition may be allowed as prayed for by setting aside the impugned order of the learned Trial Court.

5. Mr. C. Zoramchhana, Addl. Advocate General submits that the respondent No. 2 is only a proforma respondent and under the given facts and circumstances, the dispute being mainly between the respondent No. 1 and the petitioner, he has nothing to say in the matter.

6. From the projection made by the petitioner and upon considering the materials available on record, it is seen that as per the Limitation Act, particularly Article 19, the period of limitation for filing a suit for money lent is 3 (three) years beginning from the date when the loan is made. Loan in the

instant case is said to have been made on 08.07.2014 and therefore, the period of limitation would run from that date. Section 18 of the Limitation Act further provides that a fresh period of limitation will be computed from the time when an acknowledgement is signed by the borrower of having borrowed the money, provided that the acknowledgement is made before the expiration of the prescribed period of limitation for filing the suit.

7. From the impugned order, it is seen that the learned Trial Court has proceeded on the strength of the submission made by the learned counsel for the plaintiff which is to the effect that limitation has to be counted from the end of 2017, since the petitioner/defendant No. 1 had undertaken to repay the loan within that period as per the acknowledgement. However, considering the fact that Section 18 provides for computation of a fresh period of limitation subject to the acknowledgement made before the expiration of the prescribed period for filing the suit, it therefore appears that the learned Trial Court has proceeded with the matter without properly appreciating the relevant provisions of the Limitation Act. Since the respondent No. 1 has failed to appear before this Court despite notice, I am of the view that he should be given a chance to be heard in the matter.

8. Therefore, instead of deciding the matter, the matter is remanded back to the learned Trial Court by setting aside the impugned Order dated 06.09.2022 for fresh consideration in accordance with law by framing a preliminary issue as to whether the Money Suit is barred by limitation in terms of the relevant provisions of the Limitation Act.

9. The parties are therefore directed to appear before the learned Trial Court

on **23.03.2023**, whereafter, the learned Trial Court shall proceed with the matter as directed herein above. Since the respondent No. 1 is not represented before this Court and in the event the respondent No. 1/plaintiff does not appear on 23.03.2023, the learned Trial Court shall issue notice by fixing an appropriate date for appearance of the plaintiff/respondent No. 1.

10. The Civil Revision Petition accordingly stands disposed of.

JUDGE

Comparing Assistant