

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

C.R.P. NO. 3 OF 2023

Smt. Thoudam (N) Takhellambam (O) Anoubi Devi,
aged about 63 years, W/o Shri Takhellambam Phoni
Singh of Kwakeithel Ningthemkol, P.O. Imphal, P.S.
Singjamei, Imphal West District, Manipur.

.... Petitioner

- Versus -

1. Shri Nameirakpam Dhiren Singh of Kwakeithel
Thounaojam Leikai, P.O. Imphal, P.S. Lamphel,
Imphal West District, Manipur.

2. Smt. Nameirakpam (O) Chaoba Devi @ Bidya, W/o
Shri Nameirakpam Dhiren Singh of Kwakeithel
Thounaojam Leikai, P.O. Imphal, P.S. Lamphel,
Imphal West District, Manipur.

.... Respondents

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the petitioner	:	Mr. Albert Keisham, Advocate
For the respondents	:	Ex-parte.
Date of hearing	:	08.12.2023
Date of order	:	12.01.2024

J U D G E M E N T & O R D E R
(CAV)

[1] Heard Mr. Albert Keisham, learned counsel appearing for the petitioner and respondents are proceeded as ex-parte vide order dated 27.02.2023.

[2] The brief facts of the case in filing the present petition are as follows:

“(i) The present Civil Revision Petition is filed by the petitioner against the order dated 09-12-2022 passed by the Learned Civil Judge (Senior Division), Imphal West in Judicial Misc. Case No. 46 of 2021 (Ref: M.S. No. 66 of 2020) whereby the leave to defend filed by the Respondents was allowed by the Ld. Court.

(ii) The facts leading to the filing of the present civil Revision Petition succinctly stated that the present petitioner instituted the original money suit being M. S. No. 66 of 2020 before the Ld. Civil Judge (Senior Division), Imphal West praying for;

(a) a decree for recovery of Rs. 5,00,000/- (Rupees five lakhs) only;

(b) a decree for the cost of litigation;

(c) any other relief or reliefs which the Hon’ble Court deems fit to be awarded, be awarded in the nature of the suit in the ends of justice.

(iii) Thereafter, the Respondents file an application under Order XXXVII Rule 3(5) read with section 151 of C.P.C. 1908 before the Civil Judge (Senior Division) Imphal West praying for granting leave to defend and the same is registered as Judicial Misc. Case No. 46 of 2021.

(iv) The Ld. Civil Judge (Senior Division) Imphal West vide its order dated 09-12-2022 passed in Judicial Misc. Case No. 46 of 2021 allowed the leave to defend filed by the Respondent.

(v) The petitioner had given a legal notice to both the Respondents and in reply to it the Respondents had accepted the debt of Rs. 5,00,000/- (Rupees five lakhs) only and further stated that she

had already paid Rs. 1,00,000/- (Rupees one lakh) only and Rs. 4,00,000/- (Rupees four lakhs) only are indebted.

(vi) The Respondents on 10-06-2018 undertake to repay the said amount of Rs. 5,00,000/- (Rupees five lakhs) only to the petitioner by executing a written undertaking in Manipuri language.

(vii) In spite of existence of all these documents the Ld. Civil Court erred in allowing the J.M. Case No. 46 of 2021 (Leave to defend) which amounts to gross injustice.

(ix) Being aggrieved by the order dated 09.12.2022 passed in Judicial Misc. Case No. 46 of 2021 the petitioner begs to prefer this Civil Revision Petition on the grounds herein below:-

(i) The Ld. Civil Judge (Sr. Divn.), Impha; West failed to appreciate the existence of the reply legal notice sent by the counsel of the Respondent wherein it is accepted that the Appellant have hander over a sum of Rs. 5,00,000/- (Rupees five lakhs) only to the Respondents and further accepted that the Respondents are yet to pay an amount of Rs. 4,00,000/- (Rupees four lakhs) only to the Appellant as the Respondents have already gave an amount of Rs. 1,00,000/- (Rupees one lakhs) only during the month of December, 2019.

(ii) The Ld. Civil Judge (Sr. Divn.), Imphal West failed to appreciated the fact that the Respondents have put their signature in the said undertaking dated 10.06.2018 executed in the Non-Judicial Stamp paper which they have admitted in their reply legal notice.

In view of the facts and circumstances as stated above, the petitioner prayed for;

"(i) to admit this Revision;

- (ii) *to call for the records of the case;*
- (iii) *to set aside the impugned order dated 09-12-2022 passed by the Hon'ble Civil Judge (Sr. Divn.), Imphal West in Judicial Misc. Case No. 46 of 2021;*
- (iv) *to pass any order or orders as your Honour Lordship may deem fit and proper in the facts and circumstances of the case."*

[3] On perusal of the Judgment and order dated 09.12.2022, it is seen that the Ld. Civil Judge (Sr. Divn.), Imphal West minutely discussed about the facts put up by both parties and further on careful perusal of the aforementioned impugned order, it is found that the present respondent in the present Civil Revision Petition (petitioner in Judl. Misc. Case No. 46 of 2021) denied the factum of execution of the promissory note and receiving of any consideration of the promissory note, while the petitioner and the respondent are pleaded to be involved in business together, the present respondent pleaded that the promissory note was obtained by way of fraud i.e the promissory note was a fraud document. Further, the respondents have averred that the signature in the promissory note dated 10.06.2018 are not theirs and that they have never executed the promissory note.

[4] The Hon'ble Supreme Court observed in the para 16 of the **[(2017) 1 Supreme Court Cases 568 - IDBI Trusteeship Services Limited Vs. Hubtown Limited]** that:-

"(16) It is thus clear that Order 37 has suffered a change in 1976, and that change has made a difference in the law laid down. First and foremost, it is important to remember that Milkhiram case⁶ is a direct authority on the amended Order 37 provision, as the amended provision in Order 37 Rule 3 is the same as the Bombay amendment which this Court was considering in the aforesaid judgment. We must hasten to add

that the two provisos to sub-rule (3) were not, however, there in the Bombay amendment. These are new, and the effect to be given to them is something that we will have to decide. The position in law now is that the trial Judge is vested with a discretion which has to result in justice being done on the facts of each case. But Justice, like Equality, another cardinal constitutional value, on the one hand, and arbitrariness on the other, are sworn enemies. The discretion that Judge exercises under Order 37 to refuse leave to defend or to grant conditional or unconditional leave to defend is a discretion akin to Joseph's multi-coloured coat – a large number of baffling alternatives present themselves. The life of the law not being logic but the experience of the trial Judge, is what comes to the rescue in these cases; but at the same time informed by guidelines or principles that we propose to lay down to obviate exercise of judicial discretion in an arbitrary manner. At one end of the spectrum is unconditional leave to defend, granted in all cases which present a substantial defence. At the other end of the spectrum are frivolous or vexatious defences, leading to refusal of leave to defend. In between these two extremes are various kinds of defences raised which yield conditional leave to defend in most cases. It is these defences that have to be guided by broad principles which are ultimately applied by the trial Judge so that justice is done on the facts of each given case.

(17) Accordingly, the principles stated in para 8 of Mechelec case⁴ will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case⁶, as follows:

(17.1) If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit."

[5] And again in para 15 of **[(2010) 9 Supreme Court Cases 385 - Jai Sing and others Vs. Municipal Corporation of Delhi and Another] :-**

"15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well-recognised principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and /or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognised constraints. It can not be exercised like a "bull in a china shop", to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice".

[6] In view of the facts and circumstances herein above discussed and on the observations made in the above 2(two) Hon'ble Supreme Court cases, it is decided that there is no room for

interference of the order passed by the Ld. Civil Judge (Sr. Divn.), Imphal West in Judicial Misc. Case No. 46 of 2021 as the defendants satisfies the court that they have a substantial defence, that is, a defence that is likely to succeed and the defendant is entitled to unconditional leave to defend the suit.

[7] Accordingly, the present Civil Revision Petition No. 3 of 2023 is dismissed and disposed of without costs. However, the petitioner is given liberty to file a fresh application on other grounds, if desired.

[8] Send an extract copy of this order to the Court of Civil Judge (Sr. Divn.), Imphal West.

JUDGE

FR/NFR

Lucy

KHOIRO
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BIPINCH
ANDRA
SINGH

Digitally signed
by KHOIROM
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