

Serial No. 15 Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC Tr. P. (C) No. 2 of 2024

Date of Decision: 20.05.2024

The Archdiocese of Shillong,
Represented by the Chancellor,
R/o Archbishop's House, Laitumkhrah,
Shillong-793003,
East Khasi Hills District, Meghalaya.

.... Applicant(s)

- Versus -

Shri Paul Leong,
S/o (L) T.S. Leong,
R/o Mawprem, Shillong,
East Khasi Hills District, Meghalaya.

... Opp. Party

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. S. Sen, Adv. with
Mr. M.U. Ahmed, Adv.

For the Respondent(s) : Mr. C.C.T. Sangma, Adv. with
Mr. R. Kharsyad, Adv.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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JUDGMENT AND ORDER (ORAL)

1. Pursuant to the order dated 17.05.2024, Mr. C.C.T. Sangma, learned counsel for the opposite party in the instant Misc. Transfer case has submitted a series of orders to satisfy this Court as to the grounds made out for transfer of FAO No. 1 (H) 2024, to the Court of the District and Sessions Judge, Ri-Bhoi District, Nongpoh.

2. This Court by an order dated 09.05.2024 on reference being made by the District and Sessions Judge, had allowed for the transfer of the matter to the Court of the District and Sessions Judge, Ri-Bhoi District, at Nongpoh. A perusal of the materials as placed by the opposite party reveal that no effective orders have been passed by the Judicial Officers concerned, but however, they had touched upon the same, by reiterating the orders for removal of the goods and articles by the judgment debtor from the suit premises. This matter for one reason or another has been hanging unresolved.

3. In such cases, therefore, though there is no allegation of bias, or otherwise as held in the case of *Ranjit Thakur Vs. Union of India & Ors.* reported in (1987) 4 SCC 611, the Hon'ble Supreme

Court had expressed the effect of alleged bias as follows. The running paragraphs from 15 to 19 are reproduced hereinbelow:-

“15. The second limb of the contention is as to the effect of the alleged bias on the part of respondent 4. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and is whether respondent 4 was likely to be disposed to decide the matter only in a particular way.

16. It is the essence of a judgment that it is made after due observance of the judicial process; that the Court or Tribunal passing it observes, at least the minimal requirements of natural justice, is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non-judice". (See Vassiliades v. Vassiliades-AIR 1945 PC 38).

17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly. "Am I biased ? " but to look at the mind of the party before him.

18. Lord Esher in Allinson v. General Council of Medical Education and Registration, (1894) 1 QB 750, 858-59 said:

"The question is not, whether in fact he was or was not biased. The Court cannot inquire into that In the administration of justice, whether by a recognised legal court or by persons who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the

administration any person who is to take part in it should not be in such a position that he might be suspected of being biased."

19. In Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon, [1969] 1 Q.B. 577, at 599, Lord Denning M.R. Observed:

... in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit."

4. Mr. S. Sen, learned counsel for the applicant seeking recall of the order dated 09.05.2024, has submitted that the fruits of litigation of the decree holder has been denied for over a decade, due to the dilatory tactics of the opposite party. He submits that with the transfer of the case, further delay will be caused, and the applicant will be put to further irreparable loss.

5. However as discussed, in view of the fact that the Judicial Officers had at one point of time or the other touched upon the matter, the prayer for recall of the order dated 09.05.2024, is not allowed.

6. As the parties have already been put to notice to appear before the Court of the District and Sessions Judge, Ri-Bhoi District, at Nongpoh, tomorrow i.e. 21.05.2024, considering the nature of the matter, the District and Sessions Judge, Ri-Bhoi District, Nongpoh is therefore, directed to dispose of the matter within a period of 10(ten) days.

7. As ordered, this Misc. Case is accordingly disposed of.

JUDGE

Meghalaya
20.05.2024
"V. Lyndem-PS"