

GAHC030000142024



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

Case No. : CRP/1/2024

M/s SSR CREST Engineers and Constructions Ltd
Plot No. 8P, HMT Satavahana Colony, Kukatpally, Hyderabad-5000072, r/b its
Managing Director/Proprietor

VERSUS

Smt C.Ramthianghlimi and 36 Ors.
W/o Lalzawngliana, R/o Electric Veng, Lunglei, Mizoram

Advocate for the Petitioner : Mr. Joseph Mangsuanhau

Advocate for the Respondent : Mr B Lalramenga

Linked Case : I.A.(Civil)/15/2024

M/s SSR CREST Engineers and Constructions Ltd. r/b its mananging
Director/Proprietor
Plot No. 8P

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Lunglei
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Advocate for the Petitioner : Mr. Joseph Mangsuanhau
Advocate for the Respondent :

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
O R D E R

02.07.2024

Heard Mr. Joseph Mangsuanhau, learned counsel for the petitioner along with Mr. B. Lalramenga, learned counsel for the respondents.

2. This is an application filed under Article 227 of the Constitution of India, read with Section 115 CPC and Section 151 CPC and Section 17(2)(b) of the Mizoram Civil Courts (Amendment) Act, 2007 challenging the impugned Order dated 23.10.2023 passed by the learned Civil Judge, (Sr. Division-IV) in Money Suit No.44 of 2022.

3. Mr. Joseph Mangsuanhau, learned counsel for the petitioner submits that the present petitioner had filed an application before the learned trial court under Order 7 Rule 11, read with Order V Rule 2 seeking for rejection of the plaint filed by the plaintiff and for striking off the name of the present petitioner who was arrayed as Defendant No.4 in M.S No. 44/2022 under Order 1 Rule 10(2) C.P.C. however the learned trial court had dismissed the application vide the impugned order dated 23.10.2023, and hence the instant Civil Revision Petition.

4. The learned counsel submits that the present petitioner was not served a copy of the plaint along with the summons to the Defendant No.4 in the Money Suit as mandated under Order V Rule 2 C.P.C. and that the claim of the learned counsel for the respondents that they had sent a copy of the plaint along with summons to the petitioner/(defendant No.4 in the Money Suit) is completely false. The learned counsel for the petitioner submits that the learned counsel for the respondents/(plaintiff in the Money Suit) had consciously ignored to comply with the mandate under Order V Rule 2 CPC, 1908 and had cited Order 5 Rule 9 C.P.C., which is not the issue in the instant case.

5. The learned counsel thus submits that though a number of summons were received by the present petitioner (Defendant No.4 in the Money Suit) however, they were without a copy of the plaint. The counsel for the petitioner further states that he had approached the learned counsel for the plaintiff in the Money Suit through whatsapp messages wherein he was asked to collect the copy of the plaint from the Chamber of the learned counsel for the plaintiff, however the copy was not supplied to him that, but he was shown, copies of postal receipt of the plaint which is only for sending of the courts summons

In support of his submission the learned counsel has cited the Judgment of the **Madhya Pradesh High Court** in **Smt. Chhuthai & Anr. Vs. Madanlal & Anr.** reported in **AIR 1989 MP 330 (para 5)**, he has also cited the decision of the Hon'ble Supreme Court in **Special Leave Appeal @ No.5383/2020**(arising out of impugned Final Judgment & Order dated 31.10.2019 in FAO(OS) (COMM) No.281/2019 passed by the High Court of Delhi at New Delhi.

6. The learned counsel further submits that the learned trial court had erred in placing its reliance upon section 21 of the Mizoram Civil Courts Act and not

following the mandatory provision of Order V Rule 2 of the CPC. He submits that the learned trial court had erred in stating that the Code of Civil Procedure, 1908 is to be followed in spirit in all Civil Courts and not in letter. He submits that compliance of Order V Rule 2 is mandatory and since copy of the plaint was not served to the present petitioner/Defendant No.4 in the Money Suit, the Defendant No.4 may be struck off from being made a party in the said Money Suit No.44/2022.

7. The learned counsel for the petitioner had also led this court to the letter dated 08.01.2020 issued by the SSR CREST Engineers and Constructions Limited/Defendant No.4 in Money Suit, which is the revocation of authorization of WRT Sub Contract concerning Mr.Dheeraj Pao (defendant No.5 in the Money Suit), and submits that the letter authorizing the Defendant No.5 in the Money Suit to act on behalf of the Defendant No.4 was withdrawn and the subcontracting agreement made between them stands ineffective and unenforceable with effect from 17:00 hours on July 9, 2019. The learned counsel therefore submits that there is no *locus standi* for the instant petitioner/Defendant No.4 in the Money Suit as there is no prima facie case against the said petitioner/defendant No.4 in Money Suit.

8. The learned counsel for the petitioner further submits that in the affidavit-in-opposition filed by the respondents, the name of one Shri Chhangte Lalsawmliana of Mualveng, Republic, Aizawl is shown to represent all the respondents, however, he has no authorization to represent all the respondents and his name or Sl.No. is not seen in the instant Civil Revision Petition filed by the petitioner. That there is no authorization letter found in the joint affidavit-in-opposition filed by the respondents, for Chhangte Lalsawmliana to represent the respondents.

9. Mr. B. Lalramenga, learned counsel for the respondents on the other hand submits that the affidavit-in-opposition is jointly filed through one of the respondents namely, Shri Chhangte Lalsawmliana who has been duly authorized by all the respondents to be their representatives in filing affidavit-in-opposition. He further submits that the learned trial court had rightly dismissed the application filed by the petitioner under Order 7 Rule 11 of CPC read with Order V Rule 2 CPC in the Money Suit No.44/2022.

10. The learned counsel submits that Order 7 Rule 11 (f) provides that a plaint may be reject if the provisions of Order 7 Rule 9 is not followed. On reading of Order 7 Rule 9 CPC it states that where there is a direction or Order issued for serving of summons to the defendant in the manner provided in Rule 9 of Order V of CPC, the court will direct the plaintiff to present as many copies of the plaint as there are defendant along with requisite fees for service of summons. However, the learned trial court vide its order dated 14.06.2022 had not given any direction to the plaintiff (the present respondents) to present copies of the plaint along with requisite fees for service of notice on the defendant.

11. The learned counsel also submits that however, inspite of no such direction copy of the plaint was sent along with issuance of notice/summons to the defendant No.4 in the Money Suit. The learned counsel further submits that the respondents (plaintiffs in the Money Suit) were willing to serve copy of the plaint to the instant petitioner which can be seen from the WhatsApp conversation annexed by the instant petitioner wherein, he was asked to come to the office to collect the copy of the plaint. He further submits that since the plaint was quite bulky, the counsel for the plaintiff had stated that he would supplied the Xerox copy in the next date fixed by the learned trial court, however before the copy of the plaint could be furnished the learned counsel for

the petitioner/defendant No.4 in the Money Suit, had filed the instant Civil Revision Petition.

12. The learned counsel further submits that there was no failure on the part of the respondents to comply with the provision of Order 7 Rule 9 of the CPC since no direction was made by the learned Trial Court. The learned counsel for the respondents thus submits that there was no reasons why the plaint should be rejected under Order 7 Rule 11 (CPC) for non-compliance of Order 7 Rule 9.

13. The learned counsel further submits that Section 21(1) of the Mizoram Civil Courts Act, 2005 has also clearly stated that the Civil Procedure Code is to be followed in spirit in all the Civil Courts and therefore it is not mandatory to follow the Civil Procedure Code.

In support of his submission, the learned counsel has cited the decision of the Co-ordinate Bench of this Court in **Smt. Sawichhungi Vs. Smt. Lalruati** in **RFA No.2 of 2012 dated 13.06.2013**.

14. The learned counsel thus states that there was no reason why the name of the present petitioner (defendant No.4 in Money Suit No.44/2022) should be struck off from being one of the defendants since the plaint in the Money Suit made it clear as to how the present petitioner is a necessary party to be impleaded as one of the defendants in Money Suit No.44/2022. That the serving of summons to the defendant is done by the learned trial court and the present respondents are not liable to serve summons along with the plaint and unless they are directed to do so as per Order V Rule 9 CPC. The learned counsel for the respondents further submits that a copy of the plaint can be served at any time to the petitioner.

15. Having heard the submissions made by the learned counsels for both the

parties, this court finds that the instant petitioner had approached the learned trial court under Order 7 Rule 11 CPC read with Order V Rule 2 CPC and for striking out the name of the defendant No.4 under Order 1 Rule 10(2) CPC. This court on perusal of Order V Rule 2 CPC finds that every summons shall be accompanied by a copy of the plaint. Order 7 Rule 11 CPC provides the ground under which a plaint can be rejected and at Order 7 Rule 11(f) a plaint can be rejected where the plaintiff fails to comply with the provisions of Rule 9, Order 7.C.P.C. It is seen that Rule 9 of Order 7 clearly states that where the court orders that summons be served on the defendant in the manner provided in Rule 9 of Order V it will direct the plaintiff to present as many copies of the plaint on plain paper as they are defendant with 7 (seven) days from the date of such order along with requisite fees for service of summons on the defendant.

16. It appears that no such direction was made by the learned trial court under Order 7 Rule 9 CPC, however, it is noted that the learned counsel for the respondents submits that the copy of the plaint can be furnished to the learned counsel for the present petitioner at any time.

17. In view of the above, this court finds that there are no grounds to interfere with the order of the learned Civil Judge (Sr. Division-IV) dated 23.10.2023 for not rejecting the plaint of the plaintiff in Money Suit No.44/2022 under Order 7 Rule 11 CPC.

18. This court also finds that the issue whether there is any prima facie case against the instant petitioner/defendant No.4 in Money Suit No.44/2022 is to be decided by the learned trial court after considering the written statements and evidence adduced by the parties before the trial court. Thus, this court finds that the learned trial court had rightly held that it would not be deemed proper for

striking out the name of defendant No.4 under Order 1 Rule 10(2) CPC for the reasons that there is no strict prove at this initial stage that there is no *prima facie* or *locus standi* against the defendant No.4.

19. In view of the above, the instant CRP,1/2024 stands dismissed and disposed of.

20. Meanwhile, this court finds that it would be appropriate and in the interest of justice, to direct the learned counsel for the respondents, Mr. B. Lalramenga to furnish a copy of the plaint in Money Suit No.44/2022 to the learned counsel, Mr. Joseph Mangsuanhau so that the petitioner (Defendant No.4 in the Money Suit) is given the fair opportunity to present his case before the learned Trial Court.

JUDGE

Comparing Assistant