

GAHC030000512024



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

Case No. : FAO/1/2024

The Mizoram Co-operative Apex Bank Ltd. and 2 Ors
r/b its Chief Executive Officer, Head Office, Tuikual, Aizawl Mizoram 2: The
Board of Directors
Mizoram Co-Operative Apex Bank Ltd.

3: Sh R.Lalrempui

VERSUS

Sh Sanghluna
S/o K.Lalhnaia (L), Salem Veng, Aizawl, Mizoram

Advocate for the Petitioner : Mr. C Lalfakzuala, Adv.

Advocate for the Respondent : Mr B Lalramenga, Adv.

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 12.03.2024

Date of Judgment & Order : 20.03.2024

JUDGMENT & ORDER (CAV)

Heard Mr. C. Lalfakzuala, learned counsel for the appellants. Also heard Mr. B. Lalramenga, learned counsel for the respondent.

2. This is an appeal filed under Order XLIII, Rule 1 (r) CPC *read with* Section 17 (2) (b) of the Mizoram Civil Court Act, 2005 challenging the impugned Order dated 18.01.2024 passed by the learned Civil Judge (Sr. Division)–IV, Aizawl in CMA No.797/2023 arising out of Civil Suit No.136/2023.

3. The brief fact of the case in nutshell is that; the present respondent was entrusted with the duty of a supervisor to look after the Keifang Branch building of the Mizoram Co-operative Apex Bank Ltd., during the period of the former Board of Directors. After the formation of the New Board of Directors (2023-2028), the management/supervision of the construction of the Keifang Branch building of MCAB Ltd. was taken over by the New Board of Directors. The respondent averred that he had expended Rs.8,63,432/- (Rupees Eight lakhs Sixty-three thousand four hundred and thirty-two) only from his own pocket in construction of the said building. Accordingly, the present respondent/plaintiff filed a Civil Suit No.136/2023 against the appellants, herein as defendants Nos. 1 to 3 praying for;

3.1. A decree declaring that the impugned Resolution dated 14.07.2023 vis-à-vis

Agenda No.9 of the defendant No.2 is illegal, void and the same is liable to be set aside and quashed.

3.2. Further, prayed for a decree declaring that the appointment of the defendant No.3 by the defendant Nos. 1 and 2 to execute and supervise the construction work of the Keifang Branch building of MCAB Ltd. is illegal and hence, the same is liable to be set aside.

3.3. A decree of declaring that the plaintiff/present respondent had been rightfully appointed by the defendant Nos. 1 and 2 to execute the construction work of the building of Keifang Branch, MCAB Ltd. Further, with a declaration to uphold the Deed of Agreement dated 27.06.2023 which was executed between the plaintiff and the defendant No.1 for construction of said building.

3.4. The present respondent/plaintiff further prayed for a decree directing the present appellants/defendants to pay an amount of Rs.8,63,432/- (Rupees Eight lakhs Sixty-three thousand four hundred and thirty-two) only along with a permanent and perpetual injunction restraining the defendants from interfering/intervening in the construction work in pursuance to the Deed of Agreement dated 27.06.2023.

4. Thereafter, the appellants filed their written statement with counter claim against the claim of the respondent in Civil Suit No. 136/2023. The reliefs claimed in the counter claim are as follows;

4.1. For a decree declaring that the Deed of Agreement dated 27.06.2023 is not enforceable as per the law and is also not binding upon the defendant Nos. 2 and 3 as well as the defendant No.1.

4.2. Further prayed for a decree declaring that the Board of Directors resolution dated 14.07.2023 is sustainable and good in law and the counter claimants/defendants have the right and authority to continue the construction work of the building.

4.3. Also, prayed for a decree directing to the present respondent/plaintiff to pay a sum of Rs.10,00,000/- (Rupees Ten lakhs) only to the counter claimants/defendants No. 2 and 3 for filing a frivolous suit.

5. Mr. C. Lalfakzuala, learned counsel for the appellants has submitted that the matter in CMA No.797/2023 arising out of Civil Suit No.136/2023 pertains to an application for grant of temporary injunction under Order 39, Rule 1 & 2 of CPC *read with* Section 94 (e) of CPC filed by the respondent herein against the appellants to restrain them from construction of the building work of the Keifang Branch, MCAB Ltd. and further prayed for, stay/suspension of the impugned resolution dated 14.07.2023 vis-à-vis Agenda No.9 of the appellant No.2. Thereafter, the appellants accordingly filed their written objection in CMA No.797/2023.

6. After hearing the submissions made by the plaintiff/present respondent as well as the defendants/present appellants, the learned Civil Judge (Sr. Division)-IV, Aizawl, vide its impugned order dated 18.01.2024 observed that in bare reading of the agreement dated 27.06.2023 executed between the applicant/present respondent and the CEO of Mizoram Co-operative Apex Bank, the agreement appears to be valid agreement which however will be proved in the course of evidence in the main suit. Accordingly, the learned Civil Judge (Sr. Division)-IV, Aizawl, held that there is a prima facie case as well balance of convenience and irreparable loss lies in favour of the present respondent. And,

thus, the order was passed in favour of the respondent.

7. On being aggrieved and dissatisfied with the observations and findings made in CMA No.797/2023 arising out of Civil Suit No. 136/2023, the present application has been preferred by the present appellants.

8. It is submitted by the learned counsel for the appellant, Mr. C. Lalfakzuala that from the findings made by the learned Trial Court in granting temporary injunction in favour of the present respondent vide impugned order dated 18.01.2024 is illegal and suffers from serious infirmity. There is no justifiable and legal ground to conclude that the respondent has a prima facie case, balance of convenience and irreparable loss in his favour. He further submits that the learned Trial Court did not consider the fact that the damage, if, any suffered by the respondent can always be compensated in terms of money inasmuch the main relief of the respondent/plaintiff in his plaint for recovery of money and to continue the construction work of the building, wherein, the estimated amount of construction work is also clearly shown.

9. He also submitted that the learned Trial Court ignored the cardinal principles for grant of temporary injunction in allowing the application of the respondent under Order 39 Rule 1 & 2 read with Section 94 (e) of CPC. The Trial Court also failed to appreciate the fact that the issue between the appellants and the respondent over the suit was not with regard to property nor there was any dispute in regards to the ownership of the property. He further submitted that the only prayer of the respondent is that;

9.1. The impugned resolution dated 14.07.2023 vis-à-vis Agenda No.9 of the defendant/present appellant No.2 in respect of the construction work of the

building is illegal, wrong and void and should be set aside and quashed;

9.2. To declare the appointment of defendant/present appellant No.3 to execute, supervise the construction work of the said building is illegal and void.

9.3. To direct the defendants/present appellants to pay an amount of Rs.8,63,432/- (Rupees Eight lakhs Sixty-three thousand four hundred and thirty-two) only to the plaintiff/present respondent which he had spend for construction of the building.

10. Thus, he submits that the respondent had filed the Civil Suit only for recovery of money and also filed an application for temporary injunction to disrupt the construction work of the building, wherein, the ownership of the land and said building were not disputed. The learned Trial Court below had failed to appreciate the fact and on the basis of the pleadings of the parties, it is held that the prima facie case as well as the balance of convenience and irreparable loss lies only in favour of the respondent. Further, the said Court also failed to see that no irreparable injury would be caused to the respondent and damage, if any could be very well compensated in terms of money. But, the Trial Court failed to consider this aspect of the case and accordingly granted temporary injunction by restraining the appellants from further construction of the Keifang Branch building of MCAB Ltd. In the same time, the Trial Court also failed to consider the fact that, further construction of the building would not defeat and frustrate the purpose of suit.

11. Mr. C. Lalfakzuala, learned counsel for the appellants further submitted that the completion of the Keifang Branch building of MCAB Ltd is not only for the interest of the bank but for the interest of the general public and people

living in the vicinity of the bank; the concerned NGO's of the Keifang locality also raised support for expeditious completion of the said building. Thus, it is not only the appellants who have suffered injury along with that the general public at large is also suffering from the said order of injunction passed by the learned Trial Court.

12. The learned counsel for the petitioner further raised a point that the respondent failed to make any prayer under Specific Relief Act, 1963 and hence, without invoking the Specific Relief Act, 1963, the prayer of the respondent in CMA No.797/2023 arising out of Civil Suit No. 136/2023 is not maintainable. In addition to his submission, he relies on the decision passed by the Hon'ble Apex Court reported in ***2022 Livelaw SC 800 [Balram Singh vs. Kelo Devi]*** and mainly emphasized on paragraph Nos. 6 and 7 of the said judgment which reads as under;

6. Having conscious of the fact that the plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, the plaintiff filed a suit simplicitor for permanent injunction only. It may be true that in a given case, an unregistered document can be used and/or considered for collateral purpose. However, at the same time, the plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, in the present case the relief for specific performance. Therefore, the plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to sell, more particularly when the defendant specifically filed the counter-claim for getting back the possession which was allowed by the learned trial Court. The plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The plaintiff cannot get the relief by clever drafting.

7. In view of the above and for the reasons stated above, both, the learned first appellant Court and the High Court have committed a grave error in passing a decree for permanent injunction in favour of the plaintiff as against the defendant and dismissing the counter-claim filed by the original defendant. The impugned judgment and order passed by the High Court, confirming the judgment and decree passed by the first appellant Court and the judgment and decree passed by the first appellant Court decreeing the suit for permanent injunction and dismissing the counter-claim of the defendant are unsustainable and the same deserve to be quashed and set aside and the judgment and decree passed by the learned trial Court dismissing the suit by the plaintiff for permanent injunction and allowing the counter-claim of the defendant deserves to be restored."

13. In support of his submission, he further relies on another decision passed by the Hon'ble Apex Court reported in **(1992) 1 SCC 791 [Dalpat Singh & Anr. vs. Prahlad Singh & Anr.]**, wherein, it has been held that *"the satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if injunction is granted"*.

14. The learned counsel for the appellants further relies on another decision passed by the Hon'ble Apex Court reported in **2012 (6) SCC 792 [M/S Best Sellers Retail (I) P. Ltd. vs. M/S Aditya Birla Nuva Ltd. & ors.]**, wherein, in paragraph No. 29 of the said judgment it has been observed that *"yet the*

settled principle of law is that even where a prima facie case is in favour of the plaintiff, the Court will refuse temporary injunction, if, the injury suffered by the plaintiff on account of temporary injunction was not irreparable". He further submits that during the pendency of the case, the plaintiff/respondent had already received the money he claimed for, and there is also option open for the plaintiff to file money suit claiming compensation. He also submitted that the agreement dated 27.06.2023 was also not registered one and thus, it does not carry any evidentiary value in the eye of law. Thus, there is no irreparable loss in favour of the respondent rather the public at large is suffering due to grant of injunction, as there is no progress of the construction work of the building. Accordingly, this is a fit case wherein, the order of temporary injunction granted by the learned Civil Judge (Sr. Division)–IV, Aizawl vide order dated 18.01.2024 is liable to be set aside and quashed.

15. In this context, Mr. B. Lalramenga, learned counsel for the respondent has submitted that the construction work of the Keifang Branch, MCAB Ltd. was supervised by the present respondent as per the agreement between the said respondent and the appellant No. 2. And, as per the agreement, the present respondent apart from being designated as a supervisor, he was also asked to execute the construction work of the said building. In pursuant to the said agreement, the sanctioned order was also obtained; and on the strength of the said sanctioned order he also applied for re-estimation of the construction amount and for which the Board meeting was conducted on 14.07.2023, whereby, the board agreed to revise the amount. But, in the said meeting, it has been resolved that the supervision of the construction work by the present respondent will not continue and stopped the said construction work which was carried out by the respondent.

16. The said agreement was terminated and the present respondent was stopped from doing the construction work of the said building. Further, the New Board of Directors was formed and as per their resolution, the supervision/charge of the construction work was given to the appellant No. 3, and in the same time, the prayer of revising the running account was also considered by the said New Board of Directors. Further, he submits that the impugned decision of the defendant/appellant No. 2, as per the resolution of the minutes of meeting dated 14.07.2023 and consequential minutes that the defendant/appellant No. 3 to continue the execution work is palpably wrong and illegal. The present respondent had already spend an amount of Rs.8,63,432/- (Rupees Eight lakhs Sixty-three thousand four hundred and thirty-two) only from his own pocket for continuation of the ongoing construction work of the Keifang Branch, MCAB Ltd.

17. He further submits that it is an admitted fact that the present respondent/plaintiff was lawfully appointed as a contractor for constructing the said building, as well as he was also entrusted with the work of supervising, managing and execution of the said building construction work. The construction work also has been substantiated and validated by disbursement of first running account/bill to him, vide sanction order dated 07.02.2023, that apart the minutes of meeting dated 14.07.2023 had also approved/admitted to the estimated amount and also the execution work which was done so far by the respondent/plaintiff pertaining to the construction work of the building. Thus, there is no reason, as to why the defendant/appellant No. 2 should take over the execution work through defendant/appellant No.3 in place of the respondent/plaintiff.

18. Thus, challenging the impugned decision of the defendant/appellant No. 2 which has taken by the resolution dated 14.07.2023 and the consequential appointment of the defendant No.3/appellant to continue the execution work was put to challenge. Accordingly, the Civil Suit No. 136/2023 was filed praying for declaration of the resolution dated 14.07.2023 vis-a-vis the Agenda No. 9 of the defendant/appellant No. 2 is wrong, illegal and void. He further prayed for setting aside and quashing of the resolution dated 14.07.2023 against the Agenda No. 9 along with the other prayers including the prayer for permanent and perpetual injunction restraining the defendants/appellants from interfering/intervening from the construction work of the said building.

19. Accordingly, the learned counsel for the respondent submits that there is a prima facie case in favour of the present respondent and if, the construction work is carried out by the defendant/appellant No. 3, it will cause irreparable loss to the present respondent and thus, the balance of convenience also lies in his favour. And, if, the construction work is allowed to be continued by the appellant/defendant No. 3, it would not cause any hardship to the bank, but, the present respondent will face irreparable loss and injury. Accordingly, the learned counsel for the respondent submits that the learned Civil Judge (Sr. Division)-IV, Aizawl had passed the order after considering the every aspect of the case and hence, there is no reason to make any interference in the order passed by the learned Trial Court in CMA No. 797/2023 arising out of the Civil Suit No. 136/2023.

20. In support of his submission the learned counsel for the appellants relies on the decision passed by the Hon'ble Apex Court reported in **2023 SCC Online SC 177 [Thiru K. Palaniswamy vs. M. Shanmugam & Ors.]**

whereby, he mainly stressed on the paragraph No. 63 which read as under:

“63. In [Wander Ltd.](#) (supra), a decision strongly relied upon by the learned counsel for the appellants, this Court explained the principle that ordinarily, the Appellate Court would not be interfering with the exercise of discretion by the Court of first instance and substitute its own discretion except in the cases where discretion was shown to have been exercised arbitrarily, capriciously or perversely or against the settled principles of law. This Court observed and held as under:-

“9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

“...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the ‘balance of convenience’ lies.”

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The Court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.”

21. After the hearing the submissions made by the learned counsel for both sides, I have also perused the case record as well as the other annexure including the resolution which was put to challenge by the present respondent. It is an admitted fact that, as per the resolution of the Board of Director, the present respondent/plaintiff was entrusted with the construction work of the Keifang Branch, MCAB Ltd., as well as he was also asked to supervise, execute

and manage the construction work of the said building. Further, it has been seen that, there is no dispute in regard to the title of the property as well as the work done by the respondent is also not under dispute. It is also an admitted fact that, in pursuant to the agreement between the respondent and the appellant No. 2, the work of the construction was also progressed to some extent.

22. In pursuant to the agreement, the sanction order was also made and the prayer for re-estimation of the construction amount was also agreed by the Board of Directors in the minutes of meeting held on 14.07.2023. But, in the said meeting, the resolution was taken, and as per the agenda No. 9, it has been resolved that the present respondent shall ceased from continuing and supervising the construction work of the Keifang Branch building, MCAB Ltd. and further, the supervision of the said construction work was taken up by the appellant/defendant No. 3 as per the decision made by the New Board of Director.

23. On perusal of the Board resolution, it is seen that after discussion, it was the view of the Board, that the money used for construction of the building is doubtful inasmuch as the material which are recorded and bought were nowhere to be found and when comparing with the receipt, it is suspected to be dubious. With the above observation, the New Board of Director took the resolution dated 14.07.2023, whereby, the construction work was asked to supervise under defendant/appellant No. 3. So, it is the case of the respondent that without any notice and hearing the respondent, the New Board of Director arbitrarily asked him to stop the construction work which is illegal and accordingly, he filed the Civil Suit No.136/2023 for a declaration that the

resolution dated 14.07.2023 is illegal and liable to be set aside and cancelled. According, it is seen that there is a prima facie in favour of the respondent. The prayer of the respondent is to declare the minutes and resolution dated 14.07.2023 as void or illegal is the subject matter of the suit and same may be discussed and decided at the time of final hearing of the Civil Suit.

24. Coming to the other 2(two) cardinal principle for granting temporary injunction, it is to be seen that, as to whether the balance of convenience and irreparable loss lies in favour of the respondent as prayed for. It is also stated that there is no dispute in regard to the ownership of the property as well as the property is also not under dispute. The only dispute is in regard to the construction of the said building. But, the construction of the Keifang Branch, MCAB Ltd. is not only for the interest of the bank, but, it is also for the interest of the general public at large; as the public living in the vicinity of the bank will also get the benefit if the construction is completed. It is also seen from the report that the concerned NGO of the Keifang Branch, MCAB Ltd. also raised support for expeditious completion of the said construction work. Thus, by restraining the defendant/appellant No. 3 from execution of the construction work will not only hamper the interest of the bank, but also affect the interest of the general public at large.

25. It is the case of the respondent that he had already spend Rs.8,63,432/- (Rupees Eight lakhs Sixty-three thousand four hundred and thirty-two) only in the name of the construction of the building from his own pocket, but, if, the construction is stopped by restraining the appellants, it will not only affect the interest of the Bank but, also affect the general public at large. More so, the loss or injury, if suffered by the respondent can also be compensated in terms of

money to the respondent, thus, it cannot be considered that irreparable loss lies in favour of the present respondent. In the same time, it is seen that the balance of convenience also does not lie in favour of the respondent as the progress of the construction work will be for the interest of the bank as well as local public at large.

26. In the case of ***Dalpat Singh*** (*Supra*), relied by the learned counsel for the appellants, wherein, the Hon'ble Apex Court has held in paragraph No. 5 of the said judgment that "the satisfaction of the Court, that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party who are seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of the apprehended injury or dispossession".

27. But, herein the instant case, it is seen that there may be a prima facie case in favour of the respondent but the other 2(two) cardinal principle for granting injunction do not lie in favour of the respondent and there is no irreparable loss would be caused to the respondent, as his loss can be well compensated in terms of money.

28. In case of ***Aditya Birla*** (*Supra*) decision relied by the learned counsel for the appellant in paragraph No. 29 of the said judgment, it has been observed that "*yet the settled principle of law is that even where a prima facie case is in favour of the plaintiff, the Court will refuse temporary injunction, if, the injury suffered by the plaintiff on account of temporary injunction was not irreparable*".

29. So, from the discussion made above, it is seen that there may be a prima

facie case in favour of the present respondent, but, it is seen that the other 2(two) cardinal principle i.e. the balance of convenience and irreparable loss do not lies in favour of the respondent for granting temporary injunction by restraining the appellants from executing or supervising the construction work of the said building which otherwise will affect not only the bank but public at large. Accordingly, this Court is of the opinion that impugned order dated 18.01.2024 passed by the learned Civil Judge (Sr. Division)-IV, Aizawl is not tenable in the eye of law and hence, the same is liable to be vacated and set aside. However, the learned Civil Judge (Sr. Division) IV, Aizawl is hereby directed to dispose of the matter expeditiously.

30. With above observation, the present appeal stands allowed and disposed of. The impugned Order dated 18.01.2024 passed by the learned Civil Judge (Sr. Division)-IV, Aizawl in CMA No.797/2023 arising out of Civil Suit No.136/2023, stands vacated and set aside.

JUDGE

Comparing Assistant