

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

CRP (C.R.P. Art. 227) No. 24 of 2024

DP Korungthang

Petitioner

Vs.

PG Chunhemlung

Respondent

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. D. KRISHNAKUMAR**

ORDER

24.04.2025

[1] Mr. Keishang Koiphram, learned counsel, appears for the petitioner and Mr. KR Pamei, learned counsel, appears for the respondent.

[2] The present civil revision petition has been filed before this Court challenging the common order dated 28.05.2024, passed by the Ld. Civil Judge, Senior Division, Chandel, in Judl. Misc. Case No. 5 of 2023 and Judl. Misc. Case No. 4 of 2023, wherein the prayer of the petitioner/defendant for condoning the delay of 315 days in filing the application for setting aside the ex-parte judgment and decree dated 21.12.2022 was rejected; and with a prayer for granting leave to the petitioner to defend the suit.

[3] The brief facts of the case is that the respondent herein/plaintiff filed Original Money Suit No. 2 of 2022 against the petitioner herein/defendant for recovery of Rs. 14,39,420/- (Rupees fourteen lakh thirty nine thousand and four hundred twenty) only before the Ld. Civil Judge Senior Division, Chandel. There was no proper service of summon upon the petitioner/defendant and thereafter, ex-parte judgment and decree was passed on 21.12.2022 directing the petitioner/defendant to pay a sum of Rs. 14,39,420/- along with interest @ 1.5% per month from the institution of the suit till the realization of the decretal amount.

The respondent herein also filed Execution Case No. 2 of 2023 before the Civil Judge Senior Division, Chandel for execution of the aforesaid ex-parte judgment and decree dated 21.12.2022.

[4] Learned counsel for the petitioner submits that only on 31.10.2023, the petitioner/defendant receive summons/notices issued by the Court enclosing therewith a copy of the execution petition along with ex-parte judgment and decree dated 21.12.2022 passed by the Civil Judge Senior Division Chandel in Original Suit (Money) No. 2 of 2022.

[5] Aggrieved thereby, the petitioner/defendant filed Judl. Misc. Case No. 4 of 2023 praying for recalling/setting aside the ex-parte judgment and decree dated 21.12.2022 passed in Original Money Suit No. 2 of 2022 and Judl. Misc. Case No. 5 of 2023 praying for condonation of delay of 315 days for recalling the ex-parte judgment and decree. Both the application were clubbed together and pass common order dated 28.05.2024 rejecting the prayer of the petitioner. Hence, the present civil revision petition has been filed before this Court.

[6] Learned counsel for the petitioner submits that the petitioner did not receive any legal notice/summons in connection with the aforesaid suit and was also not aware of the paper publication of summons which has been published in 'Sangai Express' on 20.10.2022 and the petitioner came to know the aforesaid ex-parte judgment and decree passed by the trial court only on 31.10.2023 after the notice has been received in execution case when he was posted as Security Guard at Manipur Bhavan, New Delhi; and thereafter the instant Judl. Misc. Cases have been filed before the trial court.

[7] The Court below without taking into consideration the aforesaid submission made by the petitioner, has rejected the said contention of the petitioner by stating that the summons was sent to the defendant to the village address which was provided at the time of availing loan, but the same was returned

with a report stating that the defendant had left the said address, and therefore, summons was duly served by substituted by way of publication in the local newspaper, 'Sangai Express' on 20.10.2022. On this ground, the applications came to be dismissed.

[8] According to the learned counsel for the petitioner, the petitioner joined the service as a Rifleman in the year 2010 in 7th IRB and his service was utilized in 2nd Manipur Rifles, Government of Manipur, and he was posted at Manipur Bhavan, New Delhi as security guard on 27.02.2023 and since then, he has been staying at New Delhi. Since the petitioner he is in a government service, notice may be served to him through office, but the respondent herein send summons to the village address, which was returned unserved and later published the summons in the local newspaper. He was not aware of the newspaper publication and the aforesaid ex-parte judgment decree was passed by the Civil Judge Senior Division, Chandel.

In these circumstances, he seeks for setting aside the order passed by the Trial Court in the aforesaid applications.

[9] The learned counsel for the respondent would submit that the petitioner has not shown his bonafide to condone the delay in filing the application for setting aside the ex-parte judgment decree. According to him, the petitioner had not disclosed the correct address at the time of borrowing the money from the respondent, and thus notice has been sent to the village address provided in the loan application form and the petitioner claims to be not aware of the notice published in the local newspaper. In these circumstances, the Court below has elaborately discussed and considered and matter and dismissed the applications.

[10] Heard the learned counsel appearing parties concerned and perused the materials on record.

[11] The petitioner's application filed in Judl. Misc. Case No. 5 of 2023 is for condoning the delay in filing the application to set aside ex-parte judgment and decree and Judl. Misc. Case No. 4 of 2023 is filed for setting aside the ex-parte judgment and decree. This Court is of the view that aforesaid Judl. Misc. Case No. 4 of 2023 is numbered in the application filed against the ex-parte judgment and decree dated 21.12.2022. The Court below ought not to number the main application till the application filed for condoning the delay is allowed. However, the Trial Court has numbered both the applications filed for condoned delay and for setting aside ex-parte judgement, which is contrary to the procedure of the CPC.

[12] At this juncture, the learned counsel appearing for the petitioner would submit that since the respondent has filed execution petition, viz., Execution Case No. 2 of 202, the petitioner, seeks to show some bonafide and deposit substantial amount before the trial court.

In such circumstances, learned counsel for the respondent also agrees to the submission made by the learned counsel for the petitioner and states that reasonable amount may be deposited before the trial court in connection with the Original Money Suit No. 2 of 2022.

[13] Considering the said submissions made by the learned counsel appearing for the parties, this Court is inclined to pass order as follows:

- (i) the impugned order dated 28.05.2024 passed in Judl Misc. Case No. 5 of 2023 is set aside on condition that the petitioner shall deposit a sum of Rs. 5,00,000/- (Rupees Five Lakh) only to the credit of Original Money Suit No. 2 of 2022 within a period of 8 (eight) weeks from the date of receipt of a copy of this order.

(ii) If the conditional order is not complied within the stipulated period, Civil Judge Senior Division, Chandel, has to pass appropriate order in Judl. Misc. Case No. 4 of 2023.

(iii) It is made clear that if the petitioner fails to deposit the sum of Rs. 5,00,000/- (Rupees Five Lakh) only to the credit of Original Money Suit No. 2 of 2022 within the stipulated period of eight (eight) weeks from the date of receipt of a copy of this order, the Execution Case No. 2 of 2022 filed by the respondent may be proceeded.

[14] With the above directions, the present civil revision petition is allowed.

Sandeep

CHIEF JUSTICE