

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 3 of 2021

Date of Decision: 30.04.2021

Shri. Gotjeng Sangma & Anr.

Vs. Smti. Aijonish D. Shira

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Sen, Adv.

For the Respondent(s) : Mr. V.K. Jindal, Sr. Adv. with
Mr. S.D. Upadhaya, Adv.
Ms. E. Marwein, 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 |

JUDGMENT AND ORDER

1. This application under Article 227 of the Constitution of India has been filed assailing the orders dated 11.12.2020 and 17.12.2020 passed in Misc. Case No. 10 of 2020 and Title Suit No. 26 of 2020, by the Court of the Judicial Officer, Sub-ordinate District Council Court, GHADC, Tura. Against the same order dated 07.12.2020, the petitioner has also assailed the same by invoking Rule 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order 2014 read with Section 115 CPC by

contending that in the same order itself the petitioners' application under Order 7 Rule 11 CPC was rejected.

2. The facts briefly put is that the petitioner had leased out 4 (four) hectares of land to the respondent vide a Lease Agreement dated 18.07.2017 for stone mining activities but as some dispute arose as to the validity of the said agreement, the same it appears was terminated vide Notice dated 12.10.2020. This prompted the respondent herein to institute a suit before the Subordinate District Council Court, GHADC, Tura for declaration and for grant of temporary injunction which was registered as T.S No. 26 of 2020 and Misc. Case No. 10 of 2020 respectively. The Trial Court thereafter, by order dated 26.11.2020 while issuing notice to the petitioner fixing 17.12.2020 for appearance, granted temporary ex-parte injunction restraining the petitioners from entering the suit land and disturbing the possession of the respondent. The petitioner then submitted his show cause and written statement on 09.12.2020. Thereafter on hearing the parties, by order dated 17.12.2020, the Trial Court was then pleased to make the temporary injunction order absolute. Apart from the written statement and show cause, the petitioner also filed an application under Order 7 Rule 11 CPC praying for rejection of the plaint on the ground that the dispute was commercial in nature and as such, dispute being covered by the Commercial Courts Act, of 2015, the District Council Court did not have jurisdiction over the same.

3. The petitioners grievance centers around their contention that apart from the injunction order which was made absolute, their application under

Order 7 Rule 11 CPC was also rejected by the Trial Court by the impugned order dated 17.12.2020 and the same being not appealable they are invoking the revisional jurisdiction of this Court and at the same time questioning the orders dated 11.12.2020 and 17.12.2020.

4. Mr. S. Sen, learned counsel for the petitioner submits that the petitioner No. 2 in her capacity as the female Nokma of Kilman Gittim Akhing had leased out a stone quarry measuring 4 (four) hectares to the respondent and a Lease Agreement was executed to this effect dated 18.07.2017. He submits that the Lease Agreement was entered into by the petitioner No. 2, without consulting the clan members, which she was under an obligation to, as the lease concerned land of the Akhing. He then submits that the petitioner No. 1 being her husband and the male Nokma on coming to learn about the Lease Agreement then filed a complaint before the Revenue Authority of the Garo Hills Autonomous District Council (GHADC) questioning the validity of the lease agreement. Learned counsel submits that the proceedings before the Revenue Authority then culminated in an order dated 09.09.2020, wherein the EM In-charge Land Revenue (GHADC) observed that the same was a fit case for examination by a Civil Court. He then submits that apart from moving for dismissal of the respondent application for mining license/lease before the Forest Department, the petitioner No. 1 then issued a Notice dated 12.10.2020 terminating the Lease Agreement.

5. Learned counsel submits that the respondent thereafter, had instituted a suit being T.S No. 26 of 2020 from which the present

proceeding has arisen and that by order dated 26.11.2020, learned Trial Court was pleased to grant temporary ex-parte injunction restraining the petitioners from entering the suit land and disturbing the possession of the respondent. Learned counsel further submits that by one of the impugned orders dated 11.12.2020 passed in an application alleging violation, the Trial Court had also issued a strict warning against the petitioners, holding that they had disobeyed the interim injunction order dated 26.11.2020. Learned counsel submits that thereafter, before the next date fixed that is 17.12.2020, the petitioners had filed their written statement, show cause and also an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the said dispute being a commercial dispute the Trial Court had no jurisdiction to try the same. He submits that however, by order dated 17.12.2020, apart from making the temporary injunction absolute, the Trial Court had by the same order rejected the application under Order 7 Rule 11 CPC.

6. Mr. S. Sen, learned counsel strongly contends that the learned Trial Court erred in law in assuming jurisdiction in a mere declaratory suit and had passed injunction orders in the absence of any prayer in the main suit which is highly impermissible. He also submits that the Trial Court in a most mechanical manner had accepted the respondent's contention that the suit was for specific performance even when there were no pleadings to that effect, and failed to consider that the determination of the Lease Agreement dated 18.07.2017, disentitled the respondent from seeking enforcement or performance of the Lease Agreement.

7. In furtherance of his submissions, the learned counsel has also stressed that the Trial Court had acted perversely and in a perfunctory manner in rejecting the application under Order 7 Rule 11 CPC, without assigning any reasons which warranted the exercise of the revisional jurisdiction of this Court. He further submits that though the orders dated 11.12. 2020 and 17.12.2020 are interlocutory orders and are appealable, the same cannot be availed of due to the fact that the Judge of the District Council Court and the Presiding Officer of the Subordinate District Council Court are husband and wife and as such, there being no alternative remedy the petitioners are compelled to approach this Court under Article 227 of the Constitution of India.

8. In support of his submissions, learned counsel has relied upon the following judgments:

1. *Shiv Kumar Chadda v. Municipal Corporation of Delhi* (1993) 3 SCC 161 (para 30)
2. *The Premier Automobiles Ltd. v. Automatic Electric Pvt. Ltd.* (1976) 1 SCC 496 (para 29)
3. *Kishorsinh Ratansinh Jadeja v. Maruti Corporation of India* (2009) 11 SCC 229 (para 37)
4. *Md. Sabir v. Md. Abdul Washid* (2013) SCC OnLine Megh 195 (para 23-27)
5. *R.K. Roja v. U.S. Rahudu* (2016) 14 SCC 275 (para 5)
6. *A. Ramanathan v. M/s Tamarai Mills* (2016) SCC OnLine Mad 9469 (para 5, 6, 7)
7. *A. Jawaharlal v. Thayammal* (2015) SCC OnLine Mad 8833 (para 15, 19, 20).
8. *Shail v. Manoj Kumar and ors.* (2004) 4 SCC 785 (para 3)
9. *Barkat Ali v. Badrinarian* (2008) 4 SCC 615 (para 13, 14, 15).

The judgments as placed by the learned counsel in his submissions, deal with whether a contract which is by nature determinable can be enforced and injunction granted, as reported in *The Premier Automobiles Ltd. v. Automatic Electric Pvt. Ltd. (supra)*; and under Order 7 Rule 11 CPC whether the application has to be disposed of before proceeding with the trial, *R.K. Roja (supra)*; whether rejection of the application is appealable *A. Ramanathan (supra)*; and power of High Courts under Article 227 *Shail v. Manoj Kumar (supra)*.

Rounding of his arguments, learned counsel submits that the judgments cited, fortify his contentions that injunction cannot be granted under the Specific Relief Act, 1963 and that Order 7 Rule 11 has to be disposed of before proceeding with the trial and further that an order of rejection is not appealable. He lastly submits that, the High Court under Article 227 does have power to make such directions as the facts and circumstances of the case may warrant and that it has jurisdiction to pass itself such decisions or directions the inferior court or tribunal should have made. He therefore prays that, the impugned orders be set aside and quashed and that the plaint be rejected.

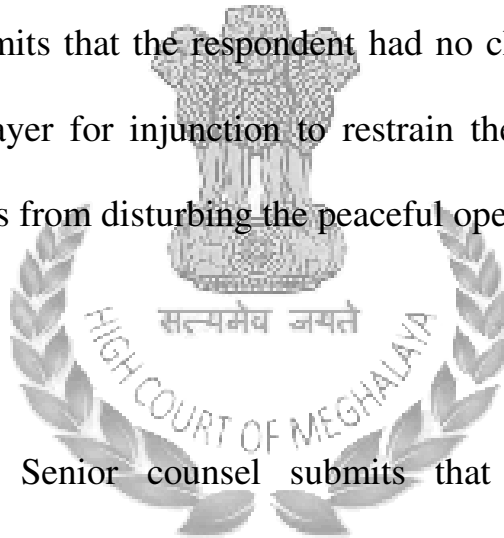
9. Mr. V.K. Jindal, learned Senior counsel assisted by Mr. S.D. Upadhaya, learned counsel for the respondent at the outset submits that the revision application under Article 227 is not maintainable inasmuch as, only if Section 115 CPC does not lie, then Article 227 will come into play. Learned Senior counsel on the contention of the petitioner that the trial court had no jurisdiction to take up the matter, submits that a mere objection to jurisdiction does not disable a Court from passing an

injunction order especially, when the subject matter concerns a right that has accrued from a valid registered deed of lease. On these two points submitted above, the learned counsel has cited the case of *Sadhana Lodh Vs. National Insurance Co. Ltd. and Another* reported in (2003) 3 SCC 524 (para 6 & 7) and also the case of *Tayabbhai M. Bagasarwalla and Another Vs. Hind Rubber Industries Pvt. Ltd. and Others* reported in (1997) 3 SCC 443 (para 16 & 26). In reply to submissions of the petitioner that the matter was exclusively triable by the Commercial Courts, learned senior counsel submits that a petition under Order 7 Rule 11 CPC for rejection of plaint, on the ground that the matter relates to Commercial Courts is not maintainable and that the remedy would be under Section 15(5) of the Commercial Courts Act. He further contends that in the instant case no Commercial Court has been constituted under the Autonomous District of Garo Hills, and as such, in the absence of a designated Commercial Court, the Civil Court will have the jurisdiction to adjudicate on the same. Learned counsel in support of his contentions, has placed reliance on the following judgments:

- 1. *Om Metallogic Pvt. Ltd and another –Vrs- Aditya Aluminium, Civil Revision No. 2481 of 2019 decided on 03.05.2019, P & H.***
- 2. *Akd Greka Drilling (India) Ltd. –Vrs- Arihant Cargo Carriers Pvt. Ltd., C.O. 3644 of 2017 decided on 20.11.2017 (Calcutta High Court).***

10. The learned senior counsel on the core merits submits that on the execution of the lease which was duly registered, the respondent had taken all steps as per law to obtain the mining clearances and consent from the Pollution Control Board to establish a stone quarry and had also applied to

the Assistant Conservator of Forest for verification of boundaries of the proposed mining area. He further submits that after observing all the formalities, the respondent was granted the mining licenses by the Forest and Environment Department, Government of Meghalaya on 22.10.2020. The learned senior counsel submits that the respondent had undertaken a lot of pain and effort to obtain all the requisite clearances from the concerned authorities in accordance with law, to operate the quarry and the same had consumed a considerable amount of time and also money which he had invested in the project, such as in manpower and machinery. As the petitioners were obstructing his work and physically stopping his workers, he submits that the respondent had no choice but to file a suit along with a prayer for injunction to restrain the petitioners and their agents or workers from disturbing the peaceful operation of the quarry by the respondent.



11. Learned Senior counsel submits that after the temporary injunction was granted by the learned Trial Court on 26.11.2020, the same was violated by the petitioners and the respondent having no recourse then filed an application under Order 39 Rule 2A CPC and the same was disposed of by order dated 04.12.2020, wherein the petitioners were given a warning to not violate the same. However, he submits the disobedience continued which forced the respondent to file a second application under Order 39 Rule 2A CPC, which was then disposed of on 11.12.2020 on an apology being tendered by the petitioners.

12. On the other challenge put forth by the petitioners that the Order 7 Rule 11 application was dismissed by the learned Trial Court vide the impugned order dated 17.12.2020, the learned senior counsel submits that the same was actually filed on 19.12.2020 as a separate application and the Trial Court had fixed the same for hearing on 19.02.2021, vide order dated 22.01.2021, but as the matter has now travelled before this Court, the hearing on the same will have to await the outcome of the instant proceedings. Learned Senior counsel strongly contends that the matter is yet to be taken up substantially, and that the instant revision application assailing the order dated 17.12.2020, on rejection of the petitioners application under Order 7 Rule 11 CPC is therefore premature. He further submits that no illegality had been committed by the Trial Court to call for exercise of supervisory jurisdiction under Article 227 of the Constitution of India and furthermore the order being appealable, remedy is under Section 115 only and if no revision lies then only perhaps petition under Article 227 will be maintainable.

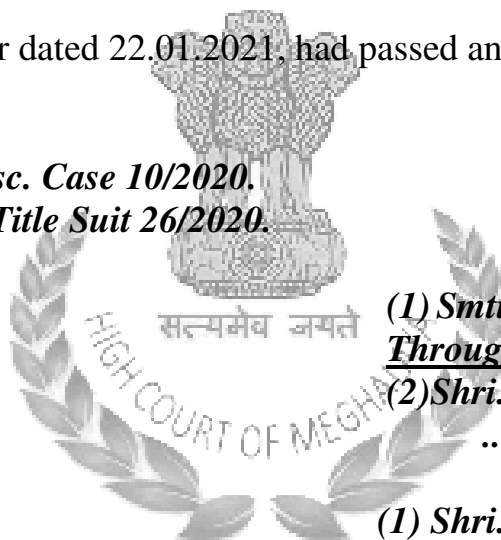
13. Learned counsel on conclusion submits that the revision application being clearly not maintainable is therefore liable to be rejected.

14. I have heard learned counsel for the parties and given my due consideration to the arguments and points of law as advanced. The entire conspectus of the dispute at hand is primarily the question of jurisdiction and secondarily, the grant of injunctive relief by the Trial Court. Arguments have been raised on the question of the applicability of the

Commercial Courts Act, 2015 to such disputes by both sides, but the main contention of the petitioners is that the application for rejection of plaint was not considered but dismissed in a most perfunctory manner, while making the injunction absolute. On the other hand, the respondent has maintained that the said question is yet to be decided and that just because an objection is raised by the petitioner as to jurisdiction, it does not mean that the Court seized with the matter, cannot pass necessary interim orders.

15. To determine the above noted issues, the records were requisitioned from the courts below. Firstly, it is to be noted that the Trial Court vide order dated 22.01.2021, had passed an order as follows:

***“Case No. Misc. Case 10/2020.
Main Case: Title Suit 26/2020.***



***(1) Smti. Aijonish D. Shira.
Through her attorney
(2) Shri. Ashahel D. Shira
.....Plaintiff/Petitioner.***

-vrs-

***(1) Shri. Gotjeng Sangma.
(2) Smti. Arje Ch. Marak
....Defendants/O/P.***

Date: 22-01-2021.

ORDER

Seen the prayer for rejection of plaint under Order 7, Rule 11 of CPC.

Fix 19-02-2021 for hearing on the petition.

Give copy of this Order along with the petition to the Plaintiff.

Judicial Officer

Memo No. GDC-JD/19/1067-1068,

Dated Tura the 22nd January, 2021.

Copy to:

1. Party.

2. Office Copy.”

The submission of the respondent counsel that the matter is fixed for hearing, is therefore borne out by the records. An examination of the impugned order dated 17.12.2020, however, reflects that the objection to jurisdiction had been put up for consideration but was disregarded by the Trial Court in the said order of injunction itself. The relevant portion is extracted herein below:

“The Court considered the issues raised by the O/P in their written argument, about Akhing Nokma’ powers and of maharies. The issue of non-joinder of necessary party and the objection to jurisdiction of this Court. These objections have no legal footing and have been made to escape legal responsibility of the O/P.”

16. From the records it is also noted that, the issue raised as to the jurisdiction of the Trial Court has been put up twice, first, in the written statement filed by the petitioner/defendant wherein, a ground has been taken as to jurisdiction which was filed on 09.12.2020, as evident from the Court fee receipt and subsequently, by another separate application signed on 16.12.2020, but with a Court fee receipt dated 22.01.2021, the date in which the order was passed fixing the application for hearing on 19.02.2021.

17. This Court now is to examine whether the question of jurisdiction had been finally decided vide order dated 17.12.2020, together with the injunction application or whether the issue is still alive for consideration. This question is extremely relevant, taking into account the fact that the petitioners themselves had filed a separate petition registered on

22.01.2021, under Order 7 Rule 11 CPC for rejection of the plaint. A bare perusal of the impugned order dated 17.12.2020, as far as it concerns the issue on jurisdiction, shows that the same was not given any due consideration and appears as if, the Trial Court was oblivious and unaware as to the grounds taken on the question of jurisdiction. As such, the said finding, not being based on any materials or any satisfaction, cannot be said to be conclusive or to have effectively dealt with the issue, so raised. The other conspicuous fact which cannot be overlooked by this Court is existence of the second petition in the records under Order 7 Rule 11 CPC, for which an order has been passed fixing a date for hearing. Taking into account, these aspects, it can safely be inferred that the Trial Court is yet to deal with the issue substantially notwithstanding the observation or finding made in the impugned order dated 17.12.2020. In this circumstance, it would be appropriate that the Trial Court be directed to decide on this issue that is the maintainability of the suit as raised by the petitioners vide their petition under Order 7 Rule 11 afresh.

18. As to the other question, regarding injunctive relief, this Court finds force in the arguments of the respondent that a mere objection to jurisdiction raised by a party, does not disable a Court from passing interim orders. In this context, it would be relevant to refer to the judgment as cited by the learned Senior counsel, that is the case of ***Tayabbhai M. Bagasarwalla and Another Vs. Hind Rubber Industries Pvt. Ltd. and Others (supra)*** where in para 16 which is quoted herein below it has been held as follows:

“16. According to this section, if an objection is raised to the jurisdiction of the court at the hearing of an application for grant of, or for vacating, interim relief, the court should determine that issue in the first instance as a preliminary issue before granting or setting aside the relief already granted. An application raising objection to the jurisdiction to the court is directed to be heard with all expedition. Sub-rule (2), however, says that the command in sub-rule (1) does not preclude the court from granting such interim relief as it may consider necessary pending the decision on the question of jurisdiction. In our opinion, the provision merely states the obvious. It makes explicit what is implicit in law. Just because an objection to the jurisdiction is raised, the court does not become helpless forthwith - nor does it become incompetent to grant the interim relief. It can. At the same time, it should also decide the objection to jurisdiction at the earliest possible moment. This is the general principle and this is what Section 9-A reiterates. Takes this very case. The plaintiff asked for temporary injunction. An ad interim injunction was granted. Then the defendants came forward objecting to the grant of injunction and also raising an objection to the jurisdiction of the court. The court overruled the objection as to jurisdiction and made the interim injunction absolute. The defendants filed an appeal against the decision on the question of jurisdiction. While that appeal was pending, several other interim orders were passed both by the Civil Court as well as by the High Court.

Ultimately, no doubt, the High Court has found that the Civil Court had no jurisdiction to entertain the suit but all this took about six years. Can it be said that orders passed by the Civil Court and the High Court during this period of six years were all non est and that it is open to the defendants to flout them merrily, without fear of any consequence. Admittedly, this could not be done until the High Court's decision on the question of jurisdiction. The question is whether the said decision of the High Court means that no person can be punished for flouting or disobeying the interim/interlocutory orders while they were in force, i.e., for violations and disobedience committed prior to the decision of the High Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court (on the question of jurisdiction), no one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of the Rule of Law and would seriously erode the dignity and the authority of the courts. We must repeat that this is not even a case where a suit was filed in the wrong court knowingly or only with a view to snatch an interim order. As pointed out hereinabove, the suit was filed in the Civil Court bona fide. We are of the opinion that in such a case the defendants cannot escape the consequences of their disobedience and violation of the interim injunction committed by them prior to the High Court's decision on the question of jurisdiction.” [Emphasis supplied]

19. As the matter before this Court is being decided on the above noted short points, the other judgments placed by the learned counsels for the parties, need not be discussed as the same would be only an academic exercise which would have no bearing on the outcome and as such, are disregarded.

20. For the reasons abovementioned, this Revision application is disposed of with the direction that the Trial Court take up the issue concerning jurisdiction as a preliminary issue to be decided at the earliest. All interim orders passed herein stand vacated and Misc. application also stands disposed of accordingly.

21. Send back the Lower Court records immediately.

22. No order as to costs.

23. Before parting with the case, it is pertinent to record that it has been submitted at the bar, that the District Council Courts in Garo Hills, are not functioning due to an agitation by the employees of the Garo Hills Autonomous District Council and that there is no likelihood of the matter being heard at an early date. Without taking formal judicial cognizance of the same, it is expected that the District Authorities as also the Executive Committee, GHADC take all steps necessary to ensure that the functioning of the courts be not impeded in any manner, failing which this Court will have no alternative but to pass appropriate orders to ensure the smooth dispensation of justice and to uphold the rule of law.



24. True copy of this order be supplied to Mr. S. Dey, learned Standing counsel, GHADC and to the Advocate General, Government of Meghalaya to communicate the observations as made in para - 23 above to the concerned authorities.

Judge

Meghalaya
30.04.2021
"D.Thabab-PS"

