

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT, AIZAWL  
MIZORAM**

**Civil Suit No.94/2010**

Mizoram Rural Bank,  
Khatla Branch, Khatla, Aizawl  
(Represented by its Branch Manager) .....Plaintiff.

-Versus-

1. Lalbiaktluanga,  
S/o R.Lalngenga,  
Maubawk, Aizawl, Mizoram.  
2. Lalvawnngheti,  
Maubawk, Aizawl, Mizoram.  
3. N.Lalliana,  
S/o Chalsiama,  
Tuikual 'C', Aizawl, Mizoram. .... Defendants.

**BEFORE**

**R.VANLALENA, Senior Civil Judge-II**

For the Plaintiff : L.R.Tluanga Sailo, Advocate.  
For the Defendants: R.K.Malsawmkima , Advocate.  
Date of Judgement: 3.4..2012

**JUDGEMENT**

**3.4.2012**

The facts of the case leading to the filing of the present Civil Suit No.94/2010 as reflected in the plaint may be briefly stated as follows:

The plaintiff is a banking company carrying on its business in different parts of Mizoram under the Regional Bank's Act 1976 with its registered Head Office at Aizawl and is owned by the Government of India.

That on 01.02.2006, defendant No.1 Shri Lalbiaktluanga, S/o R.Lalngenga, R/o Maubawk, Aizawl, Mizoram approached the plaintiff Bank, Khatla Branch, Aizawl and applied for small scale industries term loan amounting to Rs.3,00,000/- (Rupees three lakhs) only for the purpose of his business tailoring. The defendant was thoroughly informed by the plaintiff about the terms and conditions of loan, its rate of interest of Rs.13% per annum which is subject to the revision of it by the Reserve Bank of India and necessity of mortgage of land and building for the said loan. He was also informed the requirement of third party guarantees with necessary agreement to be entered/executed for the said loan. And that the loan should be paid in 60(sixty) equated monthly installment (EMI) of Rs.6840/- which was to commence from the disbursement of loan. Above this, he was informed the requirement of Guarantor who himself was informed his duly as a Guarantor. After having accepted all the terms and conditions with other requirements, the defendant accepted the same and thus executed all the requirements. On the basis

of the agreement etc., he was sanctioned a loan amount of Rs.3,00,000/- with interest @ Rs.13% per annum to be repaid in 50 equated monthly installments which was to commence from the month of May, 2006. The defendant created equitable mortgage of his original LSC No.104704/01/749 of 2006 belonging to Defendant No.3 namely Shri N.Lalliana S/o Chalsiama R/o Tuikual 'C', Aizawl. Accordingly the plaintiff disbursed Rs.3,00,000/- of loan to the defendant No.1 through his loan Account No.SSCTL-80 opened in the plaintiff Bank.

However, the defendant No. 1 has neglected to regularizes his loan account in violation of the terms and conditions etc. agreed to by him and started defaulting the Bank. Having no other alternatives, the plaintiff approached this court and prayed the following :-

- 1) To pass a preliminary decree for sale of the mortgage properly covered by LSC No. 104704/01/749 of 2006 belonging to Guarantor/Defendant No.3 by way of public auction amongst the local people as a measure for recovery of the outstanding amount of loan i.e. Rs.4,21,483/- as on 07.06.2010 due to the plaintiff alongwith interest @ 13% per annum with effect from 07.06.2010 defaulted by the defendant No.1.
- 2) Cost of the suit.
- 3) Such other and further order in favour of the plaintiff for the ends of justice.

On the other hand, the defendant No.1 contested the suit stating that the instant suit is not maintainable in its present form and style. There is no cause of action in favour of the plaintiff and against the defendants. The copy of loan agreement not furnished to the defendant. The defendant cannot be proclaimed as defaulter as the said loan was to be repaid in 60 (sixty)equated monthly installment at a rate of Rs.6840/- to be commencing from May, 2006 which has not yet over in time. Moreover, the plaintiff failed to caution the defendant by Notice or reminder. Above all, the plaintiff Bank accepted loan repayment by the defendant even after the institution of the instant suit. The suit is barred by limitation, estoppels and acquiescence. The suit is bad for non-joinder and mis-joinder of necessary parties. Hence the suit may be dismissed.

I have heard both the learned counsels for the parties at length. Ld. Counsel for the defendant No.1 submitted a copy of letter issued by the authority of the plaintiff Bank ( MRB, Khatla Branch) by which the defendant No.1 was allowed to continue to repay his loan overdues monthly by Rs.5,000/- per month, this court may pass an order directing the defendant No.1 to repay his loan overdues in lines with the written permission given by the plaintiff Bank authority. On the other hand, the counsel for the plaintiff Bank prayed this court to pass an order for further repayment of loan by the defendant No.1 by which in case of default in continuing repayment, the said defendant's mortgage property i.e. LSC No.104704/01/749 of 2006 may be foreclosed and be sold. Therefore, the sale proceeds can be utilized for repayment of the loan overdues, if any.

I have carefully considered the rival submission and prayers of the respective Ld. Counsels, and also perused materials available on record. This court has arrived at a conclusion to pass an order as prayed for by parties :-

## **ORDER**

The defendant No. 1 namely Shri Lalbiaktluanga, S/o R.Lalngenga, R/o Maubawk, Aizawl, Mizoram is hereby ordered to continue repayment of his loan overdues with the interest at a rate of Rs.13% per annum by installments of Rs.5,000/- ( Rupees five thousand) only per month regularly till full realization of the loan overdues. In case of default in continuing repayment of the said loan at the said terms, even for four consecutive months without assigning any reasons acceptable to the plaintiff Bank, the mortgaged property i.e. LSC No.104704/01/749 of 2006 be auctioned off and sold by the Branch Manager, Mizoram Rural Bank, Khatla Branch to realize the loan overdues. However, the auction should be limited only to Scheduled Tribes. For this purpose, due process of law be observed.

Give copy of this order to all concerned.

Given under my hand and seal of this court on this 3<sup>rd</sup> April, 2012.

**Sd/-R.VANLALENA**  
Senior Civil Judge – II  
Aizawl District : Aizawl.

Memo No...272../SCJ-II(A)/2012:      Dated Aizawl the 3<sup>rd</sup> April,2012.  
Copy to:

1. Mizoram Rural Bank, Khatla Branch, Khatla, Aizawl (Represent by its Branch Manager) through counsels Shri L.R.Tluanga Sailo.
2. Lalbiaktluanga, S/o R.Lalngenga, Maubawk, Aizawl, Mizoram through Counsel Shri R.K.Malsawmkima.
3. Lalvawnngheti, Maubawk, Aizawl, Mizoram through Counsel Shri R.K.Malsawmkima.
4. N.Lalliana, S/o Chalsiama, Tuikual 'C', Aizawl, Mizoram through Counsel Shri R.K.Malsawmkima.
5. Registry Section.
6. Case record.

PESHKAR

