

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT,
AIZAWL MIZORAM
Money Suit No.11/2011**

K. Vanlalzawna,
R/o Champhai, Tlangnuam,
Mizoram.Plaintiff.

-Versus-

N.Joshua
S/o N.Zareia,
Prop: JR Construction,
Chaltlang, Aizawl.Defendant.

**BEFORE
R.VANLALENA, Senior Civil Judge-2**

For the Plaintiff : B.Lalramenga & Ors, Advocates.
For the Defendants: Robert L.Hnamte & Ors, Advocates.
Date of Judgement: 3.7.2012.

JUDGEMENT AND ORDER

3.7.2012

The facts of the case leading to the filing of the instant Money Suit No.11 of 2011 as reflected in the plaint may be briefly stated as belows:

The plaintiff is a permanent resident of Tlangsam Champhai, District Champhai, Mizoram and is a well-known leader of a big community of sect called "Pu Zawna Pawl" having its headquarter at Champhai Tlangsam veng. While the Defendant is a resident of Chaltlang veng, Aizawl and is a proprietor of JR Construction having its office at Zarkawt, Aizawl.

That sometime in the month of August 2008, the defendant approached the plaintiff and asked for a loan amounting to Rs.6,00,000/- (Rupees six lakhs) to be repaid with interest @10% per month for the first month and 8% per month for the next three months from the date of disbursement of loan. The defendant told the plaintiff that his vehicle Balero would be mortgaged for the loan as a security. The defendant assured the plaintiff that he would repay the loan with interest within the stipulated period and was thus proficiently lured by the defendant. As the defendant earnestly requested the plaintiff to lend him Rs.6,00,000/- as a loan, the plaintiff thus disbursed Rs.6,00,000/- as a loan to the defendant on 06.08.2008 for which an Agreement Deed was executed between the plaintiff and the defendant by which it had been clearly agreed and stated that the defendant shall repay the loan money to the plaintiff with interest @10% per month for the first time and 8% per month for the next three

months from the date of 06.08.2008 i.e disbursement of loan. It was further mentioned that in case of default in repayment of loan by the defendant with the interest, the plaintiff will instantaneously possess the said mortgaged vehicle Balero. It is also mentioned that the said interest is not barred by the Usurious Loan Act as the agreement has been made between competent persons for lawful considerations. However, even after the expiry of four months from the date of disbursement of loan, the defendant inconsiderately ignored and refused to repay the loan with the interest for four months amounting to Rs.2,04,000/-. The plaintiff had been eagerly waiting for repayment of the loan. Unfortunately, the defendant heedlessly ignored to repay the loan. The plaintiff had been urging the defendant to repay the loan principal amount and the interest for a number of times yet the defendant did not repay his loan for even a single money. Ultimately the plaintiff through his Learned Counsel had served a legal Notice to the defendant on 19.06.2010 but to no avail. The defendant failed to repay his loan dues after a stipulated period of time in spite of endless requests made by the plaintiff. And every request made by the plaintiff to repay the loan had has been turned down by the defendant till today by simply giving him unfettered promises that he will repay him in time and also asked him to give few more time which has never been fulfilled till today. The defendant had maliciously tormented the plaintiff mentally and financially by his default in repayment of loan. The cause of action arose on 06.12.2008 when the defendant failed to repay the loan with interest as per the agreement and the cause of action still subsists till date as the defendants still fails to repay the loan-principal amount and interest. The subject matter of the suit is above Rs.2,00,000/- and the parties are residing within Aizawl judicial district, this court has jurisdiction to try this case. The instant suit is valued at Rs.8,04,000/- and court fees of Rs.5000/- by way of stamps had been deposited.

The present suit is filed bonafide and for the interest of justice.

The plaintiff thus prayed for the following reliefs :

- 1) A decree in favour of the plaintiff and against the defendant.
- 2) A decree declaring that the defendant is bound to repay the loan he had taken from the plaintiff.
- 3) A decree directing the defendant to pay immediately a sum of Rs.8,04,000/- (Rupees eight lakhs, four thousand) only i.e Rs.6,00,000/- as a principal amount plus Rs.2,04,000/- for the interest for the four months to the plaintiff as per the Agreement Deed dated 06.08.2008.
- 4) For any other reliefs to which the plaintiff is entitled to according to Justice, Equity and Good conscience.
- 5) For cost of the suit.

On the other hand, the defendant submitted his written statement on 30.11.2011 in which he contested the suit stating that the suit is not maintainable in its present form and style. The suit is bad for non-payment of requisite amount of court fees. There is no cause of action in favour of the plaintiff. It is bad for mis-joinder of party as the answering defendant is not necessary party. The defendant denied all the allegations made by the plaintiff save and except which are specifically admitted in this written statement. The defendant denied the alleged Agreement dated 06.08.2008 as the defendant has no knowledge of the existence of such document and it is a forged document. The contents in paragraph 1&2 of the plaint are totally denied. The written statement of the defendant had been accompanied by an Affidavit duly signed by the defendant.

On the basis of the pleadings of the parties, the court framed the following issues :-

- 1) Whether the present suit is maintainable in its present form and style ?
- 2) Whether the plaintiff and the Defendant entered into an Agreement Deed for giving/taking loan ?
- 3) Whether the Defendant took loan from the plaintiff ?
- 4) Whether the plaintiff is entitled to the relief claimed, If so to what extent ?

The plaintiff examined one witness while the defendant examined none in this suit.

Issue No.1 : This issue relates to the maintainability of the instant suit. The suit has been filed by the plaintiff by presenting a plaint with photo copy of the same for supply to the defendant. It is properly valued and disclosed the cause of action clearly. It is also accompanied by an Affidavit duly executed by the plaintiff. The plaint is also accompanied by the alleged Deed of Agreement and photo copy of Legal Notice served by the plaintiff on the defendant. The instant issue had been discussed in presence of both parties on 23.04.2012 in which the court had decided to maintain the suit. Hence this issue is decided in favour of the plaintiff.

Issue No.2 & 3 : These two issues are taken together for the sake of convenience. In his deposition, the plaintiff deposed that he gave a loan amounting to Rs.6,00,000/- (Rupees six lakhs) to the defendant on 06.08.2008 for which Agreement Deed dated 06.08.2008 had been made between him and the defendant wherein it had been clearly mentioned that the defendant shall repay the loan with interest @ 10% per month for the first month and 8% per month for the next three months from the date of disbursement of loan i.e.06.08.2008. The plaintiff gave a loan of this amount to the defendant as the defendant earnestly prayed him to give loan who agreed to mortgage a vehicle Bolero as a security for the said loan.

All these statement had been recorded in paragraph no.3 of the examination-in-chief on affidavit of the plaintiff. The plaintiff exhibited the said Deed of Agreement for loan date 06.08.2008 and is marked as Exhibit No.P-2 and P-2@ is plaintiff's signature. The said Deed of Agreement appeared to be signed by four persons-two each from plaintiff and defendant.

In his cross examination by the Ld. Counsel for the defendant, the plaintiff stated that he was not well acquainted with Mr.N.Joshua (defendant) and do not know any person called N.Joshua. However, in his re-examination, the plaintiff stated that he know the defendant through his agent sent by N.Joshua and the said Agreement had been made through the agent but was signed by N.Joshua. In further re-examination, the plaintiff stated that N.Joshua was not present at the time of making the said Agreement. On careful perusal of the evidences recorded, it is crystal clear that the said Agreement of Deed dated 06.08.2008 had been prepared and made between the plaintiff and a person who was thought to be an agent of defendant. The defendant did not present physically at the time of making the said Agreement. However, the defendant through his Ld. Counsel Shri H.Lalremruata had made an admission of the facts of the case orally before this court on 23.04.2012 clearly revealed that the defendant and the plaintiff had made an Agreement Deed on 06.08.2008 and that the defendant had taken loan from the plaintiff. Accordingly, the issues no 2 & 3 are decided in favour of the plaintiff. The plaintiff exhibited the following documents without objections from the defendant.

- 1) Exbt.P-1 is the plaint submitted by the plaintiff.
- 2) Exbt.P-1 (a) (b) & (c) are signatures of plaintiff.
- 3) Exbt.P-2 is Pawisa Puk Intiamkamna (Deed of Agreement) dated 06.08.2008 made between the plaintiff and defendant,
- 4) Exbt.P-2 (a) is signature of plaintiff.
- 5) Exbt.P-3 is the Legal Notice dated 17th June 2010 served upon the defendant by plaintiff through his Lawyer.

Issue No.4 : This issues relates to as to whether the plaintiff is entitled to the relief claimed : If so to what extent ? All the foregoing issues have been decided in favour of the plaintiff. In order to contest the case, the defendant failed to examine witness. He had submitted his written statement only but declined to examine his witness. He rather admitted the facts of the case before the court through his Ld. Counsel. In this situation, this court felt not necessary to proceed further. Hence this issue is decided in favour of the plaintiff. The prayer of the plaintiff had been mentioned in his plaint.

The suit though contested by the defendant, no evidence whatsoever had been adduced by him and the only evidence recorded by this court is the evidence of the plaintiff. In view of this it cannot but be held that the

Defendant have nothing to say against the reliefs sought for by the plaintiff. However, the defendant through his Ld. Counsel has made an admission of the facts of the case during the course of trial which has helped this court making final decision granting the reliefs sought for by the plaintiff.

Thus, the instant suit is finally decided and decreed as follows :

- 1) The defendant is bound to repay the loan he had taken/availed from the plaintiff alongwith the interest.
- 2) The Defendant is hereby directed to repay a sum of Rs.6,00,000/- (Rupees six lakhs) plus interest for a period of four months amounting to Rs.2,04,000/- (Rupees two lakhs, four thousand) only to the plaintiff as per the Agreement Deed dated 06.08.2008 within a period of 2(two) months from the date of this order.

Parties shall bear their own costs.

The suit having decreed as above is thus hereby disposed of accordingly.

Pronounced in open court in presence of the parties on this 3rd July 2012

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

Memo No. /SCJ-I I(A)/2012: Dated Aizawl the 3rd July,2012.
Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.
2. K. Vanlalzawna, R/o Champhai, Tlangnuam, Mizoram C/o B.Lalramenga & Ors, Advocates.
3. N.Joshua, S/o N.Zareia, Prop: JR Construction, Chaltlang, Aizawl C/o Robert L.Hnamte & ors, Advocates.
4. Registry Section.
5. Case record.

PESHKAR