

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT,
AIZAWL MIZORAM
Money Suit No.2/2011**

K.Rodingliani,
D/o K.Thankima,
Chaltlang, Aizawl.

.....Plaintiff.

-Versus-

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

.....Defendant.

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

For the Plaintiff : Dorothy Lalrinchhani & Ors, Advocates.

For the Defendants: H.Lalremruata, Advocate.

Date of Judgement: 4.7.2012.

JUDGEMENT AND ORDER

4.7.2012

The facts of the case leading to the filing of the instant Money Suit No.2 of 2011 as reflected in the plaint may be briefly stated as follows:

The plaintiff is a bonafide citizen of India belonging to Mizo Community and is residing at Chaltlang, Aizawl, Mizoram. On 14.11.2008, the Defendant borrowed a sum of Rs.5,00,000/- (Rupees five lakhs) with an interest @ 10% per month from the plaintiff for which the plaintiff and the Defendant made a Deed titled PAWISA PUK INTIAMKAMNA on 14.11.2008 duly signed by the parties with two witness. As per the terms of undertaking (Deed) the Defendant will borrow Rs.5,00,000/- from the plaintiff with interest at a rate of 10% per month which will be repaid alongwith the repayment of the principal amount till full realization of the full amount. The term of the lending may be extended as agreed to by both and the deal has been done as per free consent of the parties. The plaintiff has maintained a personal record for recording money received as repayment of the loan amount of Rs.5,00,000/- from the Defendant in her personal diary. As per the said diary, it was recorded that the Defendant has repaid the loan on 17.11.2008, 24.04.2009, 04.12.2009, 23.12.2009, 06.02.2010 and 12.02.2010 amount of Rs.40,000/- (Rupees forty thousand), Rs.1,60,000/- (Rupees one lakh sixty thousand), Rs.6,000/- (Rupees six thousand), Rs.7,000/- (Rupees seven thousand), Rs.20,000/- (Rupees twenty thousand), and Rs.20,000/- (Rupees twenty thousand) respectively. However, the Defendant has ceased further repayment of loan beyond these amounts which had caused hardship to the plaintiff and her entire family as she is the sole bread earner of the family. Thus the Defendant had left Rs.2,47,000/- with interest unpaid while the husband of the plaintiff is suffering from cancer which required huge expenditure of money for treatment.

The Defendant had been served a legal Notice on 3rd November 2010 through legal counsel for recovery of the remaining amount of borrowed money with one month chance for repayment of the loan. However, the Defendant had not taken any steps whatsoever towards repayment of his loan remaining balance i.e. Rs.2,47,000/- with interest till date. The cause of action arose on 4th November 2010 and this court has jurisdiction to try the suit as the parties are residing in Aizawl city which is within the territorial jurisdiction of this court. The plaintiff has deposited Rs.5000/- as court fees by way of court fees stamps. The suit is filed bonafide and for the interest of justice.

The plaintiff prays the following reliefs :-

- 1) A decree for Rs.2,47,000/- with interest @9% per annum w.e.f. 14.11.2008 in favour of the plaintiff and against the Defendant.
- 2) Award pendent lite and future interest @ 9% per annum over the amount of Rs.2,47,000/-.
- 3) Award cost of the suit in favour of the plaintiff and against the Defendant.

Any other order or orders may be passed in favour of the plaintiff as the court may deem fit and proper.

On the other hand, the Defendant submitted written statement and contested the case 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 and against the defendant. The suit is bad for non-joinder of party and mis-joinder of party. The defendant denied all the allegations made by the plaintiff save and except which are specifically admitted in written statement. The Defendant denied the Agreement dated 14.11.2008 stating it was invalid document as the Defendant has no knowledge of the existence of such document and alleged that it was a forged document. The Defendant prayed the court to dismiss the suit as there is not cause of action against defendant.

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

- 1) Whether the suit is maintainable in its present form and style?
- 2) Whether the Defendant has borrowed a sum of Rs.5,00,000/- (Rupees five lakhs) with interest @10% per month from the plaintiff ?
- 3) Whether the Defendant is liable to pay Rs.2,47,000/- (Rupees two lakhs, forty seven thousand) to the plaintiff with interest @ 9% per month.
- 4) Whether the plaintiff is entitled to the relief claimed ? If so, to what extent ?

The plaintiff examined two witnesses including herself while the Defendant examined no witness.

Issue No.1 relates to the maintainability of the instant suit. The suit has been filed in duplicate and within time. It has properly valued for the purpose of jurisdiction. Requisite amount of court fees has been paid. The issue of maintainability has been discussed at the time of preliminary hearing on 22.11.2011 and had been decided to be maintained for further proceeding by which case has been further proceeded. As such this issue does not need to be discussed again as it has already been discussed and decided thus in favour of the plaintiff.

Issue No.2 &3 related to as to whether the Defendant borrowed a sum of Rs.5,00,000/- from the plaintiff with interest @ 10% per month. Pw 1 namely Smt.K.Rodingliani deposed before the court that on 14.11.2008, the Defendant had borrowed Rs.5,00,000/- with interest @ 10% per month from her by executing an Agreement (Deed of PAWISA PUK INTIAMKAMNA) dated 14.11.2008. She therefore maintained a record for the purpose of recording the repayment of loan by the Defendant. As per her personal diary of records, the Defendants had repaid the loan to her on 17.11.2008, 24.04.2009, 04.12.2009, 23.12.2009, 06.02.2010 with a total amount of Rs.2,53,000/- (Rupees two lakhs fifty three thousand) leaving a balance amount of Rs.2,47,000/- (Rupees two lakhs, forty seven thousand) only. She added that despite Legal Notice and repeated request, the Defendant has not repaid the loan amount in full with the interest. She further stated that in spite of the fact that the rate of interest was agreed to by the Defendant @ 10% per month, yet she has conceded to receive 9% interest per month alongwith the principal amount. She added that she badly needed the money repayment since her husband is now suffering from cancer who requires regular medical treatment outside the state.

Pw 2 namely Smt.L.Thangpuii resident of Chaltlang and a witness in the Deed of PAWISA PUK INTIAMKAMNA deposed that she is familiar to both the plaintiff and the Defendant. She stated that the Defendant is a Class I contractor and proprietor of J.R.Construction. She had for a number of times has helped the Defendant get money borrowed from other persons whenever he needed money for doing construction works and repaid them in full. In the month of November, 2008 the Defendant again was in need of money for the same purpose for amount of Rs.20,00,000/- (Rupees twenty lakhs) and the defendant requested her to extend her help again for borrowing money as usual. She therefore went to the house of the plaintiff and requested to lend money to the Defendant. As the plaintiff agree, Deed of PAWISA PUK INTIAMKAMNA had been therefore prepared by which the Defendant will borrow Rs.5,00,000/- from the plaintiff with interest @ 10% per month. Accordingly the said Rs.5,00,000/- had been handed over to the Defendant through Pw 2. Even though the Defendant started repayment of the loan by installment for two months only, he (defendant) failed to further repay the loan till date. Pw 2 added that she herself too personally asked the Defendant to fully repay the loan but the Defendant paid no heed to her despite a number of requests.

On careful perusal of all the depositions of Pws, it is evident that the Defendant had borrowed Rs.5,00,000/- (Rupees five lakhs) from the plaintiff with interest @ 10% per month. The defendant repaid the loan by installments and thus has repaid Rs.2,53,000/- out of the principal amount but left a balance amount of Rs.2,47,000/- unrepaid. The repayment of the loan amounting to Rs.2,53,000/- clearly revealed that the Defendant had taken the loan from the plaintiff. Therefore it also revealed that the Defendant has balance amount to be repaid to the plaintiff. This repayment of loan to some amount would mean admission of facts by the Defendant.

During the course of trial of this suit, the plaintiff and the Defendant has entered into compromise agreement on 15.03.2012 for payment of the balance amount of loan/debt by the defendant. The first part of the said Agreement mentioned and reflected the contents of the previous Deed (PAWISA PUK INTIAMKAMNA) Agreement for loan dated 14.11.2008. It also mentioned that the debtor (defendant) fails to repay to the creditor (Plaintiff) the sum of Rs.2,47,000/- for which Money Suit No. 2 of 2011 had been instituted for recovery of the balance amount with interest @ 9% per annum on 12.01.2011. It further mentioned that the debtor (Defendant) had paid Rs.2,53,000/- to the (Plaintiff) creditor on various dates/installments for the principal amount. As the debtor has failed to repay the remaining amount/balance amount, and the creditor in order to recover the said balance amount has agreed to come to compromise with the debtor for further repayment. The second part of the Agreement abliged the defendant to pay Rs.2,47,000/- to the plaintiff on or before the expiry of the 3 months from this compromise Agreement. The rate of interest shall be Rs.9% per annum over the principal amount of loan w.e.f. 14.11.2008 to 15.03.2012 i.e. Rs.1,16,927/- and the interest is to be paid on or before the expiry of 5 (five) months from the date of compromise Agreement i.e. 15.6.2012. The plaintiff and the Defendant with their respective Id. Counsels put their respective signatures on the body of document of compromise Agreement.

As per the aforementioned Compromise Agreement, the defendant has to repay Rs.2,47,000/- as a balance from principal amount of loan he had taken and Rs.1,16,927/- as interest at a rate of 9% per annum. The interest calculated amount will be for a period from 14.11.2008 to 15.03.2012. On careful perusal of all the evidences on record and on further perusal of the Compromise Deed, it has been clearly revealed that the defendant had borrowed Rs.5,00,000/- from the plaintiff with interest @ 10% per month and that too is through the helping hands of Pws. It is also evident that the defendant had repaid Rs.2,53,000/- by installments to the plaintiff and left balance amount of Rs.2,47,000/- unpaid with interest w.e.f. 14.11.2008 i.e. the date on and from which the liability of the defendant had started. On further careful perusal of the materials available on record, the plaintiff decided to reduce the burden of liability of the defendant by allowing the rate of interest @ 9% per annum in stead of 10% per month. Having examined all the materials on record and on careful perusal of the evidences, this court has come to a conclusion that the issues no 2 & 3 are decided in favour of the plaintiff.

Issue No.4 relate to as to whether the plaintiff is entitled to the relief claimed, if so to what extent ? As all the foregoing issues have been decided in favour of the plaintiff, the issue no.4 is also decided in favour of the plaintiff and also on the basis of the verbal agreement entered into by the defendant and the plaintiff who personally appeared with their respective Ld. Counsels in the court on 13.03.2012. The plaintiff and the defendant put their respective signatures on the margin of the order sheet of the case record. Having decided the issue no.4 in favour of the plaintiff, the court has come to a conclusion to grant the prayer of the plaintiff. However, the relief granted will be confined only to serial no.1 of the prayer. Hence the court finally decided the suit and decreed as follow :-

The Defendant is hereby directed to repay Rs.2,47,000/- (Rupees tow lakhs, forty seven thousand) to the plaintiff with interest @ 9% per annum w.e.f. 14.11.2008 to 15.03.2012 amounting to Rs.1,16,927/- (Rupees one lakh, sixteen thousand, nine hundred twenty seven) only within a period of one month from the date of this order.

Parties shall bear their own costs.

Having decreed the suit above it is hereby disposed of accordingly.

Pronounced in open court in presence of parties on this 4th July 2012.

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

Memo No. /SCJ-I I(A)/2012: Dated Aizawl the 4th July,2012.
Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.
2. K.Rodingliani, D/o K.Thankima, Chaltlang, Aizawl C/o Dorothy Lalrinchhani & Ors., Advocates.
3. N.Joshua, S/o N.Zareia, Prop: JR Construction,Chaltlang, Aizawl C/o H.Lalremruata, Advocate.
4. Registry Section.
5. Case record.

PESHKAR