

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

Title Suit No.45 of 2014

State Bank of India,
Mission Veng Branch,
Represented by the Chief Manager,
State Bank of India, Mission Veng Branch,
Mission Veng, Aizawl.

.....Plaintiff.

Versus-

1. Lalremsangi,
Prop. Dee Eff Fashion,
D/47, Millenium Centre, Aizawl
W/o Lalthantluanga
R/o H.No. A-26, New Market
Dawrpui, Aizawl.

2. Smt. Vanlalpari
D/o Thangchuailova (L)
R/o Rawpuichhip.

3. Lalthantluanga
S/o Lianhrima,
R/o H.No. A-26, New Market
Dawrpui, Aizawl.

BEFORE

R.Vanlalena, MJS
Senior Civil Judge-II
Aizawl, Mizoram

Appearance:

For the Plaintiff : MrTJ.Lalnuntluanga, Advocate,
For the Defendant :

Date of hearing : 15.07.2016
Date of Judgment : 15.07.2016

JUDGMENT AND ORDER

1.The main facts of the case leading to the filing of the present money suit as reflected by the plaintiff in the plaint may be mentioned as follows.

2.The Plaintiff is a nationalised Bank constituted under the State Bank of India Act, 1955 carrying a business of banking at Aizawl under the Banking Regulation Act, 1949. The registered local head office is in Guwahati and one of its branches is at Mission Veng, Aizawl headed by the Chief Manager.

3.The Defendant No.1 is a proprietor of M/s Dee Eef at Millennium Centre, Aizawl dealing business with jeans and ready garments and is a permanent resident of Dawrpui, Aizawl. Defendant No. 2 is a teacher by profession in Primary School Rawpuichhip village under Gov.t of Mizoram and Defendant No. 3 is husband of Defendant No.1 residing at Dawrpui, Aizawl.

4.The Defendants had approached the Plaintiff and applied for Cash Credit Loan on 15.10.2007 for a sum of Rs.4,00,000/-(Rupees four lakhs) by submitting details of her immovable properties i.e. LSC No.Azl.919 of 1990 valued at Rs.6,00,000/- and movable properties valued at Rs.9,33,500/-. The Defendant No.1 offered the said land covered under LSC No.Azl.919 of 1990 for mortgage in respect of the loan. Defendant No.2 informed the plaintiff that she has properties valued at Rs.4,48,315/-. The application was accompanied by bio data of defendant No.1 & 2. The defendant No.1 applied for enhancement of her loan on 19.05.2010. Defendant No.3 also informed the plaintiff that he had immovable properties LSC No. 103101/01/2366 of 2008 located at Zemabawk valued at Rs. 6,05,000/- and offered the said properties for mortgage for the loan.

5. The Defendant No. 2 submitted irrevocable letter of authority dated 07.12.2009 issued by Sub-Divisional Education Officer, Mamit wherein it was stated that Defendant No. 2 is employee of SDEO Office, Mamit and that she will not entitle to withdraw or revoke her authority in case of transfer until the debts of the aforesaid account inclusive of interest to the plaintiff is liquidated for which the consent of the plaintiff is obtained. And in respect of making payment out of any amount payable to the employee including amount payable by way of terminal benefits like GPF and Gratuity in case of her death, retirement, resignation or discontinuing the service for any reason what so ever, to the plaintiff towards the balance outstanding in the loan account together with interest etc. and such payment shall be deemed to be a payment to the employee or the said loan account.

6.The Plaintiff had carefully examined all the documents submitted by the defendants in support of the application for the said loan money. After having verified and careful checks, the Plaintiff decided to sanction loan money amounting to Rs.4,00,000/- to the Defendants on 29.10.2007 and for Rs.7,00,000/- on 02.11.2010. In this connection the bank shall charge interest @ 12.25% per annum subject to revision of the rate from time to time as per direction of Reserve Bank of India.

7. The defendants No. 1 & 2 agreed the terms and conditions laid down by plaintiff and thereafter they executed agreement of loan cum hypothecation on 29.10.2007 and also guarantee agreement of 29.10.2007. Defendant No. 1 applied and was granted loan enhancement for which executed agreement of loan cum hypothecation on 02.11.2010 and guarantee agreement executed on the same day. Supplemental agreement of loan cum hypothecation on 22.11.2010. The plaintiff bank therefore sanctioned the loan amount of Rs.4,00,000/- and Rs.7,00,000/- to the defendant No.1 specifying and agreeing to repay the loan with interest @ 12.25% per annum for 12 months from the date subject to review every 12 months when it may be cancelled or reduced depending upon the conduct and utilization of the advance as per the bank scheme. Stipulation and covenants also executed by defendant no.1

8. The defendant no.1 mortgaged his landed properties covered by LSC Azl.919 of 1990 and LSC No. 103101/01/2366 of 2008 as security for the loan and mortgaged/security for the same was received by the plaintiff. The plaintiff examined the defendant no.1, his title property through their lawyer and satisfaction of the verification of the title the said landed property the said property was kept was a security/mortgaged property for the said loan. Letter of confirmation for creation of mortgaged by deposit of title deeds SME 6 dated 29.10.2007 and conformity letter on 29.10.2007 also executed by the defendant for description of title property. After the defendant no.1 was granted loan enhancement for which she executed memorandum for recording creation of mortgaged by deposit of title deeds SME 5 dated 01.11.2010 for details of title deeds deposited LSC No. 103101/01/2366 of 2008 located at Zemabawk, Aizawl.

9. The Plaintiff, thereafter disbursed the loan sum amounting to **Rs.7,00,000/-** to the Defendant No.1 on dt.27.10.2007, 06.11.2010 and 11.11.2010 through Account No.30266763046 by means of debit transfer.

10. After the disbursement of the said loan, the Plaintiff had been reviewing the performance of the loan account and observed that the Defendant No.1 had neglected and failed to make repayment of the loan amount and thus the loan account of the Defendant No.1 had become very irregular towards repayment of the loan together with the interest. Subsequently, the Plaintiff had given oral reminder to the Defendants on various dates and written reminder also given to them on 27.01.2012, 12.10.2013. However, the Defendants failed to repay the loan. This resulted into irregular accrued amount of Rs.2,94,569/- as on 28.06.2011 and the balance to the record is Rs.5,32,841/-. Therefore, the total outstanding dues till date 01.04.2012 was Rs.8,27,420/- plus an interest as agreed upon.

11. That in the aforesaid circumstances as stated in the preceding paragraphs, the plaintiff does not find any alternative but to charge and foreclosed the mortgaged land covered by the LSC No. Azl.919 of 1990 and LSC No.103101/01/2366 of 2008 and thereby prays for an order of the balance to be legally recover from the defendants, otherwise than out of the property sold, pass a decree for such balance from the sales of the landed properties covered by the aforesaid LSC to recover its present dues. That the defendant No. 1 had executed her revival letter dated 10.06.2013 on the agreements of loan cum Hypothecation and guarantee agreements. As such the cause of action is till surviving and the instant suit is filed within the period of limitation.

12. In spite of persistent efforts of the Plaintiff to get back the loan money borrowed by the Defendants, no payment had been made by the Defendants till date.

13. The inaction of the Defendants in failing to repay the loan with interest was highly illegal and perhaps amounts to cheating. In fact, the Defendants have no excuse for not repaying the loan with the interest and are bound to repay the loan with the interest as agreed upon by them.

14. The cause of action arose when the Defendants availed loan amounting to Rs.7,00,000/- from the Plaintiff on 27.10.2007, 06.11.2010 and 11.11.2010 and the cause of action again arose when defendant no. 1 had irregularities non-repayment of the loan on 28.06.2011 and the execution of revival letter on

10.06.2013 of the articles of agreement for financing the loan to the Defendants. The cause of action further arose when the Defendants acknowledged their debts to the Plaintiff for non repayment of the loan. The cause of action still survives.

15. The Plaintiff and the Defendants are residents of Aizawl, as such this Court has territorial jurisdiction and pecuniary jurisdiction to entertain the instant suit.

16. The instant suit is valued at Rs.8,27,420/-and the court fees amounting to Rs.11,740/- has been submitted alongwith the plaint.

17. The Plaintiff claimed the following reliefs:-

- (a) A decree in favour of the Plaintiff and against the Defendants.
- (b) A decree directing the Defendants to pay the Plaintiff the total outstanding dues amounting to Rs.8,27,420/- with interest at a rate of Rs 14.75% per annum from the date of irregularity of the loan repayment.
- (c) A preliminary decree for closure or mortgage property covered under LSC No. 919/1990 and LSC No. 103101/01/2366 of 2008 and to pass and order for sale of the said properties by way of auction and to pass necessary order for adjustment of accounts with the sale proceeds.
- (d) For a decree directing the defendants to redeem the mortgaged properties on payment of Rs.8,27,420/- with interest from 28.06.2011.
- (e) Liberty to proceed against other movable properties.
- (f) Attachment before judgement of the hypothecated stocks of business.
- (g) Any other relief as Hon'ble Court may be deem fit and proper in the interest of the case.
- (h) For costs of the suit.

18. The present case had been filed by the Plaintiff on 12.12.2014. During the course of trial, the Defendants had been given notices of the case against them informing to submit their respective written statements. However, all the Defendants failed to appear in Court to defend the case against them and none of them submitted written statement. The Court perused the summons served to the Defendants. The Defendant No.2 engaged lawyers namely Mr.RogerLalhmgaiha, Mr.Lalremsanga and Mr.Jacob.T.Vanlawma and submitted Vakalatnama duly executed. The Court after confirming that the summons were duly served to all Defendants but failed to appear in Court and further failed to submit written statement had made an order on 18.11.2015 that the case will be proceeded ex-parte against the Defendants and was proceeded ex-parte accordingly.

The Hon'ble Supreme Court of India in the case of **Ramesh Chand ArdawatiyaVs- Anil Panjawni decided on 5 May, 2003 and reported in AIR 2003 Sc 2508,2003(4) ALD 10 SC** held that:-

".....Even if the suit proceeds ex-parte and in the absence of written statement, unless the applicability of Order VIII Rule 10 of CPC is attracted and the Court acts there under, the necessity of proof by the plaintiff of his case to the satisfaction of the Court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very happy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the Court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex-parte, the Court is not bound

to frame issues under Order XIV and deliver the judgment on every issue as required by Order XX Rule 5. Yet the trial court would scrutinise the available pleadings and documents, consider the evidence adduced and would do well to frame the points for determination and proceed to construct the ex-parte judgment dealing with the points at issue one by one. Merely because the Defendant is absent, the Court shall not admit evidence the admissibility whereof is excluded by law not permit its decision being influenced by irrelevant or inadmissible evidence.”.

19. Accordingly, this Court framed the following points of issues for determination in consonance with the ruling made by the Apex Court of India.

POINTS FOR DETERMINATION

- (1). Is the present suit maintainable in its present form and style ?.
- (2). Whether the Defendants had taken loan amounting to Rs.7,00,000/- (Rupees Four Lakhs) from the plaintiff and failed to repay the said loan with interest at a rate of Rs.12.25% per annum ?.
- (3). Whether the Plaintiff is entitled to the relief claimed ? . If so to what extent ?

20. DECISIONS AND REASONS FOR DECISION THEREON

(1). Is the present suit maintainable in its present form and style ?

The present suit had been filed by the Plaintiff through Ld Counsels Mr.TJ.Lalnuntluanga on 12.12.2014 by filing written plaint with extra copy of it for supply to the Defendants and the same were duly furnished to the Defendants. They were duly summoned but failed to appear in Court to defend their case. The suit had been duly and properly valued at Rs.8,27,420/- for which requisite amount of Court fees amounting to Rs.11,740/- as per the Court Fees (Mizoram Amendment) Act, 1996 was paid. There was no formal defect in the plaint. Nothing defect was found in it to render it non-maintainable. This Court decided to maintain the suit accordingly and was thus maintained.

(2). Whether the Defendant No.1 had taken/availed cash credit loan amounting to Rs.7,00,000/- with interest at a rate of Rs.12,25% from the Plaintiff ?.

In her examination-in-chief on affidavit, Mrs.C.Lalremtluangi, Deputy Branch Manager, State Bank Of India, Mission Veng Branch, Aizawl as PW1 stated that on 15.10.2007, the Defendant No.1 applied for cash credit loan to the said Bank for a sum of Rs.4,00,000/- (Rupees Four Lakhs) only by submitting details of her immoveable properties as LSC No.Azl 919 of 1990 valued at Rs.6,00,000/- and moveable properties valued at Rs.9,33,500/- at the time of conducting lawyer's opinion. The Defendant No.1 offered the landed property covered under the said LSC for mortgage for the loan and the same was accordingly mortgaged. The Defendant No.2 as a guarantor too informed the Plaintiff that he is in possession of immoveable properties of landed property covered under LSC No.103101/01/2366 of 2008 and movables at Zemabawk, Aizawl valued at Rs.6,05,000/- for mortgage of the loan. His movable properties include assets valued at Rs.6,95,647/-. The loan application was also accompanied by bio-data of the two defendants. In support of the loan application, defendant No.2 submitted irrevocable letter of authority dated 07.12.2009 issued by Sub-Divisional Education Officer, Mamit, Mizoram wherein it was certified that the Defendant No.2 was an employee of the said SDEO

Office, Mamit and further certified that he will not withdraw or revoke his authority even in case of transfer until the loan was fully repaid. After thoroughly verifying the loan application of the Defendant No.1 and its supporting documents, the Plaintiff Bank decided to sanction cash credit loan to the Defendant No.1 and thus disbursed Rs.7,00,000/- (Rupees Seven Lakhs) to the Defendant No.1 by making banker cheques and through Account No.30266763046 on different dates 27.10.2007, 06.11.2011, and 11.11.2010. However, the Defendant No.1 failed to repay the loan. The Plaintiff had reminded her to repay the loan on various dates and written reminder was given to her on 27.01.2012 and 12.10.2013. Still the Defendant No.1 failed to fulfil the reminder letters thereby causing irregular accrued amount of Rs.2,94,569/- as on 28.06.2011 and the balance from record was Rs.5,32,851/- with a total outstanding dues till 01.04.2012 was Rs.8,27,420/- with future interest. Perusal of the evidence on record reveals that the Defendant No.1 had taken/availed loan of cash credit facilities from the Plaintiff bank amounting to Rs.7,00,000/- with interest at a rate of Rs.12.25%. However, the Defendant No.1 failed to repay the cash credit loan disbursed to him thereby making accumulation of outstanding balance of Rs.8,27,420/- as on 01.04.2012. It further indicates that the Plaintiff had given written reminder to the Defendant for times and the latest being on 12.10.2013. On scrutiny of the pleadings, documents and evidence adduced by PW1, this Court has framed its opinion that the Defendant No.1 did actually avail cash credit loan from the Plaintiff bank but wilfully failed to repay the same thereby making irregularity. This Court therefore decided the present point of issue that the Defendant No.1 did avail cash credit loan amounting to Rs.7,00,000/- with interest at a rate of Rs.12.25% but did not repay the loan till date. Accordingly, this issue is decided in favour of the Plaintiff.

(3).Whether the Plaintiff is entitled to the relief claimed ?.If so, to what extent ?. The Plaintiff, in the present suit made eight points of claims against the Defendant No.1 such as:-

- (a) A decree in favour of the Plaintiff and against the Defendants.
- (b) A decree directing the Defendants to pay the Plaintiff the total outstanding dues amounting to Rs.8,27,420/- with interest at a rate of Rs 14.75% per annum from the date of irregularity of the loan repayment.
- (c) A preliminary decree for closure or mortgage property covered under LSC No. 919/1990 and LSC No. 103101/01/2366 of 2008 and to pass and order for sale of the said properties by way of auction and to pass necessary order for adjustment of accounts with the sale proceed.
- (d) For a decree directing the defendants to redeem the mortgaged properties on payment of Rs.8,27,420/- with interest from 28.06.2011.
- (e) Liberty to proceed against other movable properties.
- (f) Attachment before judgement of the hypothecated stocks of business.
- (g) Any other relief as Hon'ble Court may be deem fit and proper in the interest of the case.
- (h) For costs of the suit.

On careful perusal of the decision made in aforementioned points of issue wherein the Court had decided them in favour of the Plaintiff, this Court has come to a conclusion to grant relief to the Plaintiff after having proved the case against the Defendant No.1 by the Plaintiff. However, the relief granted would be confined only in serial No.(g) and (f) of the prayer. Accordingly, the plaintiff is granted relief as follows:-

ORDER

(1). The Defendant No.1 namely Mrs Lalremsangi w/o Lalthantluanga, Dawrpui, Aizawl shall repay her loan dues amounting to Rs.8,27,420/-(Rupees eight lakhs, twenty seven thousand, four hundred twenty)only to the Plaintiff Bank within a period of 12(twelve) months from the date of this order without further interest failing which further legal action would be initiated against her as per relevant provisions of law.

(2).The Defendant No.1 shall further pay costs of the suit i.e Rs.11,740/-(Rupees eleven thousand, seven hundred forty)only to the Plaintiff.

(3).The mortgaged properties, if any, now kept in the custody of the Plaintiff shall be released to the mortgagors (defendants) only after the Defendant No.1 fully repaid the amount she has been ordered to pay by this Court.

Draw decree accordingly.

With this order, the present suit stands disposed of.

Sd/-R.VANLALENA

Senior Civil Judge-II
Aizawl District, Aizawl.

Memo.No.....Sr.CJ-II/A/2016 :Dated Aizawl, the 15th July, 2016

Copy to:-

1. The District & Sessions Judge, Aizawl Judicial District, Mizoram,Aizawl.
2. Chief Manager, State Bank of India, Mission Veng Branch, Aizawl C/o Mr.TJ.Lalnuntluang, Advocate.
3. Lalremsangi,Prop. Dee Eff Fashion,D/47, Millenium Centre, Aizawl W/o Lalthantluanga R/o H.No.A-26, New Market, Dawrpui, Aizawl.
4. Smt. Vanlalpari, D/o Thangchuailova (L)R/o Rawpuichhip.
5. Lalthantluanga, S/o Lianhrima, R/o H.No. A-26, New Market, Dawrpui, Aizawl.
6. Judicial Section.
7. Case Record.
8. Guard File.

PESHKAR