

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

**Title Suit No.48 of 2014**

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

.....Plaintiff.

Versus-

1.Mrs.Lalhmingmawii  
D/o.Lamlanthanga(L)  
Prop.Ammel Enterprise  
R/o.Ch.Chhunga Building  
A/12,SaronVeng,Aizawl.

2.Mrs.LalchhanlianiSailo,  
W/o.R.Lalngaihawma  
R/o.Bungkawn, Aizawl.

3.Mr.R.Lalngaihawma  
S/o.Thanzinga(L)  
R/o.Bungkawn,Aizawl.

....Defendants.

**BEFORE**

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

Appearance.

For the Plaintiff :Mr.TJ.Lalnuntluanga, Advocate.  
For the Defendants :Mrs.Lalhmingmawii&Ors.

Date of Hearing :Dt.11.03.2016.  
Date of Judgment :Dt.11.03.2016.

**JUDGMENT AND ORDER.**

The facts of the case leading to the filing of the present Title Suit No.48 of 2014 as reflected in the plaint may be reflected as follows:-

1.The Plaintiff is State Bank of India, Mission Veng Branch, Mission Veng, Aizawl and is running a business of banking in various places including within Mizoram which is constituted under the State Bank of India Act, 1955 carrying on its business under the Banking Regulation Act, 1949. The registered local head office is at Gwuhati and the present plaintiff is running its business through the Chief Manager, Mission Veng Branch, Mission Veng, Aizawl.

2. The Defendant No.1 is a proprietor of M/s Ammel Enterprise dealing business of stationary store and is residing at SarawnVeng, Aizawl. The Defendant No.2 is the owner of mortgaged property-Land Settlement Certificate(LSC in short)No.Azl 4433 of 1986. The Defendant No.3 is a government servant working in Power & Electricity Department, Government of Mizoram. Both the Defendants No.2&3 stood as guarantors in favour of the Defendant No.1. in the present suit.

3. The Defendant No.1 applied for loan under Small Scale Industries Finance Credit Facilities in the Plaintiff Bank on 28.01.2009 for a sum of Rs.4,00,000/- for which she submitted details of her immoveable properties i.e LSC No. .Azl 4433 of 1986 located at MaubawkVeng valued at Rs.7,80,000/- and moveable properties worth Rs.9,72,000/- while making opinion reports. The Defendant No.2 too informed the Plaintiff about her moveable and immoveable properties like LSC No. Azl.20 of 1986 and a Assam-typed building worth Rs.7,00,000/-.The Defendant No.2 offered her land covered under LSC No.4433 of 1986 as mortgage property in an application for loan by the Defendant No.1. In their application for the loan, the Defendant No.3 also informed the Plaintiff Bank that he has an immoveable property /land covered under LSC No.367 of 1976 worth Rs.6,00,000/- and moveable assets worth Rs.2,09,634/-.The Defendants No.1&2 submitted their bio-data in the application for the loan.

4. The Defendant No.3 submitted an irrevocable letter of authority dated 29.07.2008 issued by his employer- Executive Engineer, Motor Relay &Testing Division, Aizawl, Mizoram wherein the Defendant No.3 was certified to be their employee. The Defendant No.3 further agreed that in case of even his transfer, he will not be entitled to withdraw or revoke the authority letter until the debt of the aforesaid account inclusive of interest to the Plaintiff has been liquidatedfor which his written consent was obtained.

5.The Plaintiff Bank had carefully examined the applicant including the documents submitted along with the application. Having satisfied with the application, the plaintiff decided on 18.02.2009 to sanction cash credit loan as applied for by the Defendant amounting to Rs.4,00,000/-wherein the rate of interest was stated at Rs.12.25% per annum subject to revision of the interest rate from time to time as per the direction of the Reserve Bank of India.

6.The Defendant No.1 and Defendant No.2 agreed to the terms and conditions laid down by the Plaintiff and thereafter, the Defendant No.1 executed agreement of loan and Defendant No.2 executed Agreement on hypothecation on 18.02.2009. Thereafter, the Plaintiff bank had sanctioned the loan money amounting to Rs.4,00,000/-with interest at a rate of Rs.12.25% per annum to the Defendant No.1 with a start up period of 12 months to be repaid in 36

instalments including other costs and charges as per the loan agreement. The Defendant No.1 also executed Stipulation and covenants on 18.02.2009.

7.Subsequently, the Defendant No.2 mortgaged LSC No.Azl.4433 of 1986 as a security for the loan availed by the Defendant No.1. The Plaintiff through Lawyer carefully examined the mortgaged property in order to satisfy itself that the Defendant No.2 hold the title over the mortgaged property. The Plaintiff thereafter, disbursed Rs.4,00,000/- to the Plaintiff by issuing banker cheques through Account No.30684946807.

8.The Plaintiff had been reviewing the repayment performance of the Defendant No.1 and observed that the Defendant No.1 neglected and failed to repay the loan and performed unsatisfactorily which led to irregularity towards repayment of loan amount together with the interest. Consequently, the Plaintiff had informed the Defendant No.1 to make regular repayment of his loan on various occasions and gave him written reminder on 25.01.2011 27.01.2012, and on 12.10.2013. However, the Defendant No.1 still failed to resume repayment of the loan which led to accrued amount of Rs.2,52,902/- as on 30.05.2011 and the balance from the record is Rs.3,81,092/-. Therefore, the total outstanding dues till 01.04.2011 is Rs.6,33,994/-plus future interest.

9. That in spite of persistent efforts on the part of the Plaintiff to get back the loan borrowed by the Defendant No.1, the Defendant No.1 failed to repay the loan money. In such circumstances the Plaintiff finds no other alternative but to charge and foreclose the mortgaged land covered by LSC No.Azl.4433 of 1986 and therefore, pray the Court for an order for recovery of the balance to be legally recovered from the Defendant No.2 by selling the landed properties covered under LSC Azl.4433 of 1986.

10.The Defendant No.1 had given written information to the Plaintiff on 01.03.2012 about her failure to repay her loan in due times due to different problems and further informed that she was trying her level best to regularise her loan account for which she executed revival letter on 01.03.2012 on the hypothecation agreement. As such, the cause of action is surviving in the instant suit as the same is instituted within time.

11. That the inaction of the Defendant No.1 in failing to repay the loan money with the interest was highly illegal and amounts to cheating. In fact, the Defendant No.1 has no excuse for not prepaying her loan dues amounting to Rs.6,33,994/- with interest thereon and the Defendant No.1 is legally bound to repay the loan dues with the interest agreed upon.

12. The cause of action arose when the Defendant No.1 borrowed a sum of Rs.4,00,000/- from the Plaintiff on 19.02.2009 and the cause of action again arose when the Defendant No.1 had committed irregularities in repayment of loan on 30.05.2011 and the letter of information on 01.03.2012 and execution of revival letter on 01.03.2012. Agreement of loan cum hypothecation and when the Defendant No.1 had acknowledged his debt to the Plaintiff for repayment of loan with interest. The day when the Defendants executed the agreement with the Plaintiff bank and the same is still continues when the Defendants deposited with the Plaintiff the title deed covered by LSC No.Azl.4433 of 1986 whereby the

limitation is extended by twelve years for foreclosure and sell of the mortgaged properties. Thus the cause of action still survives.

13. That by virtue of the creation of the Equitable Mortgage with the Plaintiff bank for the landed properties covered under LSC.No.Azl 4433 of 1986, thus the suit falls within the purview of the Order 34, Code of Civil Procedure, 1908. As a result of this the Plaintiff desires to foreclose and sell of the said landed properties by giving the Defendants a chance to redeem the mortgaged property on payment of Rs.6,33,994/- together with the interest accrued at a rate of Rs.12.75% per annum from 30.05.2011.

14. The Plaintiff and the Defendants No.1,2&3 are residing within Aizawl city, as such this Court has territorial jurisdiction as well as pecuniary jurisdiction to entertain the suit.

15. For the purpose of Court fees, the instant suit is valued at Rs.6,33,994/- and accordingly the Plaintiff is submitting court Rs.9,463/- as court fees along with the plaint in accordance with the provision of the Mizoram Court Fees (Amendment) Act, 1995.

16. The Plaintiff claims the following reliefs:-

(a). For a decree in favour of the Plaintiff and against the Defendants.

(b). For a decree directing the Defendants to repay the total loan outstanding dues amounting to Rs.6,33,994/- with future interest at a rate of Rs.14.75% per annum from the date of irregularity of the loan till realisation of the full amount of dues.

(c). To pass a preliminary decree for foreclosure of the mortgaged property covered under LSC.No.Azl 4433 of 1986 and to pass an order of sale of the said mortgaged property by way of auction and to pass necessary order /orders for adjustment of the account with the sale of the mortgaged property.

(d). To pass a decree directing the Defendants to redeem the Mortgaged LSC No.Azl.4433 of 1986 on payment of Rs.6,33,994/- with interest as on 30.05.2011.

(e). Liberty to the Plaintiff to proceed against the other moveable and immoveable properties of the Defendants in case the sale proceeds of the mortgaged properties does not satisfy the loan dues.

(f). Attachment before judgment of the hypothecated stock of the business of the Defendant No.1.

(g). For any other reliefs as the Court may deem fit and proper in the facts and circumstances of the case.

(h). For cost of the suit.

17. On the other hand, the Defendant No.1 submitted her written statement on 15<sup>th</sup> July, 2015 stating as follows:-

*Khawngaihtakinkadilna hi min  
 pawmsaktheihchuankalawmhleang.Kapu,  
 kanchhungkualehkeimahinharsatnalianantakkantawhtakavanginka loan  
 bakarulthathai ta lova.  
 Mahsetunahchuantheihtawptakmeuhchhuahinthlatininkantheihangath  
 a a rawnrulhkan tum taw hang. I  
 ngaihhnathiamnakarawndiltakmeuhmeuhani.*

*I rintlak,*

**LALHMINGMAWII**

(I would be very obliged if you could grant my prayer. As I and my family met hardships and difficulties in repayment of the loan, I therefore could not resume repayment of the loan. However, I have now prepared to repay the loan with regularity by trying my level best and prayed for your sympathetic consideration for my failure to repay the loan as per the agreement.)

18. Perusal of the hand written statement of the Defendants No.1 indicates that she does not deny the fact of her taking loan from the State Bank of India, Mission Veng Branch, Aizawl and admitted the liability to repay the loan. She apologised for non repayment of the loan and also stated that she had tried her level best to regularly repay the loan. I have heard the Ld. Counsel for the Plaintiff Mr.TJ.Lalnuntluanga for the Plaintiff bank who made a submission to the Court that the Court may find the hand written statement of the Defendant No.1 sufficient to act upon for making a judgment on admission on the basis of the admission made by the Defendant No.1 in her written statement. Considering the submissions made by the parties, this Court has come to a conclusion to pass a judgment on admission by virtue of the provision contained under **Order 12, Rule 6 of the Code of Civil Procedure, 1908** which provides as follows:-

**Judgment on Admission:-(1) Where admission of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for determination of any other question between the parties, make such order or give such judgment as it may think fit , having regard to such admissions;**

**(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.**

19. In the instant suit, there were 3(three) Defendants represented by Defendants No.1. The said defendant not only represented the all other defendants, but also claimed the liability of the loan and also took responsibility to repay the loan by her. The said defendant admitted the liability of the loan. After having heard the parties from both sides and after having considered their submissions, this Court has made the judgment and order on admission as follows:-

**ORDER**

(1).The Defendant No.1 shall repay her loan dues amounting to Rs.6,33,994/- (Rupees six lakh, thirty three thousand, nine hundred ninety four)only to the Plaintiff being the loan dues as on 30.05.2011 within a period of 6(six) months from the date of this order without calculating further interest on the loan amount after the period of 30.05.2011.

(2).The Defendant No.1 is hereby allowed to waive the interest beyond the period of 30.05.2011.

(3).Parties shall bear their own cost for pursuit of the case.

With this order, the present suit stands disposed of.

Given under my hand and Seal of this Court on this 11<sup>th</sup> March, 2016.

**Sd/-R.VANLALENA**

Senior Civil Judge-II

Aizawl District, Aizawl.

Memo.No.....Sr.CJ-II/A/2016 : Dated Aizawl, the 11<sup>th</sup> March, 2016

Copy to:-

1. The District & Sessions Judge, Aizawl Judicial District, Mizoram, Aizawl.
2. State Bank of India, Mission Veng Branch, Represented by the Chief Manger, State Bank of India, Mission Veng Branch, Mission Veng, Aizawl.
3. Mrs.Lalhmingmawii, D/o.Lamlanthanga(L), Prop.Ammel Enterprise R/o.Ch.Chhunga BuildingA/12,Saron Veng, Aizawl.
4. Mrs.Lalchhanliani, W/o.R.Lalngaihawma (L) R/o.Bungkawn, Aizawl.
5. Mr.R.Lalngaihawma, S/o.Thanzinga(L) R/o.Bungkawn,Aizawl.
6. Judicial Section.
7. Case Record.
8. Guard File.

Peshker