

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

Money Suit No.232 of 2014.

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

.....Plaintiff.

Versus-

1. Smt. Lalthankhumi
W/o Zothanpuia (L)
Dawrpui, Aizawl
2. Smt. Zingpuii
W/o Zothlamuana
R/o Dawrpui, Aizawl.
3. Smt. Zosangliani
W/o Zohranga (L)
R/o Dawrpui, Aizawl.
4. Smt. Lalneihkimi
W/o Lalkunga
R/o Dawrpui, Aizawl.
5. Smt. Famkimi
W/o Zohrangzuala
R/o Dawrpui, Aizawl.
6. Smt. Zonunmawii,
D/o Buangpuii,
R/o Dawrpui, Aizawl.
7. Smt. Zakimi
W/o Rela
R/o Dawrpui, Aizawl.
8. Smt. Zokhumi,
D/o Hmingliana
R/o Dawrpui, Aizawl.
9. Smt. Ngurthanmawii,
W/o Lalsangzuala,
R/o Dawrpui, Aizawl.

10. Smt. Lalbiakdiki,
W/o Lalnunpuia,
R/o Dawrpui, Aizawl.

.....Defendants.

BEFORE

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

Appearance:

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

Date of hearing :Dt.06.05.2016.

Date of Judgment :Dt.06.05.2016.

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 Defendants are group members of Zonun Self Help Group and are all residents of Dawrpui, Aizawl, Mizoram.

4.The Defendants had approached the Plaintiff and applied for Agriculture term loan/loan assistance in the name of the Zonun Self Help Group (hereinafter referred to as (ZSHG) amounting to Rs.4,00,000(Rupees four lakhs) only on 10.01.2008 for ten members of the said ZSHG.

5.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.

6.On14.11.2007, the Defendants had made a resolution inside the group. As per the resolution of ZSHG, the Defendant No.1 was appointed as President and Defendant No.3asSecretary of the ZSHG respectively and further resolved that in the event of any member of the ZSHG unwilling to repay the loan, the group/ZSHG shall take responsibility of it.

7.The Plaintiff and the Defendants had executed articles of agreement for financing loan to the ZSHG on 27.02.2008. The representative of the ZSHG put and subscribed signatures on the loan agreement. As per the said agreement of loan, the ZSHG shall repay the loan in 36 months with equated monthly instalment of Rs.11,111.11/- with interest at a rate Rs.12% per annum subject to change in the rate of interest from time to time as per the Reserve Bank of India directives applicable to self help group. The said loan repayment shall commence from six month after disbursement of the loan amount. Moreover, inter-se agreement was also made by the members of ZSHG on 27.02.2008 and was put into black and white.

8. The Plaintiff, thereafter disbursed the loan sum amounting to **Rs.4,00,000/-** to the Defendants/ZSHG on dt.25.03.2008 through Account No.30337247965 by means of debit transfer.

9.After the disbursement of the said loan, the Plaintiff had been reviewing the performance of the loan account and observed that the Defendants/ZSHG had neglected and failed to make repayment of the loan amount and thus the loan account of the Defendant 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 21.01.2012 against the name of the President and Secretary of the ZSHG/Defendants. However, the Defendants failed to repay the loan. This resulted into irregular accrued amount of Rs.4,52,326/-as on 23.05.2011. Therefore, the total outstanding dues till date 08.10.2014 was Rs.8,41,214.89/- plus an interest as agreed upon

10. 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. The Defendants had executed revival letter on 11.06.2012 for the articles of agreement dated 27.02.2008 for financing the ZSHG. As such the cause of action is still surviving and the instant money suit is filed within the period of limitation.

11. 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.

12. The cause of action arose when the Defendants availed loan amounting to Rs.8,41,214.89/-from the Plaintiff on 23.05.2011 and the cause of action again arose had irregularities on repayment of the loan on 23.05.2011 and the execution of revival letter on 11.06.2012 of the articles of agreement for financing the loan to the ZSHG/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.

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

14. The instant suit is valued at Rs.8,41,214.89/-and the court fees amounting to Rs.11,740/- has been submitted alongwith the plaint.

15. 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.8,41,314.89/- with interest at a rate of Rs 14% per annum from the date of irregularity of the loan repayment.
- (c) Any other reliefs as the Court may deems fit and proper.
- (d) For costs of the suit.

16. On the other hand, the Defendants had been given times for submission of their written statements on various dates for which they were served summons and notices, but all the Defendants failed to submit written statements and consequently as prayed for by the Plaintiff through Ld Counsels, the case proceeded ex-parte against all the Defendants.

The Hon'ble Supreme Court of India in the case of **Ramesh ChandArdawatiyaVs- AnilPanjawni 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 thereunder, 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."

In compliance with the above judgment delivered by the Hon'ble Supreme Court of India, this Court in the instant suit framed the following points for determination instead of framing issues as follows:-

POINTS FOR DETERMINATION

- 17.(1). Whether the present suit is maintainable in its present form and style ?.
- (2). Whether the Defendants had taken loan amounting to Rs.4,00,000/- (Rupees Four Lakhs) from the plaintiff and failed to repay the said loan with interest at a rate of Rs.12% per annum ?.
- (3). Whether the Plaintiff is entitled to the relief claimed ?. If so to what extent ?

DECISION AND REASONS FOR DECISIONS.

18.(1).Whether the present suit is maintainable in its present form and style?.

The present suit had been filed by the plaintiff by a written plaint with photo copies of the plaint for supply to all the Defendants. The photo copies of plaint were furnished to all the Defendants. The Plaintiff duly valued the suit for which requisite amount of court fees had been paid as per the provision of the Court Fees(Mizoram Amendment) Act, 1995. The suit had been filed within time. There is no formal defect in the plaint. As there was no formal defect found in the plaint, the present suit is maintained and the same is decided in favour of the plaintiff on the ground mentioned above.

19.(2).Whether the Defendants (who were members of Zonun Self Help Group) had taken loan from the plaintiff amounting to Rs.4,00,000/- and failed to repay the same with the interest at a rate of Rs.12% per annum).

Mrs.C.Lalremtluangi, Deputy Branch Manager of the Plaintiff Bank as PW1 deposed before the Court that as per documents available in the Bank record and information given by the defendants, the defendants are group members of Zonun Self Help Group and they are residing at Dawrpui, Aizawl. The Defendants had applied for agriculture term loan/loan assistance in the name of their Group namely Zonun Self Help Group (ZSHGS) amounting to Rs.4,00,000/- for 10 (ten) members of their Group. The defendants also stated that they had agreed to repay the loan amount as per the repayment schedule which may be fixed by the bank with by giving signature of President and Secretary of Zonun Self Help Group. Thereafter, the plaintiff Bank had examined the documents submitted by the defendants and considering the defendants' necessity and request, the plaintiff decided to sanction agriculture term loan/loan assistance under the terms and conditions of State Bank of India. The defendants also agreed the terms and conditions laid by the plaintiff and made a resolution on dated 14.11.2007 wherein the defendants appointed Smt. Lalthankhumi as President and Smt. Zosangliani as the Secretary of the group for the representative of their group. The defendants group also promised in their resolution that in case if anybody among the members was unwilling to repay the loan, the group shall take responsibilities/liability. Moreover, the inter-se agreement was also executed by the defendants and they had subscribed their signature on the same date. Subsequently, the plaintiff bank had sanctioned the loan amount of Rs.4,00,000/- on dated 27.02.2008 as per the application of the Defendants by specifying and agreeing to repay 36 month/yearly instalment of Rs.11,111.11/- and interest on the loan will be @ Rs.12% per annum subject to change from time to time as per RBI directive applicable to SHG. After disbursement of full loan amount to the defendants by the plaintiff, the plaintiff had been reviewing the performances of the said loan account and observed that the defendants has failed and neglected to perform satisfactorily the loan account whereby the defendants failed to make repayment of the loan amount and as such the said loan account of the defendants become very irregular towards repayment of the loan. Subsequently, the plaintiff had given oral reminder on various dates to the defendants many times and written reminder was given to the defendants on dated 21.01.2012. However, the defendants had not responded to the reminder given by the plaintiff which resulted in the

irregularity accrued amount of Rs.4,52,326/- as on 23.05.2011 and the balance from the record is Rs.3,88,888.89/-. Therefore, the total outstanding dues till 23.05.2011 is Rs.8,41,214.89/- with plusplus future interest. The deposition of the PW1 revealed that the Defendants were group members of Zonun Self Help Group. They took agriculture loan amounting to Rs.4,00,000/-from the plaintiff bank with interest rate of Rs.12% per annum to be repaid in 36 instalments. However they failed to repay the loan by violating the terms and condition of the agreement they had signed for the loan which ultimately resulted into filing of the present suit by the plaintiff bank. From the deposition itself and on careful perusal of the records available on hand, this Court has come to form a decision that the Defendants had taken loan from the plaintiff bank amounting to Rs.4,00,000/- with interest rate of Rs.12% per annum. It also formed a decision that the Defendants had failed to repay the loan taken. Hence, the present point have been decided in favour of the Plaintiff holding that the Defendant had taken loan from the plaintiff bank but failed to repay the loan with the agreed rate of interest.

20.(3).Whether the Plaintiff is entitled to the relief claimed? If so to what extent?.

From the discussion made on the above two points, it has been clearly stated that the Defendants had taken loan amounting to Rs.4,00,000/-with interest @ Rs.12% per annum on 27.02.2008 in the name and for the members of Zonun Self Help Group, Dawrpui, Aizawl. All the Defendants were all members of the said self help group. However, they failed to repay the said loan. In spite of the persistent efforts of the plaintiff to get back the money borrowed by the defendants, no further payment has been received by the plaintiff till date. The inaction of the defendants in failing to repay the plaintiff of the loan amounts to cheating. In fact the defendants had no excuse for not repaying the plaintiff and their loan dues amounting to Rs.8,41,214.89p as on 23.05.2011 with plus future interest and the defendants is legally bound to pay the plaintiff all their dues with interest. In the instant case, even though the case had been proceeded ex-parte, yet the Court afforded opportunity to the Defendants to have a chance of cross examination of the plaintiff's witness. Despite duly summoned, the Defendants did not turn up in the Court to cross examine the plaintiff witness. As a result of this, this Court had formed an opinion that the Defendants have nothing to say in the Court which ultimately be inferred that they were in debt of the amount stated by the plaintiff. Having decided all the points in favour of the plaintiff, the present suit is decided in favour of the plaintiff and the Court finally made the order as follows:-

ORDER

- (1).The Defendants(ten members of Zonun Self Help Group)shall repay the principal loan amount with the interest calculated thereon till the institution of the present suit amounting to Rs.Rs.8,41,214.89/-(Rupees eight lacs, forty one thousand, two hundred fourteen and eight nine paise) only to the plaintiff bank within a period of one year from the date of this order by instalment or otherwise and failure to repay as per this order shall invite further legal actions as per laws.
- (2).The Defendants shall be charged no further interest beyond this amount and also beyond this date of order.
- (3).Parties shall bear their own cost.

Draw decree accordingly.

With this order, the present suit stands disposed of.

Given under my hand and Seal of this Court on this 6th day of May, 2016.

Sd/-R.VANLALENA

Senior Civil Judge-II
Aizawl District, Aizawl.

Memo.No.....Sr.CJ-II/A/2016 :Dated Aizawl, the 6th May, 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. Smt. Lalthankhumi, W/o Zothanpuia (L), Dawrpui, Aizawl
4. Smt.Zingpuui, W/o Zothlamuana, R/o Dawrpui, Aizawl.
5. Smt.Zosangliani, W/o Zohranga (L)R/o Dawrpui, Aizawl.
6. Smt.Lalneihkimi, W/o LalkungaR/o Dawrpui, Aizawl.
7. Smt. Famkimi, W/o ZohrangzualaR/o Dawrpui, Aizawl.
8. Smt.Zonunmawii,D/o Buangpuui,R/o Dawrpui, Aizawl.
9. Smt. Zakimi, W/o RelaR/o Dawrpui, Aizawl.
10. Smt. Zokhumi,D/o Hmingliana, R/o Dawrpui, Aizawl.
11. Smt. Ngurthanmawii,W/o Lalsangzuala, R/o Dawrpui, Aizawl.
12. Smt. Lalbiakdiki,W/o Lalnunpuia,R/o Dawrpui, Aizawl.
13. Judicial Section.
14. Case Record.
15. Guard File.

PESHKAR

TABLE OF INDEX

1. Exhibit P-1 is photo copy of application form for loan submitted by the defendants.
2. Exhibit P-2 is photo copy of Hriatpuina given by President, Village Council court, Dawrpui, Aizawl.
3. Exhibit P-3 is photo copy of letter of agreement.
4. Exhibit P-4 is photo copy of letter of authorisation.
5. Exhibit P-5 is photo copy of articles of agreement for financing Self Help Groups.
6. Exhibit P-6 is photo copy of inter-se agreement executed by members of Zonun Self Help Group.
7. Exhibit P-7 is photo copy of statement of account.
8. Exhibit P-8 is show cause notice given by plaintiff to the defendants.
9. Exhibit P-9 is statement of account belonging to Zonun Self Help Group.
10. Exhibit P-10 is photo copy of revival letter.

The defendants produced no documents.