

**IN THE COURT OF SENIOR CIVIL JUDGE- 2
AIZAWL DISTRICT: AIZAWL, MIZORAM**

CIVIL SUIT NO. 50 OF 2010

Plaintiff:

Mizoram Rural Bank
Aizawl Branch, Zarkawt- Aizawl
Represented by its Chief Manager

By Advocate's : Mr. L.R. Tluanga Sailo

Versus

Defendants:

1. Smt. Hmingthansangi
D/o Rohmingliana
Electric Veng
Near Hi-Tech Building
Aizawl – Aizawl District
2. Mr. K. Lalramliana
C/o Smt. Hmingthansangi
D/o Rohmingliana
Electric Veng
Near Hi-Tech Building
Aizawl – Aizawl District
3. Smt. Lalremtluangi
C/o Smt. Hmingthansangi
D/o Rohmingliana
Electric Veng
Near Hi-Tech Building
Aizawl – Aizawl District

Date of Judgment & Order : 25-04-2011

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 2

JUDGMENT & ORDER

BRIEF STORY OF THE CASE

The plaintiff is financial institution having registered office at Aizawl, Mizoram functioning under the Regional Bank's Act, 1976 represented by its Chief Manager, as the terms and conditions is agreed fully by the defendant no. 1 namely- Smt. Hmingthasangi and the defendant No. 3 namely- Smt. C. Lalremtluangi who is the holder of LSC No. 103101/01/774 of 2003 as mortgaged property, the defendant no. 2 also stood as guarantor. The plaintiff disbursed loan amounting to Rs.

3,00,000/- (Three lakhs rupees) to the defendant No. 1 on 15.02.2008 by establishing equitable mortgaged with interests rate at Rs. 14% p.a. subject to time to time revision on the direction of Reserve Bank of India for the purpose of setting up of mechanized carpentry workshop.

Due to failure to make payment of the same in time by the defendants, the instant suit for foreclosure and sale of properties etc. is instituted by the plaintiff. The requisite court fees worth amounts to Rs. 8324/- is also paid in full by the plaintiff at the time of filing the suit. The total amount due as on 05-03-2010 is Rs. 4,09,131/- and also prayed interest at 14% w.e.f. 06-03-2010 till realization.

Since the defendants neither appear nor submit their written statements if any while the suit has been instituted on 17/3/2010 after verified of summons duly served to both defendants, time stipulated under O. VIII, R. 1 of the CPC is lapse for a long period. Hence, impelled to proceed the case without written statements as held in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India** in connection with Writ Petition (civil) 496 of 2002 decided on 02/08/2005 reported in 2005 AIR 3353, 2005 (1) Suppl. SCR 929, 2005 (6) SCC 344, 2005 (6) SCALE 26, 2005 (6) JT 486. It is therefore axiomatic that written statement should be filed within thirty day from the date of service of summons (including duplicate copy of plaint) but extendable for another sixty days with speaking orders. It is further permissible to expand time frame exceeding ninety days where and when exceptional and rare cases/circumstances which I do not find in the instant case. As observed in **Smt. Sudha Devi Vs. M.P. Narayanan & Ors.** decided on 26/04/1988 reported in 1988 AIR 1381, 1988 (3) SCR 756, 1988 (3) SCC 366, 1988 (1) SCALE 952, 1988 (2) JT 217, it was held that-

“Even in absence of a defence the court cannot pass an ex-parte decree without reliable relevant evidence. The fact that the plaintiff chose to examine some evidence in the case cannot by itself entitle her to a decree.”

Reliance is therefore taken for proceeding of the suit as held in **Ramesh Chand Ardawatiya vs Anil Panjwani** decided on 5 May, 2003 reported in AIR 2003 SC 2508, 2003 (4) ALD 10 SC, the Supreme Court has held that-

“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 scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the 'point for determination' and proceed to construct the ex-parte judgment dealing with the points at issue one by one.”

The following points for determination is therefore chalked out-

1. Whether the plaintiff has cause of action or not
2. Whether the defendants are jointly liable or not
3. Whether the plaintiff is entitled to the relief claimed. If so, to what extend

EVIDENCE

The plaintiff produced only one witness namely- Mr. C. Zanghinglova, Deputy Chief Manager, MRB, Zarkawt Branch, he deposed that as requested by the defendant no. 1 during March, 2006, the loan amount at Rs. 3,00,000/- was disbursed for Small Scale Industry term by the plaintiff. The defendant no. 1 also executed the said terms and conditions at 13% interest per annum by mortgaging the landed property of the defendant no. 3 whilst the defendant no. 2 stood as guarantor

By making heavy reliance in the observations of Hon'ble Apex Court in the case of **Kumar Sudhendu Narain Deb vs Mrs. Renuka Biswas And Ors** decided on 13 November, 1991 and reported in 1992 AIR 385, 1991 SCR Supl. (2) 233, the suit being a mortgaged case be proceeded.

FINDINGS

Issue No. 1 Cause of action

No other evidence to divert findings adduced in the proceedings except the evidence of the plaintiff, which shows that a cause of action in favour of the plaintiff against the defendants must presumed as existed.

Issue No. 2 Joint liability of the defendants

The defendant no. 1 took a loan, as commonly known that there should be a guarantor and mortgaged property. Evidences in corroboration with the plaint clearly elicited that the defendant no. 1 is liable to repay the loan amount with agreed interest in the stipulated period. The defendant no. 2 also stood as guarantor could not also evade from his liabilities. The mortgaged property viz. landed property under LSC No. 103101/01/774 of 2003 is belonging to the defendant no. 3. I therefore find that the defendants become jointly liable in the instant debt case.

Issue No. 3 Entitlement of relief and it's extend

In the plaint, the plaintiff submitted that the interest rate is at 14% per annum but the plaintiff's witness deposed that the interest rate will be 13% per annum. Thus, the defendants will be liable to repay Rs. 4,09,131/- as on 05-03-2010 and also further liable to pay 13% interest rate per annum with effect from 06-03-2010 to the plaintiff.

ORDER

Thus, preliminary decree in the following terms is granted/awarded that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to 05.03.2010 is the sum of Rs. Rs. 4,09,131/- for principal with interest, and another 13% interest per annum till realisation, the sum

of Rs. 5000/- for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs. 15,324/- (Rs. 8324/- for court fees stamp + Rs. 7000/- for Pleader's fee) for the costs of this suit awarded to the plaintiff, making in all sum of Rs. 4,29,455/- plus 13% interest per annum to be reckoned from 6.3.2010 by compound Interest. And it is hereby ordered and decreed that the defendants do pay into Court on or before for 3rd day of June, 2011 or any later date up to which time for payment may be extended by the Court of the said sum of Rs. 8,40,235/- plus 13% interest per annum to be reckoned from 6.3.2010 by compound Interest till realization. In a very nutshell, if the above debt amount with interest may not be paid by the defendants on or before 3rd June, 2011 in the court, the mortgaged properties viz. LSC No. 103101/01/774 of 2003 will be liable to sale by way of auction and also liable to make deduction from the salary of the defendant no. 2 for recovery of the said amount.

Parties also have a right to approach the court when changes of the circumstances and situations occur even during the above stipulated period. Preliminary decree shall be drawn forthwith.

Give this copy along with preliminary decree to both parties.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2

Aizawl District: Aizawl

Memo No. CS/50/2010, Sr. CJ (A)/

Dated Aizawl, the 25th April, 2011

Copy to:

1. Mizoram Rural Bank, Aizawl Branch, Zarkawt- Aizawl, Represented by its Chief Manager through Mr. L.R. Tluanga Sailo, Advocate
2. Smt. Hmingthansangi D/o Rohmingliana, Electric Veng, Near Hi-Tech Building, Aizawl – Aizawl District through Mr. L.R. Tluanga Sailo, Advocate
3. Mr. K. Lalramliana C/o Smt. Hmingthansangi, D/o Rohmingliana, Electric Veng, Near Hi-Tech Building, Aizawl – Aizawl District through Mr. L.R. Tluanga Sailo, Advocate
4. Smt. Lalremtluangi, C/o Smt. Hmingthansangi D/o Rohmingliana, Electric Veng, Near Hi-Tech Building, Aizawl – Aizawl District through Mr. L.R. Tluanga Sailo, Advocate
5. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
6. Case Record

PESKAR