

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

MONEY SUIT NO. 08 OF 2011

Plaintiff:

Smt. Mary Lalhmasawni
W/o Mr. Remlalsiama
New Secretariat Complex
Khatla- Aizawl, Aizawl District

By Advocates

: 1. Mr. Lalfakawma
2. Miss Dorothy Lalrinchhani

Versus

Defendant:

4th Corner Business Union
Hunthar Veng, Aizawl
Aizawl District

Date of Judgment & Order : 29-04-2011

BEFORE

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

JUDGMENT & ORDER

GERMINATION OF THE CASE

This is a suit for recovery of Rs. 4,00,000/- (Rupees Four Lakhs only) alongwith interest calculated @ 3% per annum from 09.06.2007 till final payment. The plaintiff in her plaint submitted that she is a bonafide citizen of India, and a House Tax Paying native of Mizoram entitled to all the rights and protections guaranteed under the Constitution of India and other laws made there under, the defendant is a firm which has been carrying on business in Aizawl, Mizoram. On 09.06.2007, the plaintiff and the defendant executed an agreement to the effect that the plaintiff agreed to lend the defendant as loan a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) alongwith with an interest calculated @ 3% per month for a period of six (6) months. Later on 05.11.2007, the plaintiff and the defendant executed another agreement whereby the plaintiff agreed to lend the defendant as loan an additional sum of Rs. 2,00,000/- (Rupees Two Lakhs only) alongwith with an interest calculated @ 3% per month for a period of six (6) months. Thus by virtue of the said two (2) agreements mentioned above and herein, the defendant has borrowed a total sum of Rs. 4,00,000/- (Rupees Four Lakhs only) from the plaintiff, the plaintiff has made many requests to the defendant first in the month of December, 2007 for repayment of the borrowed sum of Rs. 2,00,000/- (Rupees Two Lakhs only) from defendant in respect of the Agreement dated 09.06.2007 and then again in the month of May, 2008 for repayment of the borrowed sum of Rs. 2,00,000/- (Rupees Two Lakhs only) from defendant in respect of the Agreement dated 05.11.2007 but to no avail till date. A legal notice dated 20.03.2009 was sent to the defendant through a legal counsel for recovery of the said borrowed amount and in reply to the legal notice dt. 20.3.2009,

the defendant wrote a letter dt. 9.4.2009 admitting that he had borrowed Rs. 6 lakhs and that as he was in difficulty, the loaner should wait for 3 months. Despite repeated requests for re-payment including by way of a legal notice dated 20.03.2009, the defendant has not taken any steps whatsoever for re-payment of the abovementioned borrowed amount till date. Since, the defendant did not pay any heed to the many requests made by not only the plaintiff but as well as the husband of the plaintiff, Mr. Remlalsiama for repayment of the loan amount, the husband of the plaintiff Mr. Remlalsiama filed a money suit for an amount of Rs. 6,00,000/- (Rupees Six Lakhs only) against the defendant bearing Money Suit No. 24 of 2009 in the Hon'ble Court of the Senior Civil Judge, Aizawl District, Aizawl on 04.05.2009. It may be mentioned therein that at that point, the defendant had allegedly converted both the loan accounts of the plaintiff and her husband into the name of the husband of the plaintiff *viz.* Mr. Remlalsiama. As such, the husband of the plaintiff, Mr. Remlalsiama under the belief that he had the authority to claim on behalf of the plaintiff, made a claim of Rs. 6,00,000/- (Rupees Six Lakhs only) i.e. Rs. 2,00,000/- (Rupees Four Lakhs only) which was loaned by him to the defendant and Rs. 4,00,000/- (Rupees Four Lakhs only) which was loaned by his wife (plaintiff) to the defendant vide Money Suit No.24/2009. As the husband of the plaintiff was not given legal authorization to claim on behalf of the plaintiff by the plaintiff and also as the evidence in Money Suit No.24/2009 showed that a sum of Rs. 2,10,000/- (Rupees Two Lakhs Ten Thousand only) was already paid to Mr. Remlalsiama, husband of the plaintiff, the Money Suit No. 24 of 2009 was dismissed by the Hon'ble Senior Civil Judge on 18.11.2010 through its Judgment and Order bearing memo no. MS/24/2009, Sr. CJ (A)/368 as the claim of Remlalsiama had been satisfied, though not the plaintiff's claim. As the Court of Senior Civil Judge did not delve (and rightly so) into the issues pertaining to the loan amount of Rs. 4,00,000/- (Rupees Four Lakhs only) given by the plaintiff to the defendant in the Money Suit No. 24 of 2009, the matter relating to recovery of the loan amount received by the defendant from the plaintiff for an amount of Rs. 4,00,000/- (Rupees Four Lakhs only) still remains unsettled. The defendant is now liable to pay a sum of Rs. 4,00,000/- (Rupees Four Lakhs only) with interest which may be calculated @9% per annum from 09.06.2007 in the interest of resolving this matter. The cause of action first arose in favour of the plaintiff on 09.04.2009 (i.e. the date of expiry of the legal notice dated 20.03.2009 for repayment of the loan amount) in Aizawl when the defendant failed to act upon the legal notice dated 20.03.2009 for repayment of the loan amount. The suit is valued at Rs. 4,00,000/- (Rupees Four Lakhs only) for the purpose of ascertaining pecuniary jurisdiction and Court Fee and as the plaintiff is a House Tax Paying native of Mizoram, the plaintiff is liable to pay Court Fee of Rs. 5,000/- (Rupees Five Thousand only) and accordingly the plaintiff has affixed Rs.5,000/- (Rupees Five Thousand only) as Court Fee. The plaintiff therefore prayed that this Court may be pleased to: a) pass decree for Rs. 4,00,000/- (Rupees Four Lakhs only) with interest calculated @9% per annum from 09.06.2007 till final payment in favour of the plaintiff and against the defendant b) Award pendentelite and future interest at the rate of 9% p.a. on the amount of Rs. 4,00,000/- (Rupees Four Lakhs only) c) award cost of the suit in favour of the plaintiff and against the defendant. And any further or other order(s) may be passed as this Court may deem fit and proper in the facts and circumstances of the case.

POINTS FOR DETERMINATION

Whilst the suit is instituted on 9/2/2011 and duly issued summon to the defendant and a receipt thereof is also submitted in the court. And after that applied substituted service of summons to the defendant by making publication in the Vanglaini Daily Newspaper Dt. 15th & 16th April, 2011, the defendant contumaciously fails to submit written statement or appear in the court. Thus, inevitable to proceed the case under O. VIII, R. 10 of the CPC, the following points should be determined in the case.

1. Whether the suit is barred by Res-Judicata or not
2. Whether the plaintiff has cause of action or not
3. Whether the plaintiff is entitled to the relief claimed or not. If so to what extend.

BRIEF ACCOUNT OF EVIDENCE

The plaintiff herself is the lone witness for the plaintiff, her deposition is extracted as below-

“That on 09.06.2007, the defendant and I executed an agreement wherein the defendant stated **“Vawiin 9.6.2007 hian, kei, Mary Lalhmasawni W/o Remlalsiama, R/o New Capital Complex, 4th Corner Business Union ah Rs. 2,00,000/- (Two lakhs) ka hman tir a, he ka pawisa hman tir atang hian apung thlatin za ah Rs. 3 (%) in ka hmantir a, he ka pawisa hmantir hi thla 6 (Six) atan kan inremsiam a, ka pawisa hmantir hi an hman hun tur chhung an hman zawhah ka la chhuak leh thei ngei tur a ni a, ka la chhuak theilo a nih chuan 4th Corner Business Union te hi thubuui ka siam sak thei ang”**

That on 05.11.2007, the defendant and I executed another agreement wherein the defendant further stated **“Vawiin 5.11.2007 hian, kei, Mary Lalhmasawni D/o Lallungmuana, R/o New Capital Complex, Aizawl hian 4th Corner Business Union ah Rs. 2,00,000/- (Two lakhs) ka hman tir a, he ka pawisa hman tir atang hian apung thlatin za ah Rs. 3 (%) in ka hmantir a, he ka pawisa hmantir hi thla 6 (Six) atan kan inremsiam a, ka pawisa hmantir hi an hman hun tur chhung an hman zawhah ka la chhuak leh thei ngei tur a ni a, ka la chhuak theilo a nih chuan 4th Corner Business Union te hi thubuui ka siam sak thei ang”**. Thus by virtue of the aforementioned agreements, the defendant has borrowed a total sum of Rs. 4,00,000/- (Rupees Four Lakhs only) from me.

That as the time for re-payment expired, I made requests to the defendant first in the month of December, 2007 for repayment of the borrowed sum of Rs. 2,00,000/- (Rupees Two Lakhs only) from defendant in respect of the Agreement dated 09.06.2007 and then again in the month of May, 2008 for repayment of the borrowed sum of Rs. 2,00,000/- (Rupees Two Lakhs only) from defendant in respect of the Agreement dated 05.11.2007 but to no avail till date.

That out of sheer frustration, desperation and with the utmost hope of settling the matter peacefully out of court, I had sent legal notice dated 20.03.2009 to the defendant through a legal counsel for recovery of the said borrowed amount.

That it may be mentioned herein that the defendant had also borrowed from my husband viz. Mr. Remlalsiama a sum of Rs. 2,00,000/-

(Rupees Two Lakhs only) with interest calculated @3% per month by executing an agreement dated 05.11.2007.

That in reply to the legal notice dt. 20.3.2009, the defendant wrote a letter dt. 09.04.2009 admitting that he had borrowed in total a sum of Rs. 6 Lakhs from myself and my husband and that as he was facing financial difficulty, he informed us that we should wait for 3 months time. As the request of the defendant was not acceptable and as the defendant did not pay any heed to the many requests made by not only myself but as well as my husband, Mr. Remlalsiama for repayment of the loan amount, my husband, Mr. Remlalsiama, filed a money suit for an amount of Rs. 6,00,000/- (Rupees Six Lakhs only) against the defendant bearing Money Suit No. 24 of 2009 in the Hon'ble Court of the Senior Civil Judge, Aizawl District, Aizawl on 04.05.2009. It may be mentioned herein that at this point, the defendant had allegedly converted both the loan accounts i.e. my bank account and that of my husband into the name of my husband, Mr. Remlalsiama. As such, my husband under the belief that he had the authority to claim on my behalf, made a claim of Rs. 6,00,000/- (Rupees Six Lakhs only) i.e. Rs. 2,00,000/- (Rupees Four Lakhs only) which was loaned by my husband to the defendant and Rs. 2,00,000/- (Rupees Four Lakhs only) vide agreement dated 09.06.2007 and another Rs. 2,00,000/- (Rupees Four Lakhs only) vide agreement dated 05.11.2007 i.e. a total of 4,00,000/- (Rupees Four Lakhs only) which was loaned by me to the defendant vide Money Suit No.24/2009.

That as I had inadvertently not given my husband legal authorization to claim on my behalf and also as the evidence in the Money Suit No.24/2009 showed that a sum of Rs. 2,10,000/- (Rupees Two Lakhs Ten Thousand only) was already paid to my husband, the Money Suit No. 24 of 2009 was dismissed by the Hon'ble Senior Civil Judge on 18.11.2010 through its Judgment and Order bearing memo no. MS/24/2009, Sr. CJ (A)/368 as the claim of Mr. Remlalsiama, the plaintiff in the said case had been satisfied, though not my claim.

That it may be mentioned herein that during the proceeding of Money Suit No. 24/2009, the defendant produced two witnesses viz. his wife, Annie K Dawngi and one Francis Chawngdingliana. The witness Francis Chawngdingliana had stated in his deposition that "*Cheng nuai ruk (Rs. 6 lakhs) atanga kan pek tawh Rs. 2,10,000/- paiha ala bang zawng leh kan intiamna anga a interest te chu kan la ba ngei a ni tih ka pawm*" thus admitting that the defendant had indeed borrowed a total sum Rs. 6 Lakhs from myself and my husband Mr. Remlalsiama and that barring Rs. 2.1 Lakhs which have been disbursed to my husband, the remaining capital and interest is still to be paid by the defendant.

That the defendant failed to keep the promise he made to pay the borrowed amount of Rs. 4,00,000/- (Rupees Four Lakhs only) and/ or its interest till date.

That despite my repeated requests for re-payment, the defendant has not taken any steps whatsoever for re-payment till date. Due to the non-payment by the defendants, I have suffered immense harm, injury and loss.

Ext. P- 1 is House tax payee certificate

Ext. P- 2 is a copy of 'Intiamkamna' Dt. 9.6.2007

Ext. P- 3 is a copy of 'Intiamkamna' Dt. 5.11.2007

Ext. P- 4 is a copy of Legal Notice Dt. 20-03-2009

Ext. P- 5 is a copy of letter Dt. 9/4/2009 sent by the defendant to the husband of the plaintiff

Ext. P- 6 is a copy of Intiamkamna' Dt. 5.11.2007

Ext. P- 7 is a copy of plaint in MS No. 24 of 2009
 Ext. P- 8 is a copy of Exam in Chief of Annie K. Dawngi
 Ext. P- 9 is a copy of Exam in Chief of Mr. Chawngdinglana
 Ext. P- 10 is a copy of Judgment & Order Dt. 18-11-2010 in connection with MS No. 24 of 2009”

None for the defendant appear in the proceedings even to cross examine the said PW and no evidences of the defendant is also led. Thus, closed evidences in the suit.

FINDINGS

Point No. 1 Res Judicata

The Judgment & Order Dt. 18-11-2010 is concluded that “In a nutshell, the plaintiff not only failed to proof the pleadings but also fails to plead the specific relief and also fails to elicit the exact cause of action and its exact date to purport even limitation law and further fails to estimate the value of the suit properly to determine the requisite court fees and pecuniary jurisdiction of the court. I therefore have no option except to dismiss of the suit. Otherwise misleading or eroding of justice from the true sense and correct position. The suit is therefore dismissed on the ante grounds.” Thus, the suit was not disposed on merit due to dismissal in the light of O. VII, R. 11 of the CPC, the instant suit is not therefore barred by Res Judicata whilst the plaintiff is also different from the said previous suit.

Point No. 2 Cause of action

Since no other evidence which can divert the pleadings and evidence of the sole witness of the plaintiff is available on record, I could not have any diverse views to annihilate the cause of action mentioned in the pleadings corroborated by the evidence of the plaintiff.

Point No. 3 Entitlement of relief claimed and it's extend

As per the findings of points nos. 1 & 2, the plaintiff is entitled to the relief sought but no other views except in the pleadings and prayers for Rs. 4,00,000/- (Rupees Four Lakhs only) with interest calculated @9% per annum from 09.06.2007 till final payment in favour of the plaintiff and against the defendant

ORDER

The defendant is therefore directed to pay Rs. 4,00,000/- (Rupees Four Lakhs only) with interest calculated @9% per annum from 09.06.2007 till realization to the plaintiff.

At the last stage, costs of the suit is the very essence and mandatory for the end of justice as very recently observation in the case of **Vinod Seth vs Devinder Bajaj & Anr.** disposed of on 5 July, 2010 in connection with Civil Appeal No. 4891 of 2010 [Arising out of SLP [C] No.6736 of 2009], wherein, the Hon'ble Supreme Court has held that-

“23. The provision for costs is intended to achieve the following goals: (a) It should act as a deterrent to vexatious, frivolous and speculative litigations or defences. The spectre of being made liable to pay actual costs should be such, as to make every litigant think twice before putting forth a vexatious, frivolous or speculative claim or defence. (b) Costs should ensure that the provisions of the Code, Evidence Act and other laws governing procedure are scrupulously and strictly complied with and that parties do not adopt delaying tactics or mislead the court. (c) Costs should provide adequate indemnity to the successful litigant for the expenditure incurred by him for the litigation. This necessitates the award of actual costs of litigation as contrasted from nominal or fixed or unrealistic costs. (d) The provision for costs should be an incentive for each litigant to adopt alternative dispute resolution (ADR) processes and arrive at a settlement before the trial commences in most of the cases. In many other jurisdictions, in view of the existence of appropriate and adequate provisions for costs, the litigants are persuaded to settle nearly 90% of the civil suits before they come up to trial. (e) The provisions relating to costs should not however obstruct access to courts and justice. Under no circumstances the costs should be a deterrent, to a citizen with a genuine or bonafide claim, or to any person belonging to the weaker sections whose rights have been affected, from approaching the courts.”

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, the Hon’ble Apex Court has further held that-

“...The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court fee, lawyer’s fee, typing and other cost in relation to the litigation.”

The defendant is therefore further direct to pay cost of the suit to the plaintiff at Rs. 12,000/- (Rs. 7000/- for Lawyers fee + Rs. 5000/- for Court fees) whilst the plaintiff is totally at loss.

The case shall stand disposed of accordingly. Give this copy to both parties and all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. MS/8/2011, Sr. CJ (A)/

Dated Aizawl, the 29th April, 2011

Copy to:

1. Smt. Mary Lalhmasawni W/o Mr. Remlalsiama, New Secretariat Complex, Khatla- Aizawl, Aizawl District through Mr. Lalfakawma, Advocate
2. 4th Corner Business Union, Hunthar Veng- Aizawl through Mr. Lalfakawma, Advocate
3. P.A. to Hon’ble District & Sessions Judge, Aizawl Judicial District: Aizawl
4. Case Record

PESKAR