

**IN THE COURT OF SENIOR CIVIL JUDGE- 1
AIZAWL DISTRICT: AIZAWL, MIZORAM**

CIVIL SUIT NO. 23 OF 2011

Plaintiff:

Mizoram Rural Bank
Khatla Branch, Khatla- Aizawl
Represented by its Branch Manager

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

Versus

Defendants:

1. Mr. M.C. Lalfala
S/o Hrangluaia
Bungkawn, Aizawl
2. Mr. Lalchhanhima, SDO
C/o Aizawl Water Supply Project Sub-Division
Aizawl South, Tuikhuahtlang, Aizawl

By Advocates :

For the defendant no. 1 : 1. Mr. S. Pradhan
2. Mr. Albert V.L. Nghaka
3. Mr. Lalropara Singson

Proforma defendants:

1. Smt. Ngurdingliani
W/o M.C. Lalfala
Khatla, Aizawl
2. Chief Manager
Mizoram Cooperative Apex Bank Ltd.
Dawrpui Branch, Dawrpui
Aizawl

By Advocates :

For the pro. defendant no. 2 : Mr. W. Sam Joseph

Date of Arguments : 08-12-2011

Date of Judgment & Order : 12-12-2011

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 1

JUDGMENT & ORDER

BRIEF STORY

The plaintiff is financial institution having registered office at Aizawl, Mizoram functioning under the Regional Bank's Act, 1976 represented by its Branch Manager, on the application submitted by the defendant no. 1 on 25.2.2009 and as the terms and conditions is agreed fully by the defendant no. 1 namely- Mr. M.C. Lalfala with the defendant no. 2 as Guarantor executed the Loan Agreement and the Guarantee Agreement on 25th March, 2009. The plaintiff had disbursed the loan amounting to Rs. 60,00,000/- (Rupees sixty lakhs) to the defendant no. 1 on 25.3.2009 through his account at the interest rate at 12.5% per annum subject to the revision on the direction of Reserve Bank of India and the loan was to be repaid in 120 equated monthly installments of Rs. 91,774/- which commenced after the third months from the date of disbursement and the loan being mortgage loan was also secured by creating equitable mortgage between the parties. Subsequent to the sanction of the loan, the defendant no. 1 failed to repay the loan from the month of April, 2009 in advertence with the agreement. The outstanding loan amount as on 16.3.2011 is Rs. 75,96,345/- compounded with an interest rate of 12.5% per annum with effect from 17.3.2011 till realization. Although a number of requests demanding regularization of loan amount was made to the defendant no. 1, the defendant no. 1 remains fails to regularize the same. Before approaching the court, the plaintiff came to learn that the defendant no. 1 had already deceived the plaintiff by submitting the LSC No. Azl. 242 of 1987 located at Bungkawn, Aizawl instead of LSC No. Azl. 610 of 1980 located at Bungkawn West which was intended for a security by way of Equitable Mortgage. The defendant no. 1 agreed to deposit LSC No. Azl. 610 of 1980 in order to create Equitable Mortgage as the eight (8) storied building is included in the mortgage. Court fees at Rs. 11,000/- is also paid by the plaintiff. The plaintiff therefore prayed that (i) a decree for recovery of Rs. 75,96,345/- compounded with an interest rate of 12.5% per annum with effect from 17.3.2011 till realization (ii) a decree for foreclosure and sale of the properties covered by LSC No. Azl. 242 of 1987 located at Bungkawn, Aizawl and the LSC No. Azl. 610 of 1980 located at Bungkawn West belonging to the defendant no. 1 which is in the custody of proforma defendant no. 2 for recovery of the outstanding loan amounting to Rs. 75,96,345/- (Seventy five lakhs, ninety six thousand, three hundred and forty five rupees) compounded with an interest rate of 12.5% per annum with effect from 17.3.2011 till realization (iii) in case the net proceed of the sale do not cover the outstanding due in the event of sale, a decree directing the defendants no. 1 and 2 to pay the balance thereon with cost of the suit for the interest of justice.

The proforma defendant no. 2 filed written statement and also preferred counter claim. In the written statements, they stated that they are

not aware of the dealings between the plaintiff and the defendant no. 1. No more comments on merit of the case is existed in their part.

In the counter claim submitted by proforma defendant no.2, they submitted that the proforma defendant no. 1 had approached the proforma defendant no.2 for availing loan way back in 1996. When the loan amounting to Rs. 10,00,000/- was sanctioned, the defendant no. 1 Mr. M.C. Lalfala allowed the proforma defendant no. 1 to mortgage the property under LSC No. Azl. 610 of 1980 located at Bungkawn West. It was thereby mortgaged accordingly by executing mortgage deed on 14th August, 1996. Ever since August, 1996, the original LSC of LSC No. Azl. 610 of 1980 located at Bungkawn West is in the custody of the proforma defendant no. 2. As the proforma defendant no. 1 need more money for running their business, a sum of Rs. 25,00,000/- is sanctioned to the proforma defendant no. 1 as loan and was acknowledge by the proforma defendant no. 1 on 19.12.2002. A fresh mortgage deed was executed in respect of LSC No. Azl. 610 of 1980 located at Bungkawn West. The said loan amount was to be repaid on or before 19th Dec., 2007 but till date the proforma defendant no. 1 fails to recover. The outstanding loan amount as on 7th June, 2011 becomes Rs. 14,51,340/- (Fourteen lakhs, fifty one thousand, three hundred and forty) with interest till realization due by the proforma defendant no.1 and Mr. V. Zokungpuia. Court fees at Rs. 11,000/- is also paid by the proforma defendant no. 2 in full. The proforma defendant no. 2 therefore prays that- (i) a decree declaring that the proforma defendant no. 1 and the defendant no. 1 and Mr. V. Zokungpuia are jointly and severally liable to pay the sum of Rs. 14,51,340/- (Fourteen lakhs, fifty one thousand, three hundred and forty) to the proforma defendant no. 2 (ii) cost of the suit i.e. pleaders fee, court fees and all other expenses and the pendente lite interest with future interest in case of loan account No. SSI 11/02 against the proforma defendant no. 1 and the defendant no. 1 and Mr. V. Zokungpuia jointly and severally (iii) by way of mandatory and permanent injunction to restrain the proforma defendant no. 1 from disposal of the mortgage property (iv) attachment and sale of the moveable and immoveable properties of the proforma defendant no. 1 including the property covered by LSC No. Azl. 610 of 1980 and (v) any other decree in favour of the proforma defendant no. 2 for justice, good conscience and equity.

The other parties did not contest in the instant case although ascertained that summons were duly served to them.

ISSUES

The following issues were framed on 15.9.2011 such as-

1. Whether there is cause of action for the suit in favour of the plaintiff as well as the proforma defendant no. 2
2. Whether the defendant no. 1 duly mortgaged the property under LSC No. Azl. 610 of 1980 to the proforma defendant no. 2 for the loan taken by the proforma defendant no. 1

3. Whether the proforma defendant no. 2 is entitled to sale the mortgage landed property for realizing the dues to the proforma defendant no. 2 amounting to Rs. 14,51,340/- (Fourteen lakhs, fifty one thousand, three hundred and forty) plus interest rate at 13% per annum with effect from 8.6.2011
4. Whether the defendant no. 1 misguided/deceived the plaintiff by mortgaging the land covered by LSC No. Azl. 242 of 1987 and showing the land covered by LSC No. Azl. 610 of 1980 which was already mortgaged to the proforma defendant no. 2.
5. Whether the plaintiff is entitled to get the relief claimed from the excess amount for the sale proceeds of LSC No. Azl. 610 of 1980 after fulfilling the liabilities to the proforma defendant no. 2
6. Whether the plaintiff and proforma defendant no. 2 are entitled to the relief claim. If so, to what extend and what mode.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced only one witness namely- Smt. Lalchhanhimi, Branch Manager, Mizoram Rural Bank, Khatla Branch, Aizawl (Hereinafter referred to as PW). In her examination in chief, being the plaintiff she reiterated the contents in her plaint. She further deposed that Ext. P- 1 is the loan agreement, Ext. P- 2 is the Guarantee agreement, Ext. P-3 is the Mortgage landed property and Ext. P- 4 is the intended mortgaged landed property.

In her cross examination, she deposed that the proforma defendant no. 1 is the wife of defendant no. 1. She also known that the proforma defendant no. 1 had also obtained a loan for ten lakhs rupees from Mizoram Cooperative Apex Bank and thereby mortgaged LSC No. Azl. 610 of 1980. The original LSC of the LSC No. Azl. 610 of 1980 is not their possession. The defendant no. 1 had mortgaged LSC No. Azl. 242 of 1987 in their Bank.

For the proforma defendant no. 2:

The proforma defendant no. 2 had also produced only one witness namely- Mr. V.L. Ruala S/o Pahlira (L), Chief Manager, Mizoram Cooperative Apex Bank Ltd. Dawrpui Branch, Aizawl (Hereinafter referred to as DW for proforma defendant no. 2). In his examination in chief, being the plaintiff he reiterated the contents in his plaint.

In his cross examination, he deposed that the outstanding loan amount of the proforma defendant no. 1 as on 2.11.2011 is amounting to Rs. 15,41,652/-. He has agreed to surrender the mortgaged landed property under LSC No. Azl. 610 of 1980 to the plaintiff by depositing the said outstanding loan amount to their Bank with interest in full.

Other parties betrayed the proceedings till arguments.

FINDINGS

Issue No. 1

Whether there is cause of action for the suit in favour of the plaintiff as well as the proforma defendant no. 2

From the evidence on record and as per pleadings, it is clearly ascertained that the defendant no. 1 had taken a loan from the plaintiff but remains fails to make recovery. More so, the defendant no. 1 by committing cheating, mortgaged landed property to the plaintiff under LSC No. Azl. 242 of 1987 whilst exclaimed himself to mortgage the landed property under LSC No. Azl. 610 of 1980. Cause of action is therefore in favour of the plaintiff. Meanwhile, being the wife of the defendant no. 1, the proforma defendant no. 1 had mortgaged the landed property under LSC No. Azl. 610 of 1980 to the proforma defendant no. 2 for taking a loan, but she remain fails to liquidate the same. Howsoever, as ascertained, the landed property covered under LSC No. Azl. 242 of 1987 is inadequate for obtaining a loan from the plaintiff. Cause of action is also in favour of the proforma defendant no. 2.

Issue No. 2

Whether the defendant no. 1 duly mortgaged the property under LSC No. Azl. 610 of 1980 to the proforma defendant no. 2 for the loan taken by the proforma defendant no. 1

Pleadings as well as evidences on record clearly elicited that the defendant no. 1 by authorizing the proforma defendant no. 1 as his wife mortgaged the landed property under LSC No. Azl. 610 of 1980.

Issue No. 3

Whether the proforma defendant no. 2 is entitled to sale the mortgage landed property for realizing the dues to the proforma defendant no. 2 amounting to Rs. 14,51,340/- (Fourteen lakhs, fifty one thousand, three hundred and forty) plus interest rate at 13% per annum with effect from 8.6.2011

The PW being the plaintiff and the DW for proforma defendant no. 2 being the proforma defendant no. 2 who are affected by the act of the defendant no. 1 and the proforma defendant no. 1 were reached understanding of their common bottleneck and feasible measure to the malady saying that the outstanding loan amount of the proforma defendant no. 1 as on 2.11.2011 to the proforma defendant no. 2 is amounting to Rs. 15,41,652/- (Rupees fifteen lakhs, forty one thousand, six hundred and fifty two). The proforma defendant no. 2 has agreed to surrender the mortgaged landed property under LSC No. Azl. 610 of 1980 to the plaintiff by depositing the said outstanding loan amount to their Bank with interest in full.

Issue No. 4

Whether the defendant no. 1 misguided/deceived the plaintiff by mortgaging the land covered by LSC No. Azl. 242 of 1987 and showing

the land covered by LSC No. Azl. 610 of 1980 which was already mortgaged to the proforma defendant no. 2.

Evidence and circumstances drawn in the case at hand clearly reveals that the defendant no. 1 misguided/deceived the plaintiff by mortgaging the land covered by LSC No. Azl. 242 of 1987 and showing the land covered by LSC No. Azl. 610 of 1980 which was already mortgaged to the proforma defendant no. 2.

Issue No. 5

Whether the plaintiff is entitled to get the relief claimed from the excess amount for the sale proceeds of LSC No. Azl. 610 of 1980 after fulfilling the liabilities to the proforma defendant no. 2

Being a mortgage suit and as per the entity of O. XXXIV of the Code of Civil Procedure, 1908, the plaintiff will be entitled to get the relief claimed from the excess amount for the sale proceeds of LSC No. Azl. 610 of 1980 after fulfilling the liabilities to the proforma defendant no. 2.

Issue No. 6

Whether the plaintiff and proforma defendant no. 2 are entitled to the relief claim. If so, to what extend and what mode.

As discussed above from the mingling evidences and pleadings, both the plaintiff and the proforma defendant no. 2 will be entitled to the relief claim but as per the provisions of O. XXXIV of the Code of Civil Procedure, 1908 and in terms of their understandings after preliminary decree is passed and when impelled to pass final decree.

ORDER

By taking reliance 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, preliminary decree in the following terms is granted/awarded that the amount due to the plaintiff on his mortgage mentioned in the plaint by the defendant no. 1 calculated up to 16.3.2011 is the sum of Rs. 75,96,345/- (Seventy five lakhs, ninety six thousand, three hundred and forty five rupees) compounded with an interest rate of 12.5% per annum with effect from 17.3.2011 till realization, 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. 18,000/- (Rs. 11,000/- for court fees stamp + Rs. 7,000/- for Pleader's fee) for the costs of this suit awarded to the plaintiff.

And also decreed that the amount due to the proforma defendant no.2 on his mortgage mentioned in the plaint by the proforma defendant no. 1 calculated up to 2.11.2011 is the sum of Rs. 15,41,652/- (Rupees fifteen lakhs, forty one thousand, six hundred and fifty two) compounded with an interest rate of 12.5% per annum with effect from 3.11.2011 till realization, 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. 18,000/- (Rs. 11,000/- for court fees stamp + Rs. 7,000/- for Pleader's fee) for the costs of this suit awarded to the plaintiff. And it is hereby ordered and decreed that the defendant no. 1 and the proforma defendant no.1 do pay into Court on or before for 30th day of March., 2012 or any later date up to which time for payment may be extended by the Court of the said sum till realization.

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.

Given under my hand and seal of this court on this 12th December, 2011 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 1

Aizawl District: Aizawl

Memo No. CS/23/2011, Sr. CJ (A)/

Dated Aizawl, the 12th Dec., 2011

Copy to:

1. Mizoram Rural Bank, Khatla Branch, Khatla- Aizawl, Represented by its Branch Manager through Mr. L.R. Tuanga Sailo, Advocate
2. Mr. M.C. Lalfala S/o Hrangluaia, Bungkawn, Aizawl through Mr. S. Pradhan, Adv.
3. Mr. Lalchhanhima, SDO C/o Aizawl Water Supply Project Sub-Division, Aizawl South, Tuikhuahtlang, Aizawl through Mr. L.R. Tuanga Sailo, Advocate
4. Smt. Ngurdingliani W/o M.C. Lalfala, Khatla, Aizawl through Mr. W. Sam Joseph, Adv.
5. Chief Manager, Mizoram Cooperative Apex Bank Ltd., Dawrpui Branch, Dawrpui, Aizawl through Mr. W. Sam Joseph, Adv.
6. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District, Aizawl
7. Case record

PESKAR