

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

MONEY SUIT NO. 72 OF 2011

Plaintiff:

Mr. F. Rochhunga
Laipuitlang, Aizawl
House No. 26/A

By Advocates

: 1. Mr. R. C. Thanga, Adv.
2. Mr. H. Lalmuankima, Adv.

Versus

Defendants:

Mr. Daniel L. Vanso
S/o Lalremsanga
VANSO ENTERPRISE
C/o S. Rolianthanga Building
Govt. Higher Secondary School Tlang
Chanmari, Aizawl, 796007

By Advocate's

:

Date of hearing : 16-12-2011

Date of Judgment & Order : 19-12-2011

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge-1

JUDGMENT & ORDER

GERMINATION OF THE CASE

The plaintiff on different occasions, gave different amount of money to the defendant as a loan and written deeds of promise as regard to repayment of the principals with interests by the defendant loanee and other terms and conditions were duly made and signed by parties. The total amount disbursed to the defendant by the plaintiff with interest was Rs. 56,60,000.00. Out of which, the defendant repaid Rs. 32,55,500.00 to the plaintiff. The total outstanding amount is Rs. 24,04,500.00. Thus, the plaintiff prayed a decree (i) declaring that the defendant has liability to the plaintiff of Rs. 24,04,500.00 (Rupees twenty four lakhs, four thousand and five

hundred) (ii) an order directing the defendant to make payment of Rs. 24,04,500.00 (Rupees twenty four lakhs, four thousand and five hundred) within a specified period of time and (iii) any other relief/s which this court deem fit and proper. A requisite court fees at Rs. 5,000/- is also paid by the plaintiff.

While the sui is instituted on 28/7/2011 and although summons were tried to serve to the wife of the defendant and she refused to receive and pasted/affixed a copy of summon in the conspicuous wall of the defendant by swearing affidavit by the plaintiff, the defendant remains fails to appear or file written statement till 18/10/2011. By virtue of O. VIII, R. 10 of the Code of Civil Procedure, 1908, ex parte proceeding is inevitably drawn in the instant case.

POINTS FOR DETERMINATION

Although ex parte proceedings, the Hon'ble Apex Court has held in **Ramesh Chand Ardawatiya vs Anil Panjwani** decided on 5 May, 2003 and reported in AIR 2003 SC 2508, 2003 (4) ALD 10 SC 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 should therefore determine the crux as follows-

1. Whether the suit is maintainable or not
2. Whether the plaintiff and the defendant had executed valid deed for the purpose of money lending
3. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend

BRIEF ACCOUNT OF EVIDENCE

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, the plaintiff had produced only one witness namely- Mr. F. Rochhunga, Laipuitlang, Aizawl (Hereinafter referred to as the PW). In his examination, being the plaintiff, he merely reiterated the contents of his plaint, he further deposed that-

Ext. P-1 is plaint

Ext. P- 1 (a) is his signature

Ext. P-2 is affidavit in support of plaint

Ext. P-3 is a Promise Deed dt. 23.7.2008 sworn before Notary Public

Ext. P-4 is a Promise Deed dt. 22.9.2008 sworn before Notary Public

Ext. P-5 is a Promise Deed dt. 22.12.2008 sworn before Notary Public

Ext. P-6 is a Promise Deed dt. 23.1.2009 sworn before Notary Public

Ext. P-7 is a Promise Deed dt. 23.4.2009 sworn before Notary Public

Ext. P-8 is a Promise Deed dt. 23.5.2009 sworn before Notary Public

Ext. P-9 is a Promise Deed dt. 23.7.2009 sworn before Notary Public

Ext. P-10 is a copy of receipt of payment dt. 24.9.2008

Ext. P-11 is a copy of receipt of payment dt. 24.11.2008

Ext. P-12 is a copy of receipt of payment dt. 22.12.2008

Ext. P-13 is a copy of receipt of payment dt. 22.1.2009

Ext. P-14 is a copy of receipt of payment dt. 23.2.2009

Ext. P-15 is a copy of receipt of payment dt. 23.4.2009

Ext. P-16 is a copy of receipt of payment dt. 23.5.2009

Ext. P-17 is a copy of receipt of payment dt. 23.6.2009

Ext. P-18 is a copy of receipt of payment dt. 23.7.2009

Ext. P-19 is a copy of receipt of payment dt. 26.8.2009

Ext. P-20 is a copy of receipt of payment dt. 23.9.2009

Ext. P-21 is a copy of receipt of payment dt. 2.11.2009

Ext. P-22 is a copy of receipt of payment dt. 27.11.2009

Ext. P-23 is a copy of receipt of payment dt. 27.11.2009

Ext. P-24 is a copy of receipt of payment dt. 27.11.2009

Ext. P-25 is a copy of receipt of payment dt. 7.12.2009

Ext. P-26 is a copy of receipt of payment dt. 11.12.2009

Ext. P-27 is a copy of receipt of payment dt. 14.12.2009

Ext. P-28 is a copy of receipt of payment dt. 17.12.2009

Ext. P-29 is a copy of receipt of payment dt. 21.12.2009

Ext. P-30 is a copy of receipt of payment dt. 9.1.2010

Ext. P-31 is a copy of receipt of payment dt. 23.1.2010

Ext. P-32 is a copy of receipt of payment dt. 6.2.2010

Ext. P-33 is a copy of receipt of payment dt. 12.2.2010

Ext. P-34 is a copy of receipt of payment dt. 15.2.2010

Ext. P-35 is a copy of receipt of payment dt. 19.2.2010

Ext. P-36 is a copy of receipt of payment dt. 25.2.2010

Ext. P-37 is a copy of receipt of payment dt. 1.3.2010

Ext. P-38 is a copy of receipt of payment dt. 2.3.2010

Ext. P-39 is a copy of receipt of payment dt. 2.3.2010

Ext. P-40 is a copy of receipt of payment dt. 16.3.2010

Ext. P-41 is a copy of receipt of payment dt. 24.3.2010

Ext. P-42 is a copy of receipt of payment dt. 31.3.2010

Ext. P-43 is a copy of receipt of payment dt. 7.4.2010

Ext. P-44 is a copy of receipt of payment dt. 9.4.2010

Ext. P-45 is a copy of receipt of payment dt. 12.4.2010

None contested to cross examine the said PW as well as the plaintiff also closed his evidence.

FINDINGS

Point No. 1

Maintainability of the suit

A requisite court fees is paid by the plaintiff. The plaint is duly accompanied by specific verification with affidavit. Admittedly, the suit is beyond the entity of the provisions of the Mizoram Protection of Interests of Depositors (In Financial Establishment) Act, 2002 and before enactment and publishing its effective date of the Mizoram Money Lenders and Accredited Loan Providers (Regulation) Act, 2010 where the plaintiff was not aware of its effective entity which is making retrospective effective from 21.10.2010 as per notification dt. 15th April, 2011. Thus, this issue is decided in favour of the plaintiff.

Point No. 2

Whether the plaintiff and the defendant had executed valid deed for the purpose of money lending

By perusing various exhibits during the proceedings, I satisfied that for the purpose of lending/borrowing money, both the plaintiff and the defendant duly executed agreements before the Notary Public and is no need of further elaborations.

Point No. 3

Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend

No circumstances and evidence is found to divert the adjudications except the relief sought in the plaint by the plaintiff which is again extracted as below-

- (i) declaring that the defendant has liability to the plaintiff of Rs. 24,04,500.00 (Rupees twenty four lakhs, four thousand and five hundred)
- (ii) an order directing the defendant to make payment of Rs. 24,04,500.00 (Rupees twenty four lakhs, four thousand and five hundred) within a specified period of time and
- (iii) any other relief/s which this court deem fit and proper.

However, as recently held mandate by the Hon'ble Apex Court 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] and also in **Ramrameshwari Devi & Ors. vs Nirmala Devi & Ors.** decided on 4 July, 2011 in connection with Civil Appeal Nos. 4912-4913 of 2011 (Arising out of SLP(C) Nos. 3157-3158 of 2011), justice may be met if imposed costs of the suit at Rs. 20,000/- (Rs. 15,000/- of lawyers fee + Rs. 5000/- of court fees) in favour of the plaintiff viewing the expenditure incurred

due to the incredibility of the defendant by infringing their various promise deeds.

ORDER

As per the findings of the above, it is hereby ORDERED and DECREED that the defendant has liability to the plaintiff of Rs. 24,04,500.00 (Rupees twenty four lakhs, four thousand and five hundred) plus Rs. 20,000/- (Rs. 15,000/- of lawyers fee + Rs. 5000/- of court fees) as cost of the suit. The defendant is therefore directed to make payment of the same within a period of two months (60 days) from the date of this order. Interest rate at 9% per annum shall also be paid to the plaintiff by the defendant out of the said sum including costs of the suit with effect from the date of this order till realization.

The case shall stand disposed of in the above terms.

Give this order copy with decree to all concerned.

Given under my hand and seal of this court on this 19th Dec., 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. MS/72/2011, Sr. CJ (A)/ Dated Aizawl, the 19th Dec., 2011

Copy to:

1. Mr. F. Rochhunga, Laipuitlang, Aizawl, House No. 26/A through Mr. R.C. Thanga, Adv.
2. Mr. Daniel L. Vanso S/o Lalremsanga, VANSO ENTERPRISE C/o S. Rolianthanga Building, Govt. Higher Secondary School Tlang, Chanmari, Aizawl, 796007 through Mr. R.C. Thanga, Adv.
3. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
4. Case Record

PESKAR