

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

TITLE SUIT NO. 23 OF 2011

Plaintiff:

State Bank of India
Mission Veng Branch- Aizawl
Represented by its Chief Manager

By Advocates : Mr. M.M. Ali

Versus

Defendants:

1. Mr. Lalhmingzama
Prop. City Collection of Mercy Complex
Chhinga Veng, Aizawl
C/o Mr. Vanlalhruaia
Deputy Manager, ZIDCO
New Secretariat Complex
Khatla, Aizawl
2. Mr. Vanlalhruaia
Deputy Manager, ZIDCO
New Secretariat Complex
Khatla, Aizawl
3. Smt. Lalhmingthangi
D/o Kawlthangpuia
Dawrpui Veng, Aizawl
C/o Mr. Vanlalhruaia
Deputy Manager, ZIDCO
New Secretariat Complex
Khatla, Aizawl

By Advocates :

Date of hearing : 07-12-2011

Date of Order : 07-12-2011

BEFORE

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

ORDER

This is a suit for foreclosure and sale of the mortgaged landed properties under LSC No. Azl. 386 of 1994 belonging to the defendant no. 3 and also a preliminary decree for payment of loan amount at Rs. 4,57,127/- (Rupees four lakhs, fifty seven thousand, one hundred and twenty seven) with interest rate at 9.25% per annum with effect from 21-03-2011 till realization meant to redemption of the mortgaged property. The plaintiff constituted under the State Bank of India Act, 1955 carrying business under the Banking Regulation Act, 1949 sanctioned secured loan amounting to Rs. 4,00,000/- to the defendant no. 1 by mortgaging LSC No. Azl. 386 of 1994 belonging to the defendant no. 3 with an interest rate at 10.25% per annum by executing agreement. Since the defendant no.1 breach the agreement for repayment of the said amount. The instant suit had arisen. The advolorem court fees at Rs. 7420/- is also paid by the plaintiff.

The defendant no. 2 on behalf of the defendants appeared the court and admitted all averments and submissions in the plaint in toto. Meanwhile, during pendency of the case he recovered Rs. 50,000/- to the plaintiff on 22.11.2011 by submitting original receipt which the learned counsel for the plaintiff also admitted.

Upon hearing of both parties and on perusal of case records, I am satisfied that no issues on any question of law or of fact had arisen in the instant suit for further proceeding of the case. O. XII, R. 6 of the CPC reads thus-

“6. Judgment on admissions— (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

Reliance may also be taken in **Divisional Manager, United India Insurance Co. Ltd. and Anr. Vs. Samir Chandra Chaudhary** in connection with Appeal (civil) 3663 of 2005 decided on 14/07/2005 reported in 2005 (1) Suppl. SCR 613, 2005 (5) SCC 784, 2005 (5) SCALE 470, 2005 (6) JT 289, it was held that-

“The effect of admission is that it shifts the onus on the person admitting the fact on the principle that what a party himself admits to be true may reasonably be presumed to be so, and until the presumption is rebutted, the fact admitted must be taken to be established. An admission is the best evidence that an opposing party can rely upon, and though not conclusive is decisive of matter, unless successfully withdrawn

or proved erroneous. (See Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and Ors., AIR (1960) SC 100).”

Thus, as inevitably, preliminary decree is opined to pass on today in the following terms.

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 the mortgage mentioned in the plaint calculated up to 22. 11. 2011 is the sum of Rs. 4,07,127/- (Rupees four lakhs, seven thousand, one hundred and twenty seven) for principal with interest, and another 9.25% interest per annum 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. 14,420/- (Rs. 7420/- for court fees stamp + Rs. 7,000/- for Pleader’s fee) for the costs of this suit awarded to the plaintiff plus 9.25% interest per annum to be reckoned from 22.11.2011 with the said costs of the suit. And it is hereby ordered and decreed that the defendants do pay into Court on or before for 28th day of Feb., 2012 or any later date up to which time for payment may be extended by the Court of the said sum plus 9.25% interest per annum to be reckoned from 22.11.2011 till realization

To epitomize, if the defendant remains fail to make repayment of the above accrued amount on or before 28th Feb., 2012, the said mortgage landed property will be liable to foreclosure and sale as final decree.

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- 1

Aizawl District: Aizawl

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

Dated Aizawl, the 7th Dec., 2011

Copy to:

1. State Bank of India, Mission Veng Branch- Aizawl Represented by its Chief Manager through M.M. Ali, Advocate
2. Mr. Lalhmingzama, Prop. City Collection of Mercy Complex, Chhinga Veng, Aizawl C/o Mr. Vanlalhruaia, Deputy Manager, ZIDCO, New Secretariat Complex, Khatla, Aizawl through M.M. Ali, Advocate

3. Mr. Vanlalhruaia, Deputy Manager, ZIDCO, New Secretariat Complex, Khatla, Aizawl through M.M. Ali, Advocate
4. Smt. Lalhmingthangi D/o Kawlthangpuia, Dawrpui Veng, Aizawl C/o Mr. Vanlalhruaia, Deputy Manager, ZIDCO, New Secretariat Complex, Khatla, Aizawl through M.M. Ali, Advocate
4. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Case record

PESKAR