

**IN THE COURT OF SENIOR CIVIL JUDGE- 3
AIZAWL DISTRICT: AIZAWL, MIZORAM**

MONEY SUIT NO. 55 OF 2008

Plaintiff:

Smt. C. Lalthannguri
Ramhlun North
Aizawl- Mizoram

By Advocates

: 1. Smt. Lalthanmawii
2. Mr. K. Kawlkhuma

Versus

Defendant:

Smt. J. Lalhmingliani
Kawnveng- I, Zemabawk
Aizawl- Mizoram

By Advocate's

: Smt. Lalthlamuani

Date of Arguments : 27-01-2011

Date of Judgment & Order : 28-01-2011

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 3

JUDGMENT & ORDER

GERMINATION OF THE CASE

This is a suit for recovery of Rs. 3,00,000/- (three lakhs rupees) filed by Smt. C. Lalthannguri against Smt. J. Lalhmingliani stating in the plaint that the defendant borrowed a money of the plaintiff as per requested by the defendant herself in the following dates and quantum-

(1) Rs. 50,000/- (fifty thousand rupees) on 17th December, 2005

(2) Rs. 50,000/- (fifty thousand rupees) on 17th December, 2005

(3) Rs. 1,00,000/- (one lakh rupees) on 15th March, 2006

It was further agreed to receive 50% each benefits from the profit of the business of the defendant on selling of chilies. Since the defendant fails to repay the said amount although a number of verbal request was made, Legal Notice was served by the plaintiff on 21st Sept., 2008 to recover the outstanding amount at Rs. 2,00,000/- (two lakhs rupees) with interest at Rs. 1,00,000/- (one lakh rupee). But the defendant remains fails to comply the said notice. Hence, the instant suit for recovery of Rs. 3,00,000/- (three lakhs rupees) as per alleged agreement with interest rate at 12% per annum from the date of institution of the suit till realization and other relief which this court deem fit and proper.

In her written statement, the defendant's denied that she never entered into agreement with the plaintiff for borrowing money as she never approached her to lend the money. She further submitted that she and the plaintiff under joint venture rather entered into the business of selling of chilies by purchasing the same from villages and were taken to Bagha and Silchar. With the prior knowledge and approval of the plaintiff, the defendant had sold the purchased chilies to one Mr. Sarif Uddin Lasker on 1/1/2006 at Rs. 1,29,692.10 and on 4.9.2006 at Rs. 80,070.90 and Rs. 11,363.55 and thereafter on 6/9/2006 at Rs. 21,707.00 and there was deflation of the price of chilies at that time as expected. But the said Mr. Sarif Uddin Lasker did not make payment of the said amount till this time. The defendant is not liable to pay the amount to the plaintiff whilst they entered into joint venture and the defendant herself also did not receive the amount from the said Mr. Sarif Uddin Lasker and thereby causing financial constraint for the defendant herself. The defendant rather admitted that both of them with the plaintiff went to Silchar for realization of the money from Mr. Sarif Uddin Lasker but it was a futile attempt. Moreover, due to insufficiency of requisite court fees, non-joinder of necessary parties by excluding one Mr. Sarif Uddin Lasker who is the sole culprit, the defendant prayed to dismiss the suit at the earliest.

ISSUES

To arrive correct findings and by virtue of O. XIV of R. 5 of the CPC, the issues already framed on 4.8.2009 is amended and the amended form of issues are as follows-

- (1) Whether the suit is maintainable or not
- (2) Whether the suit is bad for non-joinder of necessary parties
- (3) Whether the plaintiff is entitled to the relief claimed or not. And if so, to what extend

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff produced the following three witnesses such as-

- (1) Smt. C. Lalthannguri D/o Vankhuma (L), Ramhlun North, Aizawl (Herein after referred to as PW- 1)
- (2) Smt. Lalhmingliani Khiantge D/o K. Hmingthanzauva (L), Ramhlun North, Aizawl (Herein after referred to as PW- 2)
- (3) Smt. Laldingpuui Khiantge D/o K. Hmingthanzauva (L), Ramhlun North, Aizawl (Herein after referred to as PW- 3)

Plaintiff Witness No. 1:

The PW- 1 deposed that the defendant borrowed a money of the plaintiff as per requested by the defendant herself in the following dates and quantum-

- (1) Rs. 50,000/- (fifty thousand rupees) on 17th December, 2005

(2) Rs. 50,000/- (fifty thousand rupees) on 17th December, 2005

(3) Rs. 1,00,000/- (one lakh rupees) on 15th March, 2006

It was further agreed to receive 50% each benefits from the profit of the business of the defendant on selling of chilies.

Ext. P- 1 (a) (b) & (c) are her true signature in the plaint and Affidavit

Ext. P- 2 is a copy of agreement

Ext. P- 3 is a copy of Legal Notice

In her cross examination, she further deposed that she does not personally known the defendant but through the father of the defendant whilst the defendant approached her to lend the money, by showing clemency, instead of giving her as a borrowed money, she suggested to share 50% each profit from the business of selling chilies, she thereby gave Rs. 50,000/- in the mid of December and another Rs. 50,000/- at the end of December and again Rs. 1,00,000/- in March, 2006. It is a fact that she gave the said money for earning a profit from the business of selling chilies. She admitted that she personally seen purchasing of chilies by the defendant for the first two times but she do not personally that to whom it was further given. As informed by the defendant as failure to receive the money from Silchar to be earned from selling of chilies, she also accompanied the defendant to Silchar but fails to collect the money from there. She further admitted that the plaintiff paid Rs. 2,00,000/- to the defendant meant to share 50% each of profit from earning of money from selling of chilies.

In her re-examination, she deposed that the defendant informed her that on receiving of money (as the price of chilies) from Silchar and compensation amount of her daughter's accident, the defendant will pay the money remains due in the hand of the defendant.

Plaintiff Witness No. 2:

The PW- 2 deposed that the plaintiff is her mother living under the same roof. In her presence, the plaintiff lend Rs. 50,000/- on 17th Dec., 2005 and Rs. 50,000/- on 20th Dec., 2005. The plaintiff also told her that the defendant also borrowed another Rs. 1,00,000/- from the plaintiff on 15th March, 2006. Both the defendant and the plaintiff entered into agreement to repay the capital amount of Rs, 2,00,000/- by the defendant after three months with 50% of profit gained by the defendant from her business.

In her cross examination, she deposed that she acted as witness as requested by the plaintiff and admitted that her signatures were subscribed in none of documents in the plaint and its annexures. She admitted that the defendant approached the plaintiff and the plaintiff under sympathy suggested not to borrow the money but to share 50% each of profits earned from selling of chilies. It is a fact that the plaintiff and the defendant entered into agreement for sharing 50% each from the profit to be earned from the business of selling of chilies.

Plaintiff Witness No. 3:

The PW- 3 deposed that the plaintiff is her mother living under the same roof. The plaintiff lend Rs. 50,000/- on 17th Dec., 2005 and Rs. 50,000/- on 20th Dec., 2005. The plaintiff also told her that the defendant also borrowed another Rs. 1,00,000/- from the plaintiff on 15th March, 2006. Both the defendant and the plaintiff entered into agreement to repay the capital amount of Rs, 2,00,000/- by the defendant after three months with 50% of profit gained by the defendant from her business.

In her cross examination, she further deposed that she is unmarried dwelling with the plaintiff as a mother under the same roof. She admitted that she was not present at the time of allegedly borrowing money by the defendant from the plaintiff. She further admitted that she do not know the terms and conditions of alleged agreement except from the diary of her mother/the plaintiff but she often accompanied the plaintiff for recovery of money to the residence of the defendant. It is not a fact that she witnessed all transactions of the plaintiff and the defendant.

For the defendant:

The defendant produced only one witness namely- Smr. Lalhmingliani D/o J. Chenhranga, Zemabawk, Aizawl. She deposed that she is a native of Thingsai village, a permanent resident of Vanlaiphai presently dwelled at Zemabawk as a rented house, she personally known the plaintiff as she is also the native of Thingsai village. Sometime in the year of 2006, she entered agreement with the plaintiff for a joint venture business agreeing that the plaintiff will finance the business but the market will manage by the defendant. The plaintiff in the sum total borne Rs. 2,00,000/- (rupees two lakhs) in installments for purchasing chilies and which was given to one Mr. Sarif at Silchar. Unfortunately, due to deflation of the price of chilies, the sale proceeds were not receiving back till this time. The plaintiff also witnessed her stock of chilies at Zemabawk and the plaintiff also further went to the residence of the agent namely- Mr. Sarif to enquire payment but it was futile. She further deposed that the defendant did not borrowed the money from the plaintiff but entered into joint venture business to share 50% each profits from the sale proceeds of chilies. She pledged that as soon as receive the sale proceeds from one Mr. Sarif, she has planned to hand over the same to the plaintiff as per agreement.

In her cross examination, she further deposed that as the defendant it is not a fact that she asked the plaintiff to lend a money and she admitted that she received Rs. 2 lakhs from the plaintiff but never reach written agreement with the plaintiff. She denied that she used to spent sale proceeds for her personal cause.

POINTS OF RIVALRY

In the argument, Smt. Lalthlamuani, Ld. Advocate for the defendant stated that the alleged Deed of Agreement marked as exhibit was neither under the signatures of parties nor a register documents, it therefore does not have evidentiary value. Since the transaction of the plaintiff and the defendant was under joint venture and the culprit lies in one Mr. Sarif, Silchar, non joinder of necessary parties/ excluding the said Mr. Sarif as a

party is bad in law. On perusal of the evidence led by the PW- 1, the plaintiff instead of lending money admitted that as per her suggestion, parties entered into joint venture and no liability rest in the defendant. The other PWs 2&3 were the daughters of the plaintiff dwelling under the same roof, deposition of such partisan and interest witnesses having no force in the eye of law. The defendant also rather paid strenuous effort for receiving back of the involved money from Silchar visiting the same for so many times.

Per contrary, Mr. K. Kawlkhuma, Ld. Counsel for the plaintiff contended that the agreement is not mandatorily registrable under the Registration Act, 1908 and is duly valid. On appreciation of evidences adduced by PWs, they were corroborated each other and not shaken even in cross examination determining that the defendant borrowed the suit amount from the plaintiff for a business of chilies which the defendant fails to repay.

FINDINGS

Issue No. 1

Maintainability of the suit

The plaint is filed with duplicate copies, accompanied by Affidavit and verification duly signed and sworn by the plaintiff. Deficiency of requisite court fees at Rs. 4,900/- was also made up on 27/1/2011. The cause of action was also clearly found in the plaint. In short, I find that no laches which vitiate the proceedings in the suit.

Issue No. 2

Non- Joinder of necessary parties

Before going through the merit of the case, a resort may be taken as held in **Iswar Bhai C. Patel & Bachu Bhai Patel Vs. Harihar Behera & Anr.** decided on 16/03/1999 reported in 1999 AIR 1341, 1999 (1) SCR 1097, 1999 (3) SCC 457, 1999 (2) SCALE 108, 1999 (2) JT 250, the Hon'ble Supreme Court thereby observed thus-

"These two provisions, namely, Order 1 Rule 3 and Order 2 Rule 3 if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined."

In **U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) By Lrs. & Ors.** decided on 20/10/1994 in connection with Appeal (civil) 7067 of 1994 reported in 1995 AIR 724, 1994 (4) Suppl. SCR 646, 1995 (2) SCC 326, 1994 (4) SCALE 755, 1994 (7) JT 304, it was held that-

"The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (See: Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, [1963] Supp. 1 SCR 676, at p. 681."

And in **Sainath Mandir Trust vs Vijaya & Ors** decided on 13 December, 2010 in connection with Civil Appeal No. 3030 of 2004, the Supreme Court has held that-

“The Courts below also failed to take into consideration that the suit was bad for non- joinder of necessary parties in terms of Order XXXI Rule 2 of C.P.C. as all the trustees of the Trust were not joined as parties and hence the Trial Court was clearly justified in dismissing the suit as not maintainable for want of necessary permission of the Charity Commissioner under Sections 50 and 51 of the Act as well as non-joinder of all the trustees in terms of Order XXXI Rule 2 of the C.P.C. It was also submitted that the appellant-trust has been in uninterrupted possession of the suit land since 31.1.1974 and the suit property in question had already been included and recorded by the Charity Commissioner as a property of the trust and the Change Report to that effect was required in terms of Section 22 of the Bombay Public Trusts Act. It was finally submitted that the property in question was gifted for a pious purpose of construction of ‘Bhakta Niwas’ and, therefore, considering the aforesaid factors and the comparative hardships to the parties, the suit for possession is not only fit to be dismissed on the ground of its maintainability but even on the merits of the matter.”

In the light of the above observations, the defendant also fails to take any documents or evidence to rely on which elicited the liability of Mr. Sarif, Silchar whereas the suit is matter of recovery of money which is alleged to disburse to the defendant. I find that without the appearance/involvement of the said Mr. Sarif, the suit like allegation on borrowing money can be settled properly as Mr. Sarif will know nothing about the terms of agreement reached between the plaintiff and the defendant. The issue No. 2 is therefore affirmative in favour of the plaintiff.

Issue No. 3

Entitlement of the relief sought by the Plaintiff

Cogently, the document relied by the plaintiff is not reliable and is not having the force of law as it is merely marked as exhibit but only Xerox copy and it is merely an extract of the diary of the plaintiff as admitted by PW-1 in her deposition. The PW-3 fairly uncorroborated the versions of PWs 1&2 in respect of the validity of alleged terms of agreement whilst the PWs 1&2 were admitted as the daughters of the plaintiff living under the same roof as a partisan and interested witnesses. But, presumption can be drawn that as admitted by the defendant in her deposition as witness of the defendant's, the plaintiff gave the defendant a sum of Rs. 2 lakhs. It means that the plaintiff entrusted the defendant to manage the said sum not as a gift for a profit motive. Although it is not an express contract, it can be termed as implied contract to receive back of the principal with some other profits expected to earn from the business of chilies managed by the defendant. By weighting the evidences of both parties, no recovery of the amount given to the defendant by the plaintiff was seen. In a very nutshell, under implied contract, the defendant taken/received Rs. 2 lakhs from the plaintiff for the business of chilies aiming to share 50% interest from the profit of such business.

It can therefore be well imagined that the plaintiff is oblique to receive back at least the said principal amount at Rs. 2 lakhs from the defendant

which she entrusted even under the umbrella of the so called “*Ubi Jus Ibi remedium*” as held in the case of **Fertilizer Corporation Kamgar Union (Regd.), Sindri & Ors. vs Union Of India And Others** decided on 13 November, 1980 and reported in 1981 AIR 344, 1981 SCR (2) 52, wherein, the Apex Court has observed that-

“We have no doubt that in a competition between courts and streets as dispenser of justice, the rule of law must win the aggrieved person for the law court and wean him from the lawless street.”

However, due to unclear and lack of valid agreements, interest matter including its quantum can not be settled even on appreciation of evidences adduced by both parties.

ORDER

As per the lengthy discussions of the above and reliance so taken, the defendant is directed to make payment of Rs. 2,00,000/- (two lakhs rupees) which was entrusted to her by the plaintiff even before receiving the price of chilies from other stranger’s in the suit with interest thereon at the rate of 12% (percent) per annum from this day till realization of the said sum. The defendant is further liable to share 50% of interest if she may earn from the profit of selling chilies after receiving the price of chilies from the person/place where she disposed of.

In view of the peculiarities of the case and where the defendant herself also appears suffered/victimized on price deflation of chilies at the time of disposal, no order as to costs of the suit.

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



Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 3
Aizawl District: Aizawl

Memo No. MS/55/2008, Sr. CJ (A)/

Dated Aizawl, the 28th Jan., 2011

Copy to:

1. Smt. C. Lalthannguri, Ramhlun North, Aizawl- Mizoram through Mr. K. Kawlkhuma, Advocate
2. Smt. J. Lalhmingliani, Kawnveng- I, Zemabawk, Aizawl- Mizoram through Smt. Lalthlamuani, Advocate
3. P.A. to District & Sessions Judge, Aizawl Judicial District: Aizawl
4. i/c Registration, District Court, Aizawl
5. Case Record

PESKAR

IN THE COURT OF SENIOR CIVIL JUDGE- III
AIZAWL DISTRICT: AIZAWL

FORM NO. (J) 23
SIMPLE MONEY DECREE
[Section 34 of CPC]

MONEY SUIT NO. 55 OF 2008

Smt. C. Lalthannguri ... Plaintiff
Versus
Smt. J. Lalhmingliani ... Defendant

This suit coming on this 28th Jan., 2011 for final disposal before Dr. H.T.C. LALRINCHHANA, Sr. Civil Judge- 3 in the presence of Smt. Lalthanmawia & Ors., Advocates for the plaintiff and of Smt. Lalthlamuani, Advocate for the defendant, it is ordered and decreed that the defendant do pay to the Plaintiff's the sum of Rs. 2,00,000 (Rupees two lakhs) with interest thereon at the rate of 12% (percent) per annum from this day till realization of the said sum plus any 50% of profit if any to be received from other's arising from the cause of action of the instant suit, and also pay NIL for the costs of this suit, with interest thereon at the rate of NIL per annum from this date till the date of realization.

Given under my hand and seal of the Court, this 28th day of January, 2011

Seal of the court


Judge

COSTS OF SUIT

Plaintiff				Defendant			
		Rs.	P			Rs.	P.
1	Stamp for plaint			1	Stamp for plaint		
2	Stamp for power			2	Stamp for petitions and affidavits		
3	Stamp for petitions and affidavits			3	Costs of exhibits including copies made under the Banker's Books' Evidence Act, 1891		
4	Costs of exhibits including copies made under the Banker's Books' Evidence Act, 1891			4	Pleader's fee on Rs.		
5	Pleader's fee on Rs.			5	Subsistence and travelling allowances of witnesses (including those of a party, if allowed by a judge)		
6	Subsistence and travelling allowances of witnesses (including those of a party, if allowed by a judge)			6	Process fee		
7	Process fee			7	Commissioner's fee		
8	Commissioner's fee			8	Demi paper		
9	Demi paper			9	Cost of transmission of records		
10	Cost of transmission of records			10	Other costs allowed under the Code and Civil Rules and Orders		
11	Other costs allowed under the Code and Civil Rules and Orders			11	Adjournment costs not paid in cash (to be deducted or added as the case may be)		
12	Adjournment costs not paid in cash (to be added or deducted as the case may be)			12			
13	Total			13	Total	NIL	