

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

MONEY SUIT NO. 63 OF 2011

Plaintiff:

Mr. Zaihmingthanga
S/o Masliana (L)
Khatla, Aizawl
Mizoram

By Advocate's

: Mr. James Vanlalhruaia, Adv.

Versus

Defendants:

1. Smt. Remchhungi
H/No. V.K. 80/A
Galili veng, Zemabawk
Aizawl, Mizoram

2. Mr. Vanlalzuala
S/o Vansanga
R/o Zemabawk, Aizawl
C/o Remchhungi, Galili Veng, Aizawl, Mizoram

Date of Judgment & Order : 08-03-2011

BEFORE

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

JUDGMENT & ORDER

NUCLEUS OF THE CASE

This is a suit for realization of the amount of Rs. 4,00,000/- (Rupees four lakhs) with an interest rate at 1% per mensem filed by Mr. Zaihmingthanga against Mrs. Remchhungi and Mr. Vanlalzuala. In the plaint, the plaintiff further submitted that as requested by the defendant No. 1, he lend Rs. 4,00,000/- (Rupees four lakhs) with an interest rate at 10% per mensem by executing Deed titled "Intiamkamna" Dt. 12.8.2009 to repay within six months from the date of such deed. Since the defendant No. 1 fails to repay the same, the mortgaged LSC No. 103101/01/2415 of 2008 belonging to defendant No. 2 was mutated in the name of the plaintiff. After all, the plaintiff could not traced out the said landed property near Forest Check gate, Zemabawk as pledged by defendant No. 1 and is found that the said landed property lies in the remote corner of Zembawk landlock and inaccessible for road communication. More so, the name Mr. Vanlalzuala is also not reachable and appears cheated his signature by the

defendant No. 1. Thus, prayed to realise Rs. 4,00,000/- (Rupees four lakhs) with an interest rate at 1% per mensem by the defendant No. 1.

While the suit is instituted on 15/11/2010 and served summons and duplicate copies of plaint to both defendants, the defendants fails to submit written statements till 16/12/2010. By virtue of O. V. R. 20 (1A) of the CPC, summon is published in the Vanglaini Daily Newspaper Vol. XXV, Dt. 18th Dec., 2010 which is duly circulated within the locality of the defendants but remain fails to appear or submit written statement till 21/2/2011. Hence impelled to proceed the case in accordance with O. VIII, R. 10 of the CPC as prayed by Ld. Counsels for the plaintiff and as find fit and proper.

The said inordinate and unexplained delay of written statements called the suit to proceed under O. VIII, R. 10 of the CPC. O. VIII, R. 1 of the CPC will be attracted for the end of justice in the civil proceedings like in the instant case. Due to limitation of time and space, I would go directly to some leading cases rather than mere rhetoric. 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 held that-

“Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1.”

In **Sreenivas Basudev vs Vineet Kumar Kothari** decided on 17/3/2006 reported in AIR 2007 Gau 5, (2006) 3 GLR 230, Gauhati High Court has observed that-

“9. Order VIII, Rule 1 as well as Order VIII, Rule 10 of the Code, which warrant filing of written statement within a period of 90 days from the date of service of summons on the defendant, are part of the procedural law. The procedural law is handmaid of justice and cannot override the necessity to do justice between the parties to the suit. No part of the procedural law and not even Order VIII, Rule 1 or Order VIII, Rule 10 can, in the absence of any explicit legislative intendment, be treated to have disempowered the Court or can be said to stand in the way of the Court to make exception in an appropriate case and accept a written statement beyond the period of 90 days, though, ordinarily and except in rare and compelling circumstances, acceptance of written statement beyond the requisite period of 90 days is not permissible.

...14. What crystallizes from the above discussion is that while it is necessary that a defendant is made to file written statement within, at best, the extended time of 90 days from the date of service of the summons, the courts do have the power, in an appropriate case, to accept the written statement beyond the period of 90 days, though such acceptance is not possible except in rare cases and special circumstances.”

It is therefore axiomatic that written statement should be filed within thirty day from the date of service of summons (including duplicate copy of plaint) but extendable for another sixty days with speaking orders. It is further permissible to expand time frame exceeding ninety days where and when exceptional and rare cases/circumstances. Let us again look into the

entity of adjournment may be for the purpose of waiting of written statements.

Moreover, in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (supra)**, the Hon'ble Apex Court has further held that-

“In some extreme cases, it may become necessary to grant adjournment despite the fact that three adjournments have already been granted (Take the example of Bhopal Gas Tragedy, Gujarat earthquake and riots, devastation on account of Tsunami). Ultimately, it would depend upon the facts and circumstances of each case, on the basis whereof the Court would decide to grant or refuse adjournment. The provision for costs and higher costs has been made because of practice having been developed to award only a nominal cost even when adjournment on payment of costs is granted. Ordinarily, where the costs or higher costs are awarded, the same should be realistic and as far as possible actual cost that had to be incurred by the other party shall be awarded where the adjournment is found to be avoidable but is being granted on account of either negligence or casual approach of a party or is being sought to delay the progress of the case or on any such reason. Further, to save proviso to Order XVII Rule 1 from the vice of Article 14 of the Constitution of India, it is necessary to read it down so as not to take away the discretion of the Court in the extreme hard cases noted above. The limitation of three adjournments would not apply where adjournment is to be granted on account of circumstances which are beyond the control of a party. Even in cases which may not strictly come within the category of circumstances beyond the control of a party, the Court by resorting to the provision of higher cost which can also include punitive cost in the discretion of the Court, adjournment beyond three can be granted having regard to the injustice that may result on refusal thereof, with reference to peculiar facts of a case. We may, however, add that grant of any adjournment let alone first, second or third adjournment is not a right of a party. The grant of adjournment by a court has to be on a party showing special and extraordinary circumstances. It cannot be in routine. While considering prayer for grant of adjournment, it is necessary to keep in mind the legislative intent to restrict grant of adjournments.”

In **State Bank of India Vs. K.M. Chandra Govindji** decided on 08/11/2000 reported in 2000 (8) SCC 532, 2000 (7) SCALE 354, 2000 (2) Suppl. JT 433, it was further observed that-

“In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournments, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected.”

I therefore must uphold the sanctity of CPC for timely justice and solely for the interest of justice while very *sine quo non* to revamp subordinate judiciary of Mizoram in line with law of the land at the arena of insulation of judiciary from executive so as to restore public faith in the judiciary. The inordinate delay and unexplained delay for filing of written statements by the defendants in the instant case could not be exonerated in view of the socio-economic conditions of the victim so as to restore public faith in the judiciary to avoid achlocracy/mobocracy akin to macabre life.

Although ex parte proceedings, this court should be guided by the observation of Hon'ble Apex Court as held in **Ramesh Chand Ardawatiya**

vs Anil Panjwani decided on 5 May, 2003 reported in AIR 2003 SC 2508, 2003 (4) ALD 10 SC, the Supreme Court has held 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.”

POINTS FOR DETERMINATION

The following points for determination is framed out on 25/2/2011, such as-

1. Whether the suit is maintainable or not
2. Whether there is cause of action against the defendants and in favour of the plaintiff
3. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend

EVIDENCE

The plaintiff had produced one witness namely- Zaihmngthanga S/o Masliana (L), resident of Khatla, Aizawl, Mizoram, he thereby deposed as follows-

1. *“That OP No. 1 Remchhungi and her friend Sangkhuma Sailo S/o Ngurchhuana Sailo who is one of the witness of the Deed ‘Intiamkamna’ approach me for loan amounting to ` 4,00,000/- for a period of six month with an interest @ 10% per month by mortgaging the LSC No. 103101/01/2415 of 2008 belonging to the OP No. 2 Vanlalzuala.*
2. *That before I handed over the said amount, I asked OP No. 1 where the LSC is locate exactly. Then I and my friend Marina and OP No. 1 came together to locate the said LSC to Zemabawk. OP No. 1 told me and locate that the said LSC is near Forest Check Gate, Lunglei Road, Zemabawk, Aizawl, Mizoram.*
3. *That I am a civil pentioner having no House on my own and I want LSC for building a house for my family. With still thinking my family condition, I agree with the proposal made by OP No. 1 Remchhungi. Then I handed over the said amount to OP No. 1 and OP No 1 handed over the original LSC to me on 5.8.2009. On 12.8.2009, the said Deed ‘Intiamkamna’ was prepared by OP No. 1 put her signature on behalf of Vanlalzuala, the OP No. 2 and in the said Deed, there are some clerical mistake in the name of the father of the OP No. 2 and the number of LSC.*
4. *That the OPs do not realized any monthly interest and the capital even after six months expired. I transferred the LSC into my name and when I was preparing to build a house at the said LSC near Forest Check Gate in which where the said LSC is*

locate by the OP No. 1 Remchhungi. Unsolvable problem is happened regarding the location of the said LSC. I approached the OP No. 1 and the while VCP of Zemabawk separately. The OP No. 1 have nothing to say saying some lame excuses. The VCP of Zemabawk told me that the said LSC is somewhere in the Pachuau Mual and it is far from Zemabawk and there is also no approach road and it is not in good location for building as there is no any other residence in the said Pachuau Mual.

5. That after I came to know that the OP No. 1 Remchhungi had cheat me. I approached her many times to give me back a loan without the interest. She refused.

6. That I asked the OP No. 1 Remchhungi where the OP No. 2 Vanlalzuali is available. She does not know.

7. That I know the loan amounting to Rs. 4,00,000/- is going into the hand of OP No. 1 only.

8. That on 29.6.2010 I give Pleader's Notice through my lawyer.

9. That the OPs do not repay their loan till date.

10. That I am read to hand over back the LSC mortgaged to OPs after the OPs realized their loan.

11. That the following are exhibited :-

- (a) Exb P-1 (a), (b) and (c) are my signature.
- (b) Exb P-2 is a photo copy of the said 'Intiamkamna'
- (c) Exb P-3 is a photo copy of the said LSC.
- (d) Exb P-4 is a photo copy of Pleader's Notice.

12. That I pray this Hon'ble Court may graciously be pleased to pass an order directing the OPs to realize a loan amounting to Rs. 4,00,000/- with an interest @ 1% per month from 5.8.2009."

No other evidence is adduced in the proceedings, the defendants remains fails to appear in the court even for cross examination and produce any evidence in the later stage. The sole depositions of plaintiff witness is corroborated each other and is consonance with the averments and submissions in the plaint. No other evidence can be appreciated and inevitable to rely in the above depositions.

FINDINGS

Point No. 1

Maintainability of the suit

The plaint is duly accompanied by Affidavit and Verification sworn and signed by the plaintiff, but only Rs. 40/- as court fees is paid but is curable u/s 149 of the CPC. In short, I do not find any irregularities which vitiate the proceedings.

Point No. 2

Cause of action

As plaintiff's evidence determined and on perusal of documents filed by the plaintiff, I find that there is sufficient cause of action against the defendants and in favour of the plaintiff

Point No. 3

Entitlement of relief and it's extend

In the plaint, the plaintiff sought a relief of Rs. 4,00,000/- (Rupees four lakhs) with an interest rate at 1% per mensem with effect from 5.8.2009, which is also co-apt with the entity of the Usurious Loans Act, 1918 (Act No. 10 of 1918) and the principal amount is not in dispute at all. Thus, I find appropriate to award relief in favour of the plaintiff as prayed in the plaint.

At the last stage, costs of the suit is the essence of justice like in the instant case as very recently held 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], the 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 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.”

My inclination is therefore to follow the above principles towards justice even for a futuristic approach but not heavy costs.

DIRECTIVES

I therefore have no option except to pronounce judgment & order forthwith that it is ordered and decreed that the defendant No. 1 do pay to the Plaintiff's the sum of Rs. 4,00,000/- (Rupees four lakhs) with interest

thereon at the rate of 12% (percent) per annum to be reckoned from 5th August, 2009 till the date of realization of the said sum, and also pay Rs. 12,000/- (twelve thousand rupees) [Viz. Rs. 5000/- for court fees + Rs. 7000/- for lawyers fee) for the costs of this suit, with interest thereon at the rate of 12% (percent) per annum from this day till the date of realization making reliance in **Vinod Seth vs Devinder Bajaj & Anr.** (supra.).

By virtue of section 149 of the CPC, the plaintiff is directed to make up deficiency of requisite court fees as per the Court Fees (Mizoram Amendment) Act, 1996 within thirty days from the date of this order.

Decree shall be drawn within fifteen days from the date of this judgment & order.

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

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 3
Aizawl District: Aizawl

Memo No. MS/63/2010, Sr. CJ (A)/

Dated Aizawl, the 8th March, 2011

Copy to:

1. Mr. Zaihmingthanga S/o Masliana (L) Khatla, Aizawl- Mizoram through Mr. James Vanlalhruaia, Advocate
2. Smt. Remchhungi H/No. V.K. 80/A, Galili veng, Zemabawk- Aizawl, Mizoram through Mr. James Vanlalhruaia, Advocate
3. Mr. Vanlalzuala S/o Vansanga R/o Zemabawk, Aizawl C/o Remchhungi, Galili Veng, Aizawl, Mizoram through Mr. James Vanlalhruaia, Advocate
4. P.A. to District & Sessions Judge, Aizawl Judicial District: Aizawl
5. Case Record

PESKAR