

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

CIVIL SUIT NO. 68 OF 2009

Plaintiff:

Shri C. Laltanpuia
S/o C. Thankhuma
R/O Laipuitlang, Aizawl

By Advocate's

: Mr. L.H. Lianhrima, Adv.

Versus

Defendants:

1. Shri Lalthangfala
s/o Rangkunga (L)
Maubawk, Aizawl
2. Bajaj Allianz Life Insurance Co. Ltd
Chanmari, Aizawl
Represented by the Manager

By Advocates

For the defendant no. 1 : 1. Mr. C. Lalramzauva Sr. Adv.
2. Mr. A. Rinliana Mahotra, Adv.
3. Mr. Joseph Lalfakawma, Adv.
4. Mr. T.J. Lalnuntluanga, Adv.
5. Miss Penlui Vanlalchami, Adv.
6. Mr. K. Laldinliana, Adv.

For the defendant no. 2 : Mr. B. Lalramenga, Adv.

Date of Arguments : 24-10-2011

Date of Judgment & Order : 02-11-2011

BEFORE

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

JUDGMENT & ORDER

GERMINATION OF THE CASE

The case in brief on the basis of the version of the plaintiff is that the Plaintiff is a resident of Laipuitlang, Aizawl and the Defendant No 1 is a life insurance policy holder and a resident of Maubawk, Aizawl while the Defendant No 2 is the Bajaj Allianz Life Insurance Co. Ltd where the Defendant No 1 had duly insured his life with the Policy No 0051833571. That the Defendant No 1 approached and requested the Plaintiff for a loan of Rs 2 lakhs with a promise to repay him back soon. Accordingly, the defendant no 1 took a loan of Rs 2,00,000/- from the Plaintiff on 5-5-2008 by executing PAWISA PUKA INTIAMNA in presence of two reliable witnesses and the said document was duly signed and registered before the Notary

Public, Aizawl. That in compliance with the "PAWISA PUKA INTIAMNA" dated 5-5-2008, the Defendant No 1 handed over the Insurance Policy No 0051833571 of Bajaj Allianz in exchange of the loan of Rs 2,00,000/- According to the terms and conditions laid down in the PAWISA PUKA INTIAMNA, if Pu Lalthangfala could not repay the loan amount within one year, the mortgaged policy shall be forfeited by him and he shall have no authority over the said insurance policy and Pu C. Laltanpuia shall draw the money. This clearly indicated that the Defendant No 1 do not have any legal or moral right to claim the Policy No 0051833571 amounting to Rs 6,00,000/- That even after a lapse of one Calendar year the Defendant No 1 has no intention to repay the loan amount of Rs 2,00,000/- to the Plaintiff. As a result, the Plaintiff went to the office of the Manager, Bajaj Allianz Life Insurance Co Ltd. Chanmari Aizawl and apprised him of the problem. On the advice of the dealing clerk, the Plaintiff and the Defendant subscribed their respective signatures in the prescribed form of Assignment before the Manager, Bajaj Allianz Insurance Co Ltd, Chanmari Aizawl and submitted along with original Policy document for necessary action. That the said Assignment along with all the required documents were submitted to the Headquarters, Bajaj Allianz on 27-8-2009 for necessary action. However, the Defendant No 1 and his wife with mala fide intention went to the office of the Defendant No 2 and requested for cancellation of the Assignment which had already been sent to the Headquarters and also requested for the original document without any shame or qualms. The dealing clerk of the Bajaj Allianz sent E-Mail for cancellation of the Assignment without the knowledge and consent of the Plaintiff. On enquiry of the matter from the office of the Defendant No 2, the Plaintiff was advised to take legal action and file a suit in the competent court. That the Plaintiff and the Defendant No 1 put their respective hands on the PAWISA PUKA INTIAMNA dated 5-5-2008 and the Prescribed form of Assignment before two reliable witnesses and a Notary Public without force, coercion or undue influence and with their free consent. As such, the Defendant no 1 is legally bound to abide by the terms and conditions of the said two documents. That the Agreement namely, PAWISA PUKA INTIAMNA and ASSIGNMENT which had been duly executed by the Plaintiff and the Defendant No 1 cannot be simply rescinded or cancelled by any of the party without the full consent of the other party. That the Defendant No 1 after executing the Mortgaged Deed (PAWISA PUKA INTIAMNA) and ASSIGNMENT, the Defendant No 1 has no moral or legal right to claim the Policy No 0051833571 from the Plaintiff. The Plaintiff therefore prays that (a) Let a decree be passed upholding and confirming that the Assignment dated 6th May, 2009 executed by the Defendant No 1, Lalthangfala in favour of the Plaintiff, C. Laltanpuia as the same was made in presence of reliable witness on the basis of Pawisa Puka Intiamna duly signed by the parties in presence of reliable witnesses on 5-5-2008. (b) Let the decree be passed declaring that the Plaintiff is entitled to beneficial owner of the Policy No 0051833571 issued by the Defendant No 2 for sum assured of Rs 7,50,000/- on the basis of Assignment duly executed by the Assignor. (c) Let the cost of the suit be decreed in favour of the Plaintiff against the defendants. (d) Let any other relief to which the Plaintiff is entitled according to Justice, Equity and Good Conscience be decreed in favour of the Plaintiff.

The defendant no.1 stated that the Plaintiff purchased a landed property of the Defendant No.1 located at Maubawk, Aizawl for a sum of Rs.12 Lakhs. Because of these dealings between them both of them were keeping close contacts with each. Thereafter the Defendant No.1 was in need of a certain amount of money and approached the Plaintiff and asked him for a loan of Rs.2 lakhs. The Plaintiff then willingly handed over the

said amount of Rs. 2 Lakhs to the Defendant No.1 on 5/5/08 to be repaid within a period of one year. In short, the suit was contested by the Defendants No.1 & 2 by filing written statements wherein the Defendant No.1 had stated that his failure to repay the said loan to the Plaintiff was due to the fact that the Plaintiff had moved out of station due to his posting at Kolkata and thereafter when he came back he refused to accept repayment of the said loan even when the Defendant No.1 tried to give him back his loan on more than one occasion. The Defendant No.1 further stated that the documents "Pawisa Puka Intiamna" dt. 5/5/08 and 'Absolute Assignment Policy' were fabricated by the Plaintiff for the purpose of depriving the Defendant No.1 his valuable Policy amounting to Rs.7,50,000/- for a meagre amount of Rs. 2 lakhs. The Defendant No.2 submitted in the written statement that the assignment is private transaction between the Defendant No.1 and the Plaintiff and the Defendant No.2 has no role to play in it. He further submitted that no advice was given by any of the employees or dealing clerk to the Defendant No.2 or the Plaintiff in respect of the assignment of the Insurance Policy No. 0051833571 from the Defendant No.1 to the Plaintiff as claimed by the Plaintiff. The Defendant No.2 also submitted that since the Plaintiff and the Defendant No.1 gave their signatures in the application for assignment whereby they gave their consent to the assignment of the said Insurance Policy normal procedure was taken up by the Defendant No.2 accordingly.

ISSUES

The following issues were emerged and framed on 28-04-2010 and amended towards correct adjudication as such-

1. Whether the suit is maintainable in its present form and style
2. Whether there is cause of action in favour of the Plaintiff and against the Defendants.
3. Whether the Plaintiff has *locus standi* to file the present suit.
4. Whether the Agreement Dt. 5/5/2008 in between the plaintiff and the defendant no. 1 is enforceable or not
5. Whether Absolute Assignment for Policy under Policy No. 0051833571 in the aegis of the defendant no. 2 executed in favour of the plaintiff is enforceable or not.
6. Whether the plaintiff is entitled to receive the relief claimed. If so to what extend

BRIEF ACCOUNT OF EVIDENCE

The plaintiff has produced the following witnesses namely-

1. Mr. C. Laltanpuia S/o C. Thankhuma, Laipuitlang- Aizawl (Hereinafter referred to as PW-1)
2. Mr. P.C. Rozamlia, Kanan Veng, Aizawl (Hereinafter referred to as PW-2)
3. Mr. Lalhangliana, Bawngkawn, Aizawl (Hereinafter referred to as PW-3)

The **PW-1** in his examination in chief reiterated the summary of the plaint being the plaintiff. He further deposed that-

Ext. P-1 is the plaint

Ext. P-1 (a), (b) and (c) are his true signatures

Ext. P-2 is a copy of Bond for lending money dt. 5/5/2008

Ext. P-2(a) is his true signature

Ext. P-3 (a) to (bb) are a copy of Absolute Policy Assignment (Ext. P- 2 and 3 are objected by learned counsel for the defendant no. 1)

In his cross examination, he admitted that before execution of the instant bond, he had purchased the land of the defendant no. 1 at Rs. 12 lakhs. He denied that as he was deployed at Kolkota, the defendant no. 1 could not repay the said loan amount. He denied that the signature of the defendant no. 1 in Ext. P-2 is forged. He also admitted that in real sense, he did not incline to take and receive Rs. 6 lakhs in respect of lending of Rs. 2 lakhs to the defendant no. 1. He admitted that during Feb., 2009 to March, 2010, he was deployed as Dy. LO in Mizoram House, Kolkota. He also admitted that the defendant no. 1 with the VCP of Lawipu came to his house to repay the said debt amount but he refused to receive as the stipulated period was over for repayment. Without any profit motive, he lend the said amount to the defendant no. 1 as in need of the same.

In his re-examination, he deposed that although in the beginning, he did not incline to receive the Insurance Policy of the defendant no. 1, as the defendant no. 1 malafide proceed the matter, I pursued the matter likewise.

The **PW- 2** in his examination in chief deposed that as requested by parties, he and Mr. Lalthangliana of Bawngkawn subscribed their signature as witness in Agreement dt. 5/5/2008 and further witnessed that without any inducement and threatening, the defendant no. 1 appended his signature therein.

In his cross examination, he deposed that except merely subscribing his signature in the said Bond, he did not have any other knowledge on its consequence. During execution of Ext. P-2, he did not know that the defendant no. 1 was present. As he did not know the defendant no. 1, he admitted that he did not know the voluntary act of defendant no. 1 in execution of Ext. P-2.

The **PW- 3** in his examination in chief deposed that as requested by parties, he and P.C. Rozamliana of Kanan Veng subscribed their signature as witness in Agreement dt. 5/5/2008 and further witnessed that without any inducement and threatening, the defendant no. 1 appended his signature therein.

In his cross examination, he deposed that the plaintiff is his superior officer as Superintendent in Health Department at that time as he was a peon. He admitted that he appended his signature in Ext. P-2 at their office viz. Health Directorate. The PW-2 is also working as LDC in their office and also put his signature in their office. He admitted that he did not know the defendant no. 1 and also did not know that whether he borrowed the money from the plaintiff or not.

In his re-examination, he stated that as told to him by the plaintiff, he knows that the defendant no. 1 borrowed the money of the plaintiff.

For the defendant no. 1:

The defendant no. 1 had produced the following witnesses

1. Mr. Lalthangfala S/o Rangkunga (L), Maubawk- Aizawl (Hereinafter referred to as DW-1 for defendant no. 1)

2. Smt. Lalrimawii W/o Lalthangfala, Maubawk- Aizawl (Hereinafter referred to as DW-2 for defendant no. 1)
3. Mr. Lalnuntluanga Pautu, VCP, Lawipu, Aizawl (Hereinafter referred to as DW-3 for defendant no. 1)

The **DW-1 for defendant no. 1** in his examination in chief reiterated the contents of written statements of defendant no. 1 as he is the defendant no. 1. He further deposed that Ext. D-1 is a copy of Order Dt. 5/8/2009 passed by ASO-1, Aizawl. Ext. D-2 is a copy of Certificate dt. 3/7/2009. Ext. D-3 is a copy of Certificate dt. 6/8/2009. Ext. D-2 (a) and (d) and 3 (a) are his true signatures.

In his cross examination, he deposed that since the past 20 to 30 years he knows the plaintiff. Being a Catholic by denomination, he prefixed his Christian name John in his name but he never include in his good name. He deposited at Rs. 6 lakhs to the defendant no. 2. He admitted that his signature put in his Insurance policy and his affidavit are different. He also admitted that he have two distinct type and form of signatures. He denied that Ext. P- 3 (a) (b) and (c) are his true signatures. He also denied Ext. P-2 is under his true signature. His signature put in Vakalatnama is his third signature. He admitted that as in need, he borrowed Rs. 2 lakhs from the plaintiff on 5/5/2008. When Policy Assignment in favour of the plaintiff was made, he was hospitalized.

The **DW-2 for defendant no. 1** in her examination in chief deposed that the defendant no. 1 is her husband. She further deposed that there was not written agreement for borrowing money from the plaintiff duly signed by the defendant no. 1. More so, Absolute Assignment of Policy was also beyond the knowledge of the defendant no. 1 as he was hospitalized at that time.

In her cross examination, she deposed that on 21st Jan., 1987, she married with the defendant no. 1. Variant type and form of signatures of the defendant no. 1 was not known by her. She knows that the defendant no. 1 borrowed the money of the plaintiff. She denied that the defendant no. 1 did not intend to repay back of the borrowed money to the plaintiff.

The **DW-3 for defendant no. 1** in his examination in chief deposed that the defendant no. 1 had borrowed Rs. 2,25,000/- from the plaintiff. As requested by the defendant no. 1 he and the defendant no. 1 went to the house of the plaintiff on 31st July, 2009 at around 7:10 A.M., to repay the said amount but the plaintiff refused to receive back the same.

In his cross examination, he deposed that since 1966, he dwelled at Lawipu veng, he admitted that the terms of agreement for borrowing money is beyond his knowledge.

For the defendant no. 2:

The defendant no. 2 had produced the following witnesses-

1. Mr. Saithuama, Manager, Bajaj Allianz Life Insurance Co. Ltd., Chanmari- Aizawl (Hereinafter referred to as DW-1 for defendant no. 2)
2. Mr. Kawnga Khiangte, CSC, Bajaj Allianz Life Insurance Co. Ltd., Chanmari- Aizawl (Hereinafter referred to as DW-2 for defendant no. 2)

The **DW-1 for defendant no. 2** in his examination in chief deposed that as per section 38 of the Insurance Act, 1938, the instant Absolute Assignment of Policy was made and is remains valid as duly signed by the plaintiff and the defendant no. 1. Without the consent of both parties, it cannot be cancelled. As the plaintiff refused to put his signature for cancellation of the same. The process of the same remains valid.

In his cross examination, he deposed that he did not see when the defendant no. 1 put his signature in the said Absolute Assignment of Policy as the plaintiff alone approached them in their office. As he duly compared and scrutinized the signature of the defendant no. 1, he pursued the said Absolute Assignment of Police. He well acquainted with the plaintiff and the defendant no. 1 before persuasion of the Absolute Assignment of Police. As per his advice and supervisions, Ext. P- 3 (a), (b) and (c) were prepared and also acted as witness in Ext. P- 3 (c). Ext. P – 3 (b) and (c) are filling up by his hand written. Since Absolute Assignment of Policy was made by the plaintiff and the defendant no. 1, no change can be made and is in fact beyond the authority of the company. So far as his knowledge concerned, he affirmed that the defendant no. 1 came to their office once for making Ext. P- 3 (b) and (c) and also appended his signature.

The **DW-2 for defendant no. 2** in his examination in chief deposed that as per section 38 of the Insurance Act, 1938, the instant Absolute Assignment of Policy was made and is remains valid as duly signed by the plaintiff and the defendant no. 1. Without the consent of both parties, it cannot be cancelled. As the plaintiff refused to put his signature for cancellation of the same. The process of the same remains valid.

TERMS OF RIVALRY

Learned counsel for the plaintiff submitted at the time of arguments that According to Section 38 of Insurance Act, 1938, **“assignment”** refers to a procedure of transferring rights, interest and title of the policy from “assignor” (original rights’ holder) to “assignee” (new individual). Under assignment, an original policyholder can transfer maturity and death benefits of a policy to assignee. Further, **Absolute Assignment** has also been defined in the said Act as follows: Under Absolute Assignment, the original assignor loses all his rights over the policy, and the same will get transferred to assignee (new policyholder). Also under ‘absolute assignment’, the original nominee gets cancelled and assignee will hold all the rights, including nomination. Here, he can either assigns a nominee or reserves the nominee’s rights to himself.

Learned counsel for the plaintiff further travelled that In case of absolute assignment, along with the rights, liabilities attached to the policy will also get transferred to assignee. Also, once, a policy is assigned with absolute assignment, it cannot be cancelled. It can be done only by another valid re-assignment. He further added that it is therefore crystal clear from the cross examination of the defendant no 1, Lalthangfala himself what kind of a person Lalthangfala is and the true colour and character of Lalthangfala has been revealed. Shri Saithuama, Manager, Bajaj Allianz on his cross examination by the counsel of the Plaintiff stated at Para 3 that *“Ext 3(A), (B) & (C) te hi office-a Branch Manager ka nihna anga ka thurawn*

leh buaipui a buatsaih a ni” The witness further added at Para 4 that “*Ext-3(C) a hriatpuitu hming tarlan pawh hi keimah ngei ka ni tih ka hria*” Shri Saithuama as witness has duly confirmed the fact that at Para 5 & 6 “*Ext – 3(B) & (C) te hi office-ah keimah ngeiin ka fill up sak a ni.*” “*Ext-3(B)&(C) te hi keima kut ngeia fill up sak a ni a, tin, hriatpuitu ah pawh ka tang ngei*” Para 7 “*Ext – 3(B) & (C)-a defendant no 1 Lalthangfala leh Plaintiff C.Laltanpuia signature te hi dik lohna awma ka hriatloh avangin dan angin ka process tir ta ani*” Para 8 “*Plaintiff Pu C.Laltanpuia leh Defendant No 1 te hian Absolute Assignment an siam tawh avangin Policy No.0051833571 hi Pu C.Laltanpuia a neitu nihna a neifel tawh a, tih danglam theih a ni tawh lo*”. Para 9 “*Anihna takah chuan Company in thuneihna a nei tawh lo*” Para 10 “*Defendant No 1, Lalthangfala hi Ext-3(B)&(C) buaipui hian vawikhat chu alo kal ngei ani tih ka hria. Hemi tum hian hming pawh a sign ngei niin ka hria*” It is voluminously clear from the deposition of Shri. Saithuama, the Manager, Bajaj Allianz at the relevant time of incident who also subscribed his hand to the said Absolute Assignment that the defendant no 1, Shri Lalthangfala has actually appeared and signed/executed the said Absolute Assignment in presence of the Manager. Hence, the defendant no 1 has no legal or moral right to deny the Absolute Assignment duly executed by him as per provision.

On the other hand, learned counsel for the defendant no. 1 after delving into various adduced evidences argued that in view of the reasons stated by the Plaintiff himself, it is unreasonable for him not to accept the said amount of Rs.2,25,000/- from the Defendant No.1 when the same was brought to him for repayment of the loan taken by the Defendant No.1 though it was a little beyond the period of one year as agreed by both the Plaintiff and the Defendant No.1. In fact, the reason for the Defendant No.1 to approach the Plaintiff for giving him the said amount of Rs. 2 lakhs on loan was due to the close relationship he and the Plaintiff had developed while making transactions in respect of the said land as stated earlier. And now the intention on the part of the Plaintiff to deprive the Defendant No.1 of all the benefit he would derive by subscribing the said Insurance Policy under the Defendant No.2 by filing the instant suit appears to be unreasonable, legally untenable. Accordingly, this suit being without any merits is liable to be dismissed with cost.

FINDINGS

Issue No. 1

Maintainability of the suit

While the suit is valued at Rs. 6 lakhs and a requisite court fees is also make up by the plaintiff as directed to do so. No other points of laches is raised during the proceedings. The plain is also duly accompanied by Affidavit and Verification, no queries on non-joinder of necessary parties also arose. Meanwhile, the suit is matter of mortgage which requires to cautious on the matter. In short, I find no irregularities which vitiate the proceedings as the well accepted principles is that procedural law is the handmaid of justice Vide, **Shreenath & Another vs Rajesh & Others**, 1998 AIR 1827, 1998 (2) SCR 709, 1998 (4) SCC 543, 1998 (2) SCALE 725, 1998 (3) JT 244: **M.S. Grewal v. Deep Chand Sood**, (2001) 8 SCC 151: **Sushil Kumar Sen v. State of Bihar** (1975) 1 SCC 774: **The State of Punjab and Anr. v. Shamlal Murari and Anr.** (1976) 1 SCC 719 remains recognized by the Supreme Court on 10 May, 2011 in **Mahadev Govind Garge & Ors vs**

Spl. Land Acquisition Officer, Upper Krishna Project, Jamkhandi in connection with Civil Appeal Nos. 5094 of 2005.

Issue No. 2

Whether there is cause of action in favour of the Plaintiff and against the Defendants.

It is a well settled law that the cause of action means the right to sue as held in **M/s. Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr.** decided on 28/04/2004 in connection with Appeal (civil) 9159 of 2003 reported in 2004 AIR 2321, 2004 (1) Suppl. SCR 841, 2004 (6) SCC 254, 2004 (5) SCALE 304, 2004 (1) Suppl. JT 475. Admittedly, the defendant no. 1 had borrowed Rs. 2 lakhs from the plaintiff but fails to make repayment within the stipulated period of time. Furthermore, with the knowledge and satisfaction of the defendant no. 2, Absolute Assignment for Policy with regards to Insurance Policy No. 0051833571 was processed. Cogently, cause of action had arisen in favour of the plaintiff and against the defendants.

Issue No. 3

Whether the Plaintiff has locus standi to file the present suit.

In dictionary meaning, the term *locus standi* means the right to bring an action, to be heard in court, or to address the Court on a matter before it. Locus standi is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. Undisputedly, the plaintiff lend Rs. 2 lakhs to the defendant no. 1. Thereafter, sought measures to execute Absolute Assignment for Policy with regards to Insurance Policy No. 0051833571 in favour of the plaintiff. The defendant no. 1 thereby objected its awesome process. The plaintiff will therefore obviously the aggrieved person as defined in the case of **Bar Council of Maharashtra v. M. V. Dabholkar**, (1975) 2 SCC 703: AIR 1975 SC 2092 and in the case of **S.P. Gupta Vs. President Of India And Ors.** decided on 30/12/1981 reported in AIR 1982 SC 149, (1981) Supp (1) SCC 87, (1982) 2 SCR 365. This issue is therefore decided in favour of the plaintiff.

Issue No. 4

Whether the Agreement Dt. 5/5/2008 in between the plaintiff and the defendant no. 1 is enforceable or not

In the disputed Mortgaged Deed Dt. 5/5/2008 marked as Ext. P-2, the defendant no. 1 had borrowed Rs. 2 lakhs from the plaintiff to repay within one year from the date of execution. In case of failure to repay the same within a stipulated period, Premium Installment at Rs. 6 lakhs deposited as Insurance Policy No. 0051833571 by the defendant no. 1 should be forfeited in favour of the plaintiff. The plaintiff was forthwith appointed as the custodian of all connected documents of the said Insurance Policy. Meanwhile, the PWs 2 and 3 who were put them as witnesses of the said Mortgaged Deed deposed in their cross examination that their signatures were appended in their working place viz. Health Department, Govt. of Mizoram by not ascertainment that whether the defendant no. 1 as mortgagor executed the same voluntarily or not whilst the DWs for defendant no. 1 vehemently denied of the said Mortgaged Deed. However, the loan interest conditions will be governed by the rigour of the Usurious Loans Act, 1918 (Act No. 10 of 1918). In the light of the definitions under sub-section (8) of section 2 of the Mizoram Money Lenders and

Accredited Loan Providers (Regulation) Act, 2010 (Act No. 12 of 2010), the instant cause can also be termed as loan. Section 18 of the said Act reads thus-

“18. Maximum amount of interest recoverable on loans and discharge of loans in certain cases

- (1) No money lender or accredited loan provider shall recover towards the interest in respect of any loans advanced by him, an amount in excess of the principal amount.
- (2) Any loan in respect of which the money lender or accredited loan provider has realized from the debtor an amount equal to or more than twice the amount of the principal, shall stand discharged and the amount, if any, so realized in excess of twice the amount of the loan shall be refunded by the money lender or accredited loan provider, as the case may be, to the debtor.”

As per sub-rule (1) of rule 10 of the Mizoram Money Lenders and Accredited Loan Providers (Regulation) Rules, 2010, the rate of interest shall be annualized rates. The persuasive value of the above legal entity will be attracted towards justice, equity and good conscience even in the instant case. In this legal loopholes and betrayal of the plaintiff by the PWs 2 and 3 during their cross examination, I find that the said Agreement Dt. 5/5/2008 in between the plaintiff and the defendant no. 1 will not be enforceable in toto.

Meanwhile, facts can be presumed that as the plaintiff is the custodian of documents pertaining to Premium Installment at Rs. 6 lakhs deposited as Insurance Policy No. 0051833571 by the defendant no. 1. And as admitted by the DWs 1 and 3 for the defendant no. 1 that the defendant no. 1 had borrowed Rs. 2 lakhs from the plaintiff on Dt. 5/5/2008. At least under the umbrella of the doctrine of '*Ubi jus ibi remedium*' still recognized by the Apex Court 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, remedy within the zone of law will be lies in favour of the plaintiff.

Issue No. 5

Whether Absolute Assignment of Policy under Policy No. 0051833571 in the aegis of the defendant no. 2 executed in favour of the plaintiff is enforceable or not.

Commonly known that Absolute assignment of a life insurance policy should be explained the Assignment Clause of life insurance contract. This is a feature in a life insurance policy allowing a policy owner to freely assign (give, or sell) a policy to another, or institution. The fact that life insurance is freely assignable makes it a useful financial instrument through which to secure a loan. Needless to say is that Bajaj Allianz Life Insurance Co Ltd is a unique joint venture among the global giants Allianz Group (AG) and Bajaj Auto. Allianz AG's world ranking establishes it among the top insurance companies in the world. Bajaj is the biggest two and three wheeler manufacturer in the world. Bajaj Allianz Life Insurance Company boasts of a nationwide presence with 876 offices and over 4 million satisfied customers.

In the instant case, as clearly deposed by DW-1 of the defendant no. 2, with the satisfaction of the Company Viz. Bajaj Allianz Life Insurance Co. Ltd. Absolute Assignment for Policy with regards to Insurance Policy No.

0051833571 was executed in favour of the plaintiff. Although the DWs 1 and 2 for the defendant no. 2 denied the signature of the defendant no. 1 in the said Absolute Assignment for Policy. As admitted by the defendant no. 1 in his cross examination as DW-1 for defendant no. 1, he practiced to use different form and style of signatures. Meanwhile, DW-1 for the defendant no. 2 fairly as an independent witness deposed that the process of the disputed Absolute Assignment for Policy is already completed and is unable to alter without the consent of the plaintiff. It un-doubtedly disclosed that although the first cause of action viz. execution of Mortgaged Deed Dt. 5/5/2008 may be vague in favour of the plaintiff, the second cause of action viz. execution of Absolute Assignment for Policy has duly done on the satisfaction of the defendant no. 2 will be beyond scrutiny of the instant proceedings as the defendant no. 1 fails to challenged its process in the law courts and further fails to make any counter claim in the instant proceedings which will be an undisputed factum. In other sense, the act of the defendant no. 1 can be estopped by a doctrine of estoppels and by means of *estoppels in pais* (Estoppel by conduct) as enshrined under section 115 of the Indian Evidence Act, 1972 in the light of the observations in **P.S. Gopinathan Vs. State of Kerala and Others** reported in (2008) 7 SCC 70, the Supreme Court held thus;

"44.Apart from the fact that the appellant accepted his posting orders without any demur in that capacity, his subsequent order of appointment dated 15-7-1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion, rightly held that the appellant is estopped and precluded from questioning the said order dated 14-1-1992. The application of principles of estoppel, waiver and acquiescence has been considered by us in many cases, one of them being *G. Sarana (Dr.) v. University of Lucknow.....*"

Furthermore, the defendant no. 1 and his DW-3 went to the house of the plaintiff in the morning of 31st July, 2009 for repayment of the instant debt amount as clearly admitted by evidences of both parties, but the plaintiff refused to receive the same by rather urging the defendant no. 1 for other benefits. The defendant no. 1 remains blenched to approach the court for redemption suit etc. Till the instant case, as stated above, the defendant no. 1 further fails to prefer any counter claim. No mode of adjudication in favour of the defendant no. 1 can be arisen whilst admitted that the plaintiff lend Rs. 2 lakhs to the defendant no. 1.

Issue No. 6

Whether the plaintiff is entitled to receive the relief claimed. If so to what extend

In view of the findings of the above, the Plaintiff will be entitled to beneficial owner of the Policy No 0051833571 issued by the Defendant No 2 for sum assured of Rs 7,50,000/- on the basis of Absolute Assignment duly executed by the Assignor by leaving the crux in terms of the further decisions of the defendant no. 2 in accordance with their rules of business or other laws enveloped to their business. In this catena, the defendant no. 2 as DW-1 for defendant no. 2 himself deposed that the process of the said

Absolute Assignment in the affirmative sense of the plaintiff is unchallengeable without the will and desire of the plaintiff.

ORDER

Upon hearing of both parties and in view of the afore findings under various issues, it is hereby ORDERED and DECREED that the plaintiff is entitled to beneficial owner of the Policy No 0051833571 issued by the Defendant No 2 for sum assured of Rs 7,50,000/- on the basis of Absolute Assignment duly executed by the Assignor.

Parties are directed to bear their own costs.

If I am in a position to add more, as fairly deposed in his deposition as PW-1 by the plaintiff stating that the said money lending was not profit motive and not strongly intended to claim the disputed Insurance Policy at the beginning, the plaintiff is expected to share and compensate the defendant no. 1 when maturation of the said Policy. Pertinently, at the time of oral arguments, learned counsel for the plaintiff submitted that the instant Insurance Policy will attain maturation in 2017 which is also admitted by learned counsel for the defendant no. 1, it denotes that when maturation period is too long, it will not be excessive profitable even for the plaintiff who is decreed.

Give this copy to all concerned including decree.

Given under my hand and seal of this court on this 2nd Nov., 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/68/2009, Sr. CJ (A)/

Dated Aizawl, the 2nd Nov., 2011

Copy to:

1. Mr. C. Laltanpuia S/o C. Thankhuma, Laipuitlang- Aizawl through Mr. L.H. Lianhrima, Adv.
2. Mr. Lalthangfala S/o Rangkunga (L), Maubawk- Aizawl through Mr. C. Lalramzauva, Sr. Adv.
3. Bajaj Allianz Life Insurance Co. Ltd., Chanmari, Aizawl Represented by the Manager through Mr. B. Lalramenga, Adv.
4. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District: Aizawl
5. Case record

PESKAR

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

DECREE

CIVIL SUIT NO. 68 OF 2009

Plaintiff:

Shri C. Laltanpuia
S/o C. Thankhuma
R/O Laipuitlang, Aizawl

By Advocate's : Mr. L.H. Lianhrima, Adv.

Versus

Defendants:

1. Shri Lalthangfala
s/o Rangkung (L)
Maubawk, Aizawl
2. Bajaj Allianz Life Insurance Co. Ltd
Chanmari, Aizawl
Represented by the Manager

By Advocates

For the defendant no. 1 : 1. Mr. C. Lalramzauva Sr. Adv.
2. Mr. A. Rinliana Mahotra, Adv.
3. Mr. Joseph Lalfakawma, Adv.
4. Mr. T.J. Lalnuntluanga, Adv.
5. Miss Penlui Vanlalchami, Adv.
6. Mr. K. Laldinliana, Adv.

For the defendant no. 2 : Mr. B. Lalramenga, Adv.

Date of Arguments : 24-10-2011
Date of Judgment & Order : 02-11-2011

BEFORE

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

This suit coming on this 2nd Nov., 2011 for final disposal before Dr. H.T.C. Lalrinchhana, Senior Civil Judge - 1 in the presence of Mr. L.H. Lianhrima, Advocate for the plaintiff and of Mr. C. Lalramzauva & Ors., Advocates for the defendant no.1 and Mr. B. Lalramenga, Adv. for the defendant no. 2, it is ordered and decreed that the plaintiff is entitled to beneficial owner of the Policy No 0051833571 issued by the Defendant No 2 for sum assured of Rs 7,50,000/- on the basis of Absolute Assignment duly executed by the Assignor.

Given under my hand and seal of the Court, this 2nd day of Nov., 2011.

Seal of the court

Judge