

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

MONEYSUIT NO. 55 OF 2010

Plaintiff:

Smt. Ralramthangi
W/o Lalhmingliana Sailo
Ramhlun North, Aizawl

By Advocates

: 1. Mr. B. Lalramenga
2. Mr. Reuben L. Tochhawng
3. Mr. J.C. Lalnunsanga
4. Miss Bobita Lalhmingmawii

Versus

Defendant:

Smt. C. Lalmawii
D/o Thangzuala (L)
Tuikual 'B', Aizawl

By Advocate's

: Smt. Liliparmawii Hmar

Date of Judgment & Order

: 30-04-2012

BEFORE

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

JUDGMENT & ORDER

GERMINATION OF THE CASE

This is a suit for recovery of Rs. 5,00,000/- as principal from the defendant with the unpaid contractual interests amounting to Rs. 20,000/- as per 'Pawisa Inpukna' Dt. 3/9/2004 and with pendente lite interest rate @ 12% per annum till full and final realization of the whole amount of the said debt. In the plaint, the plaintiff submitted that on 3/9/2004, the defendant had borrowed a sum of Rs. 5 lakhs from her with a conditioned that interest rate will be @ 10% per mensem and to repay within six months. By Acknowledgment due Dt. 10/8/2010, the defendant further agreed that she only clear Rs. 2,80,000/- (Two lakhs and eighty thousand) from the whole debt to the plaintiff. As directed the plaintiff also make up deficiency of court fees.

The defendant in her written statements contended that the plaintiff herself rather approached her to invest her money. The defendant took only Rs. 3,50,000/- from the plaintiff not Rs. 5 lakhs. The defendant already paid Rs. 2,80,000/- (Two lakhs and eighty thousand) to the plaintiff. thus, prayed to dismiss of the suit with costs.

ISSUES

On 10/3/2011, issues were framed and amended towards justice as follows-

1. Whether the suit is maintainable or not
2. Whether the defendant borrowed Rs. 5 lakhs from the plaintiff. if so, under what lawful conditions
3. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Smt. Ralramthangi W/o Lalhmingliana Sailo, Ramhlun North, Aizawl (Hereinafter referred to as PW-1)
2. Smt. V.L. Hriatrengi D/o Ngurthansanga, Ramhlun North, Aizawl (Hereinafter referred to as PW-2)
3. Smt. Baby Lalrinhlui D/o Lalhmingliana Sailo, Ramhlun North, Aizawl (Hereinafter referred to as PW-3)
4. Mr. NG Kapliana, Tanhril, Aizawl (Hereinafter referred to as PW-4)

The **PW-1** in her examination in chief reiterated the gist of her plaint being the plaintiff.

None appeared and contested to cross examine her as the defendant betrayed the proceedings except filing written statement.

The **PW-2** in her examination in chief deposed that she acknowledged that on 3/9/2004, the defendant approached the plaintiff asking loan of Rs. 5 lakhs with an interest rate @ 10% per month to repay within six months. After strenuous efforts of the plaintiff, the defendant repaid only Rs. 2,80,000/- to the plaintiff.

None appeared and contested to cross examine her as the defendant betrayed the proceedings except filing written statement.

The **PW-3** in her examination in chief deposed that she acknowledged that on 3/9/2004, the defendant approached the plaintiff asking loan of Rs. 5 lakhs with an interest rate @ 10% per month to repay within six months. After strenuous efforts of the plaintiff, the defendant repaid only Rs. 2,80,000/- to the plaintiff.

None appeared and contested to cross examine her as the defendant betrayed the proceedings except filing written statement.

The **PW-4** in his examination in chief deposed that he acknowledged that on 3/9/2004, the defendant approached the plaintiff asking loan of Rs. 5 lakhs with an interest rate @ 10% per month to repay within six months. After strenuous efforts of the plaintiff, the defendant repaid only Rs. 2,80,000/- to the plaintiff.

None appeared and contested to cross examine her as the defendant betrayed the proceedings except filing written statement.

As the defendant betrayed the proceedings, no further proceedings can be had except to deliver judgment & order.

FINDINGS

Issue No. 1

Whether the suit is maintainable or not

The suit is accompanied by only verification supported by para wise affidavit, a requisite court fee is paid. I therefore find no irregularities which vitiate the proceedings.

Issue No. 2

Whether the defendant borrowed Rs. 5 lakhs from the plaintiff. if so, under what lawful conditions

Although evidence of the plaintiff proof that the defendant had borrowed a sum of Rs. 5 lakhs from her with a conditioned that interest rate will be @ 10% per mensem and to repay within six months. By Acknowledgment due Dt. 10/8/2010, the defendant further agreed that she only clear Rs. 2,80,000/- (Two lakhs and eighty thousand) from the whole debt to the plaintiff. In this task, by virtue of Section 3 of the Interest Act, 1978 (Act No. 14 of 1978), interest rate can not exceed current rate of interest. Clause (b) of section 2 of the said Act reads thus-

“(b) "current rate of interest" means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949. (10 of 1949)

Explanation.- In this clause, "scheduled bank" means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949;(10 of 1949)”

Thus, interest rate @ 110% per annum is excessive which is also against the provision of the Usurious Loans Act, 1918 (Act No. 10 of 1918). Thus, the agreement in between the plaintiff and the defendant is not cogently not lawful.

Issue No. 3

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

Although not lawful agreement, as partly admitted by the defendant and as determined by Acknowledgement Due Dt. 10/8/2010, the plaintiff will be entitled relief towards justice, equity and good conscience. The plaintiff will entitle compound interest rate @ 12 % per annum with effect from 3/9/2004 from the defendant by minus (-) of Rs. 2,80,000/- (Two lakhs and eighty thousand) from the total borrowed money @ Rs. 5 lakhs. More so, only because of the lethargy of the defendant, the plaintiff had instituted the instant suit. Therefore, imposing costs of the suit @ Rs. 10,000/- (Ten thousand rupees) as lawyers fee plus Rs. 5,000/- (Five thousand rupees) as court fees as costs of the suit is mandate as recently observed by the Hon'ble Apex Court 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). And also 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].

ORDER

In view of the afore findings in various issues, it is hereby ORDERED and DECREED that the plaintiff is entitled compound interest rate @ 12 % per annum with effect from 3/9/2004 from the defendant by minus (-) of Rs. 2,80,000/- (Two lakhs and eighty thousand) from the total borrowed money @ Rs. 5 lakhs. The plaintiff is further entitled costs of the suit @ Rs. 10,000/- (Ten thousand rupees) as lawyers fee plus Rs. 5,000/- (Five thousand rupees) as court fees with an interest rate @ 12% per annum from today. The defendant is directed to pay the above decreetal amount to the plaintiff within sixty days from the date of this order.

In the above terms, the case shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 30th April, 2012 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/55/2010, Sr. CJ (A)/

Dated Aizawl, the 30th April, 2012

Copy to:

1. Smt. Ralramthangi W/o Lalhmingliana Sailo, Ramhlun North, Aizawl through Mr. B. Lalramenga, Adv.
2. Smt. C. Lalmawii D/o Thangzuala (L), Tuikual 'B', Aizawl through Smt. Liliparmawii Hmar, Adv.
3. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Case record

PESKAR