

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

CIVIL SUIT NO. 92 OF 2011

Plaintiffs:

1. Smt. Lalzawngliani
2. Smt. Lalrinawmi
3. Smt. Chhawnkimi
4. Smt. F. Lalhuthangi
5. Mr. H. Lalmangaihzuala
6. Mr. Lalthara
7. Mr. R. Chhawntluanga
8. Smt. Zonuni
9. Smt. Lalsangpuii
10. Mr. P. Lalremliana
11. Mr. Chawiliana
12. Mr. Lalchunglura
13. Mr. Thangmawia
14. Smt. Zochungnungi
15. Smt. Sangmawii
16. Smt. Vanlalvuani
17. Mr. Lalchhingpuia
18. Mr. Rosiama

Represented by:

Smt. Lalzawngliani
Republic Vengthlang
Aizawl- Mizoram

By Advocate's : Smt. C. Lalremruati

Versus

Defendant:

Smt. Zothanpuii
W/o R. Lalrinfela
Venghnuai- Aizawl

By Advocate's : _____

Date of hearing : 14-08-2012

Date of Judgment & Order : 16-08-2012

BEFORE

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

JUDGMENT & ORDER

BRIEF FACTS OF THE CASE

Although the plaintiffs did not believe, the defendant's offered to the plaintiff no. 1 was fulfilled by lending huge amount of money in different dates with an interest rate @ 10% per annum, the defendant timely repaid the same. The defendant later borrowed certain sum of money from the plaintiffs by promising repayment with an interest rate @ 10 % per annum as follows-

- 1) From Smt. Lalrinawmi, during 18/12/2007 to 19/8/2008, a sum of Rs. 16,50,000/- was borrowed by the defendant.
- 2) From Smt. Lalzawngliani, during 11/10/2007 to September, 2008, a sum of Rs. 9,21,000/- was borrowed by the defendant.
- 3) From Smt. Chhawnkimi, during 28/12/2008 to 22/7/2008, a sum of Rs. 14,00,000/- was borrowed by the defendant.
- 4) From Smt. F. Lalhuthangi, during 13/5/2008 to 7/8/2008, a sum of Rs. 11,00,000/- was borrowed by the defendant.
- 5) From Mr. H. Lalhmangaihzualla, during 23/4/2008 to 1/8/2008, a sum of Rs. 10,50,000/- was borrowed by the defendant.
- 6) From Mr. Lalthara, during 1/9/2007 to 11/8/2008, a sum of Rs. 5,40,000/- was borrowed by the defendant.
- 7) From Smt. Chhawnkimi, during 26/4/2008 to 6/6/2008, a sum of Rs. 2,20,000/- was borrowed by the defendant.
- 8) From Smt. Zonuni, during 19/6/2008 to 9/7/2008, a sum of Rs. 9,50,000/- was borrowed by the defendant.
- 9) From Smt. Lalsangpuii, during 1/4/2008 to 12/8/2008, a sum of Rs. 2,00,000/- was borrowed by the defendant.
- 10) From Mr. P. Lalremliana, on 6/8/2008, a sum of Rs. 1,00,000/- was borrowed by the defendant.
- 11) From Mr. C. Chawiliana, during 26/4/2008 to 10/7/2008, a sum of Rs. 1,80,000/- was borrowed by the defendant.
- 12) From Mr. Lalchunglura, on 10/7/2008, a sum of Rs. 70,000/- was borrowed by the defendant.
- 13) From Mr. Thangmawia, on 2/11/2008, a sum of Rs. 14,000/- was borrowed by the defendant.

- 14) From Smt. Zochungnungi, on 7/6/2008, a sum of Rs. 6,00,000/- was borrowed by the defendant.
- 15) From Smt. Sangmawii, on 26/1/2008, a sum of Rs. 1,00,000/- was borrowed by the defendant.
- 16) From Smt. R. Vanlalvuani, on 6/3/2008, a sum of Rs. 40,000/- was borrowed by the defendant.
- 17) From Mr. Lalchhingpuia, on 16/7/2008, a sum of Rs. 40,000/- was borrowed by the defendant.
- 18) From Mr. Rosiama, on 28/8/2008, a sum of Rs. 1,00,000/- was borrowed by the defendant.

The grand total of the above falls at Rs. 92,75,000/- (Rupees ninety two lakhs and seventy five thousand). The plaintiffs in their plaint therefore prays that- (i) a decree that the defendant had cheated the plaintiffs and directing the defendant to pay Rs. 92,75,000/- (Rupees ninety two lakhs and seventy five thousand) with interest rate @ 9% per annum with effect from filing of the suit (ii) a decree that the defendant had cheated the plaintiff no. 1 to sign those agreement by means of fraud between the plaintiff no. 1 and other plaintiffs (iii) a decree directing the defendant to pay adequate compensation amounting to Rs. 30,00,000/- to the plaintiffs due to their suffering, irreparable loss and mental and financial injury (iv) a decree for attachment and sale of moveable and immovable properties of the defendant and paid to the plaintiffs for realization of Rs. 92,75,000/- (Rupees ninety two lakhs and seventy five thousand) with interest rate @ 9% per annum with effect from filing of the suit (v) order restraining the defendant from disposing, in any manner her property during pending of the case and (vi) an order/decreed granting relief to the plaintiffs which they are entitled according to law, justice, equity and good conscience.

The defendant in her written statement and in her own oral evidence admitted some of her borrowed amount claimed in the plaint from various plaintiffs but she claimed that she make repayment in the following terms with quantum of her borrowed amount from some of the plaintiffs different from the plaint -

- 1) With regards to her liabilities on Smt. Lalrinawmi, out of Rs. 16,50,000/-, she stated that she paid Rs. 1 lakh on cash, she also paid one LSC with Assam type building located at Zemabawk, Aizawl estimated costs at Rs. 14 lakhs. Besides that she paid computer worth @ Rs. 20,000/- and @ Rs. 80,000/-. She therefore thought that she already repaid her debt amount to Smt. Lalrinawmi.
- 2) With regards to her liabilities on Smt. Lalzawngliani, out of Rs. 9,21,000/-, she already repaid Rs. 3,14,000/-.

- 3) With regards to her liabilities on Smt. Chhawnkimi, out of Rs. 14,00,000/-, she repaid Rs. 90,000/-
- 4) With regards to her liabilities on Smt. F. Lalhuthangi, out of Rs. 11,00,000/-, she already repaid Rs. 1,10,000/-.
- 5) With regards to her liabilities on Mr. H. Lalmangaihzuala, she only admitted that her borrowed amounts is at Rs. 7,50,000/, she repaid one LSC with building located at Durtlang estimated value at Rs. 5 lakhs. She also paid one LSC with three storied Assam type building located at Chawlhmun, Aizawl worth amounting to Rs. 15 lakhs. More so, she also paid one LSC located at Zemabawk valued at Rs. 2 lakhs. She thought that she made excess payment to him and no further liabilities to the said Mr. H. Lalmangaihzuala.
- 6) With regards to her liabilities on Mr. Lalthara, she admitted that her liabilities was Rs. 5,40,000/- but already repaid Rs. 42,000/- to him.
- 7) With regards to her liabilities on Smt. Chhawnkimi, she admitted that her liability was a sum of Rs. 2,20,000/- and already repaid Rs. 15,000/-.
- 8) With regards to her liabilities on Smt. Zonuni, she admitted her liability as a sum of Rs. 9,50,000/- was borrowed, but she claimed that she had paid one LSC located at Tlangnuam, Aizawl for her liabilities estimated value at Rs. 4 lakhs.
- 9) With regards to her liabilities on Smt. Lalsangpuui, she admitted her liabilities as a sum of Rs. 2,00,000/- was borrowed but she remain fails to make repayment either by a cash or not.
- 10) With regards to her liabilities on Mr. P. Lalremliana, she admitted that her liability was a sum of Rs. 1,00,000/- but not yet make repayment of the same.
- 11) With regards to her liabilities on Mr. C. Chawiliana, she was silent on it.
- 12) With regards to her liabilities on Mr. Lalchunglura, she was silent on it.
- 13) With regards to her liabilities on Mr. Thangmawia, she was silent on it.
- 14) With regards to her liabilities on Smt. Zochungnungi, she admitted that her liability was a sum of Rs. 6,00,000/- and is yet to repayment.

- 15) With regards to her liabilities on Smt. Sangmawii, she was silent on it.
- 16) With regards to her liabilities on Smt. R. Vanlalvuani, she admitted that her due amount was a sum of Rs. 40,000/- and is yet to repayment.
- 17) With regards to her liabilities on Mr. Lalchhingpuia, she was silent on it.
- 18) With regards to her liabilities on Mr. Rosiama, she admitted that her due amount was a sum of Rs. 1,00,000/- and is yet to repayment.

ISSUES

The following issues were framed on 19/12/2011 namely-

1. Whether the suit is maintainable or not
2. Whether the defendant had cheated one of the plaintiff namely- Smt. Lalzawngliani in order to borrow a sum of Rs. 92,75,000/- from all the plaintiffs or not
3. Whether the defendant is liable to repay Rs. 92,75,000/- with interest to the plaintiffs or not
4. Whether the defendant is liable to pay compensation of Rs. 30,00,000/- to the plaintiffs or not
5. Whether the plaintiffs are entitled to the relief claimed or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

The plaintiff had produced only one witness namely- Smt. Lalzawngliani W/o P. Lalremliana, Republic Vengthlang, Aizawl (Hereinafter referred to as PW). In her examination in chief, she mainly affirmed the contents of the plaint and she further deposed that –

Ext. P- 1 (a) and (b) are authorization letter to her by other plaintiffs

Ext. P- 2 is a letter showing that the defendant had repaid her borrowed money to five persons for the first time

Ext. P-3, 4, 5 and 6 are a letter namely “Pawisa Inpuktirna” executed by the plaintiff under the instruction of defendant

Ext. P- 7 is a Declaration executed by the defendant

Ext. P- 8 is legal notice given to the defendant by the plaintiffs

None contested to cross examine.

The defendant herself posed as her witness (Hereinafter referred to as DW). In her examination in chief, she deposed that since 2007, she used to borrow the money from different persons with promising 10% interest per month. She later lend the same to other persons but the other persons where she lend could not recover both the capital and interest at all, which

created insolvency like in the instant case, she further deposed pertaining to the instant case that-

1. With regards to her liabilities on Smt. Lalrinawmi, out of Rs. 16,50,000/-, she stated that she paid Rs. 1 lakh on cash, she also paid one LSC with Assam type building located at Zemabawk, Aizawl estimated costs at Rs. 14 lakhs. Besides that she paid computer worth @ Rs. 20,000/- and @ Rs. 80,000/-. She therefore thought that she already repaid her debt amount to Smt. Lalrinawmi.
2. With regards to her liabilities on Smt. Lalzawngliani, out of Rs. 9,21,000/-, she already repaid Rs. 3,14,000/-.
3. With regards to her liabilities on Smt. Chhawnkimi, out of Rs. 14,00,000/-, she repaid Rs. 90,000/-
4. With regards to her liabilities on Smt. F. Lalhuthangi, out of Rs. 11,00,000/-, she already repaid Rs. 1,10,000/-.
5. With regards to her liabilities on Mr. H. Lalmangaihzualla, she only admitted that her borrowed amounts is at Rs. 7,50,000/, she repaid one LSC with building located at Durtlang estimated value at Rs. 5 lakhs. She also paid one LSC with three storied Assam type building located at Chawlhmun, Aizawl worth amounting to Rs. 15 lakhs. More so, she also paid one LSC located at Zemabawk valued at Rs. 2 lakhs. She thought that she made excess payment to him and no further liabilities to the said Mr. H. Lalmangaihzualla.
6. With regards to her liabilities on Mr. Lalthara, she admitted that her liabilities was Rs. 5,40,000/- but already repaid Rs. 42,000/- to him.
7. With regards to her liabilities on Smt. Chhawnkimi, she admitted that her liability was a sum of Rs. 2,20,000/- and already repaid Rs. 15,000/-.
8. With regards to her liabilities on Smt. Zonuni, she admitted her liability as a sum of Rs. 9,50,000/- was borrowed, but she claimed that she had paid one LSC located at Tlangnuam, Aizawl for her liabilities estimated value at Rs. 4 lakhs.
9. With regards to her liabilities on Smt. Lalsangpuii, she admitted her liabilities as a sum of Rs. 2,00,000/- was borrowed but she remain fails to make repayment either by a cash or in kind.
10. With regards to her liabilities on Mr. P. Lalremliana, she admitted that her liability was a sum of Rs. 1,00,000/- but not yet make repayment of the same.
11. With regards to her liabilities on Mr. C. Chawiliana, she was silent on it.

12. With regards to her liabilities on Mr. Lalchunglura, she was silent on it.
13. With regards to her liabilities on Mr. Thangmawia, she was silent on it.
14. With regards to her liabilities on Smt. Zochungnungi, she admitted that her liability was a sum of Rs. 6,00,000/- and is yet to repayment.
15. With regards to her liabilities on Smt. Sangmawii, she was silent on it.
16. With regards to her liabilities on Smt. R. Vanlalvuani, she admitted that her due amount was a sum of Rs. 40,000/- and is yet to repayment.
17. With regards to her liabilities on Mr. Lalchhingpuia, she was silent on it.
18. With regards to her liabilities on Mr. Rosiama, she admitted that her due amount was a sum of Rs. 1,00,000/- and is yet to repayment.

During her cross examination, she admitted that all the above were her own liabilities but not on others. She appended her signature on Declaration Dt. 28/5/2009 after she perused the contents. She further deposed that most of the plaintiffs where she is liable to repay the money were the friends of Smt. Lalzawngliani, when she failed to reach a persons to borrow money, Smt. Lalzawngliani used to help her for finding out of the said persons. In case when Smt. Lalzawngliani got such persons, she used to pay commission fee to the said Smt. Lalzawngliani.

FINDINGS

Issue No. 1

Whether the suit is maintainable or not

Although the suit is being filed as Money Suit, as the plaintiff and lone oral evidence of the plaintiff disclosed and as the defendant being DW admitted that since 2007, the defendant collected deposits from different persons like the instant plaintiff. The mode of receiving and deposits of money can be termed as "*Deposit*" under clause (b) of section 2 of the Mizoram Protection of Interests of Depositors (in financial establishment) Act, 2002 (Act No. 14 of 2002), the defendant can also be termed as "*Financial Establishment*" as defined under clause (c) of section 2 of the Mizoram Protection of Interests of Depositors (in financial establishment) Act, 2002 (Act No. 14 of 2002). The said Act is made effective retrospectively from **26th August, 2004** under Notification No. B. 14015/8/2008- F. Est, the 17th November, 2008 published in the Mizoram Gazette, Ext. Ordinary,

Vol. XXXVII, 18.11.2008, Issue No. 479 whereas the defendant started her business since 2007 when the cause of action had arisen as per paragraph 9 of the plaint which is after commencement of the Mizoram Protection of Interests of Depositors (in financial establishment) Act, 2002.

Sub- sections (1) & (2) of section 4 of the Act further says that-

“4. Competent Authority:

(1)The Government may, by notification, appoint an authority hereinafter called ‘the competent authority’ to exercise control over the properties attached by the Government under section 3.

(2)The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of the Act”

In this task, the Deputy Commissioners of each Districts are declared as Competent Authority for the purpose of the said Act by the Government of Mizoram under Notification No. B. 14015/8/89- F. Est/Pt., Dated Aizawl, the 26th September, 2006.

Sub-sections (1) & (2) of section 6 of the Act further determined the competent court as-

“6.Competent Court:

(1)No court, other than the District and Sessions Judge or a Special Court constituted under this Act shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(2)Any pending case in any other court to which the provisions of this Act apply, shall stand transferred to the Court of District and Sessions Judge of competent jurisdiction”

The power of the Court of District and Sessions Judge is also elaborated under section 7 of the Act and attachment of properties malafide transferees is also elucidated u/s 8 of the Act.

The Act also have an override effect as contemplated u/s 14 of the Act, it reads thus-

“14.Act to override other laws:

Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything consistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law”

Thus, as held in the case of **Noor Mohd. Khan Ghouse Khan Soudagar & Anr. vs Fakirappa Bharmappa Machena Halli & Ors.** decided on 28 April, 1978 reported in 1978 AIR 1217, 1978 SCR (3) 789, this court is not competent to adjudicate the case with a simple reasons that the instant mode of collection or deposits of money to the unrecognized person is not curable like in the formal civil courts in civil proceedings sine quo non

to handle with special procedures set forth like the Mizoram Protection of Interests of Depositors (in financial establishment) Act, 2002 (Act No. 14 of 2002) and the Mizoram Protection of Interests of Depositors (in financial establishment) Rules, 2003.

Thus, for the sake of justice and for the interest of the plaintiffs and as held in the case of **Manish Goel Vs. Rohini Goel** reported in AIR 2010 SC 1099, the crux deserved to leave to the appropriate forum in accordance with the provisions of the Mizoram Protection of Interests of Depositors (in financial establishment) Act, 2002.

Issue No. 2

Whether the defendant had cheated one of the plaintiff namely- Smt. Lalzawngliani in order to borrow a sum of Rs. 92,75,000/- from all the plaintiffs or not

As maintainability of the suit is decided negatively which can vitiate the proceedings, this issue is left on undecided.

Issue No. 3

Whether the defendant is liable to repay Rs. 92,75,000/- with interest to the plaintiffs or not

As maintainability of the suit is decided negatively which can vitiate the proceedings, this issue is also left on undecided.

Issue No. 4

Whether the defendant is liable to pay compensation of Rs. 30,00,000/- to the plaintiffs or not

As maintainability of the suit is decided negatively which can vitiate the proceedings, this issue is also left on undecided.

Issue No. 5

Whether the plaintiffs are entitled to the relief claimed or not. If so, to what extend.

As maintainability of the suit is decided negatively which can vitiate the proceedings, this issue is also left on undecided.

ORDER

In view of the findings reached above by leaving the disputes in the appropriate forum and procedure under the Mizoram Protection of Interests of Depositors (in financial establishment) Act, 2002 (Act No. 14 of 2002), the instant suit is hereby dismissed by giving liberty to the plaintiffs for moving appropriate authorities in the appropriate mode in accordance with the Mizoram Protection of Interests of Depositors (in financial establishment) Act, 2002 (Act No. 14 of 2002).

Give this copy to all concerned.

With this order, the case shall stand disposed of.

Given under my hand and seal of this court on this 16th August, 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/92/2011, Sr. CJ (A)/

Dated Aizawl, the 16th August 2012

Copy to:

1. Smt. Lalzawngliani, Republic Vengthlang, Aizawl- Mizoram through Smt. C. Lalremruati, Adv.
2. Smt. Zothanpuui W/o R. Lalrinfela, Venghnuai- Aizawl
3. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District, Aizawl
4. Case record

PESKAR