

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

CIVIL SUIT NO. 160 OF 2010

Plaintiff:

Mr. Lahlimpuia  
S/o R. Lalhluna (L)  
Tuikual North, Aizawl

*By Advocate's*

: Mr. Reuben L. Tochhawng

*Versus*

Defendants:

1. Smt. Lalthianghlimi  
D/o Lalthanauva  
Ramhlun, Aizawl

2. Smt. Lalduhzuali  
D/o F. Sangthanga  
College Veng, Aizawl

*By Advocates*

:

For the defendant no. 1

: Mr. R. Lalhmingmawia

For the defendant no. 2

: 1. Mr. C. Lalrinchhunga  
2. Mr. Lalawmpuia Ralte

Date of Arguments

: 06-12-2012

Date of Judgment & Order

: 10-12-2012

**BEFORE**

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

**J U D G M E N T & O R D E R**

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**FACTUAL SCENARIO**

By entering into Deed of Agreement Dt. 20<sup>th</sup> Sept., 2010, the defendants borrowed Rs. 3 lakhs from the plaintiff on the same day with covenanting to pay interest rate @ 10% per month to be repaid within three months and by mortgaging Tipper B/R No. MZ-O1/D-6935 as simply English mortgage. As the defendants fails to repay the same. The plaintiff

filed the suit for (i) a decree declaring that the defendants are legally liable to repay the loaned amount of Rs. 3 lakhs and for directing the defendants to immediately repay the same with its agreed honorarium/contractual interest @ 10% per month to the plaintiff (ii) cost of the suit and (iii) any other relief which this court deems fit and proper.

The defendant no. 1 by contesting in the case filed written statement stating that the plaintiff and the defendant no. 2 fall in love and thereby entered into Agreement Dt. 20-09-2010. On the same night and in her own residence a sum of Rs. 2,70,000/- was handed over to the defendants by the plaintiff. Out of the said amount, the defendant no.1 had spent only Rs. 73,950/- and the remaining amount of Rs. 1,96,050/- was taken by the defendant no. 2 and Smt. Elizabeth Lalngaihsaki. Thereafter Rs. 15,000/- was taken from defendant no. 1 by the plaintiff on the night of 17.10.2010. The defendant no. 2 also already taken back of the mortgaged vehicle. Due to last of the love affairs of the defendant no. 2 and the plaintiff, the instant suit is being filed. Being non registration of Deed of Agreement, it has no force of law. The defendant no. 1 only spent Rs. 73,950/- from their borrowed money. Hence prayed set off of the same.

The defendant no. 2 stated in her written statements that the suit is bad for non-joinder of necessary parties as the mortgaged vehicle was owned by Mr. Lalrinpuia, Durtlang, Aizawl and is not arrayed as parties in the lis. The instant suit is not maintainable as it should be filed in accordance with the Specific Relief Act, 1963, valuation of the suit is also not calculated in proper. Thus, prayed to dismiss of the suit.

### **ISSUES**

Issues were framed on 07/06/2011 and amended towards correct findings as follows

1. Whether the suit is maintainable in its present form and style.
2. Whether the plaintiff has cause of action and locus standi to file the suit against the defendants or not
3. Whether the Deed of Agreement Dt. 20/9/2010 is legally valid or not
4. Whether the suit is bad for non-joinder of necessary parties or not
5. Whether the plaintiff had taken back of Rs. 15,000/- from the defendant no. 1 on the night of 17.10.2010 or not. If so, whether it will be set off or not
6. Whether the defendants are jointly liable in the case or not
7. Whether the plaintiff is entitled to the reliefs claimed or not. If so, to what extend.

### **BRIEF ACCOUNT OF EVIDENCE**

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Mr. Lahlhlimpuia S/o R. Lahnuna, Tuikual North, Aizawl (Hereinafter referred to as PW-1)
2. Smt. Lalkimi D/o Khawvelthanga, Chhingaveng, Aizawl (Hereinafter referred to as PW-2)
3. Mr. Lalchungnunga S/o J. Zirsangliana, Tuikual, Aizawl (Hereinafter referred to as PW-3)
4. Smt. Elizabeth Lalngaihsaki, Ramhlun Veng, Aizawl (Hereinafter referred to as PW-4)

The **PW-1** in his examination in chief merely reiterated and affirmed the averments and submissions in his plaint being the plaintiff stating that his money was lent to the defendants through Smt. Lalkimi offered to him with attractive rate of interest. He also stated that the defendants only repaid Rs. 15,000/- till date.

In his cross examination, he deposed that since when they asked money for borrowing, he came to know the defendant no. 2. He denied that there was no love affairs with the defendant no. 2 with him. He admitted that he gave Rs. 30,000/- to Smt. Lalkimi but he could not identify the place for such payment. The said Smt. Lalkimi was merely an agent/commissioner and thereby not arrayed in the lis.

The **PW-2** in her examination in chief deposed that as requested by the defendants, on 17/9/2010 he approached the plaintiff for borrowing money at Rs. 6 lakhs, only because of viewing rate of interest, the plaintiff later lend Rs. 3 lakhs to the defendants. The defendant no. 1 exclaimed ownership of the mortgaged vehicle but registered in another's name. The owner of the vehicle later claimed of the said vehicle. Hence disappointment of the plaintiff.

In her cross examination, she admitted that she was present for executing Deed of Agreement and also saw when delivery of borrowed amount to the defendants. But, no documents pertaining of mortgage vehicle was settled at the time of execution of agreement.

The **PW-3** in his examination in chief deposed that he is well acquainted with the plaintiff and witnessed the transaction of money lending and recovery of only Rs. 15,000/- by the defendants to the plaintiff till date.

In his cross examination, he admitted that the plaintiff is his maternal uncle and can only meet once in a month in a normal course. He admitted that he was not acted as witness in the Agreement and he only came to know the matter through parties.

The **PW-4** in her examination in chief deposed that the mortgaged vehicle was claimed as ownership by the defendant no. 2 and stated to borrow money by mortgaging her vehicles. They also physically inspected the mortgaged vehicle for execution of agreement. The said agreement was drafted by Mr. Chunga who was the Sub-Inspector claimed as brother by the plaintiff. During execution of agreement, she herself, Smt.

Lalthianglimi, Smt. Janet Lalduhzuali, Smt. Lalkimi, SI Chunga and Mr. Lalhlimpua were present. The plaintiff paid Rs. 30,000/- to the said Smt. Lalkimi in front of Millenium Centre. The plaintiff later disbursed remaining Rs. 2,70,000/- to them and the defendant no. 2 had taken Rs. 70,000/- commencing love affairs of the plaintiff and the defendant no. 2. As the defendant no. 2 dislike to treat as wife by the plaintiff, the instant cause of action had arisen due to disappointment of the plaintiff.

In her cross examination, she deposed that she knew liabilities of the defendants to the plaintiff. She admitted that by telling a lie, the defendants mortgaged Tipper B/R No. MZ-O1/D-6935.

For the defendants:

The defendants had produced the following witnesses namely-

1. Mr. Smt. Lalthianglimi D/o Lalthanzauva, Ramhlun, Aizawl (Hereinafter referred to as DW-1)
2. Smt. Janet Lalduhzualo (Hereinafter referred to as DW-2)

The **DW-1** in her examination in chief mainly affirmed her written statements as defendant no. 1. The owner of the mortgaged vehicle Tipper B/R No. MZ-O1/D-6935 by lodging and FIR also prosecuted a case against them in the court of Miss Gracy L. Bawitlung which was exlaimed as ownership by the defendant no. 2 for mortgage. She also stated that the plaintiff also physically inspected the mortgage vehicle before lending of money.

In her cross examination she admitted that Deed of Agreement was voluntarily executed by parties and she was also present when execution of the same.

In her re-examination, she stated that she spent only Rs. 73,950/- from the borrowing money.

The **DW-2** in her examination in chief deposed that she admitted borrowing amount from the plaintiff of Rs. 2,70,000/- and also gave Rs. 30,000/- to Smt. Lalkimi by the plaintiff. As the plaintiff love her and always accompanied them by the plaintiff, they could not properly run their business. When she fled away from the plaintiff, the plaintiff often angry with her and intimidated her. After two months, she came to know that although the plaintiff claimed himself as bachelor to her, the plaintiff have wife and she ceased to follow the plaintiff. The plaintiff thereby dissatisfied with her and hence the dispute.

She could not appear for cross examination in the court and her deposition cannot be taken as evidence therefore.

## **FINDINGS**

### **Issue No. 1**

#### **Whether the suit is maintainable in its present form and style or not**

The suit is valued by the plaintiff at Rs. 3 lakhs and paid Rs. 200/- amount of court fees at the threshold. By this court order Dt. 25/11/2010 in Misc J No. 301 of 2010, the plaintiff was allowed to make up deficiency of court fees before judgment in terms of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997).

The plaintiff adversely reluctant and negligence on make up of ad valorem court fees till date without knowing reasons. Thus, there is no grounds to adjudicate the case on merit and in favour of the plaintiff due to negligence on make up of deficiency of court fees as granted permission as the he himself prayed in Misc J No. 301 of 2010.

### **Issue No. 2**

#### **Whether the plaintiff has cause of action and locus standi to file the suit against the defendants or not**

The plaintiff filed the suit on the basis of Deed of Agreement Dt. 20/9/2010, this issue will be determined by findings under issue no, 3.

### **Issue No. 3**

#### **Whether the Deed of Agreement Dt. 20/9/2010 is legally valid or not**

Undisputedly, the mortgaged Tipper B/R No. MZ-O1/D-6935 was owned by Mr. Lalrinpuia, Durtlang, Aizawl but not arrayed for execution of Deed of Agreement Dt. 20/9/2010. And admittedly, a ball point pen written Deed of Agreement Dt. 20/9/2010 in a simple Blank paper is neither register under the Registration Act nor paid requisite stamp duties. Moreover, none exhibit the said alleged documents during the course of proceedings.

Furthermore, the rate of borrowed amount of Rs. 3 lakhs was agreed to repay with interest rate @ 10% per mensem which is certainly excessive in terms of the Usurious Loans Act, 1918 and the Interest Act, 1978. Thus, viewing from the horizon peep out from law, Deed of Agreement Dt. 20/9/2010 alleged executed by parties has no force of law. In another sense, on the basis of Deed of Agreement Dt. 20/9/2010, the plaintiff has no cause of action against defendant as settled the law by Hon'ble Supreme Court in **Swamy Atmananda & Ors.Vs. Sri Ramakrishna Tapovanam & Ors.** decided on 13/04/2005 in connection with Appeal (Civil) 2395 of 2000 and reported in 2005 AIR 2392, 2005 (3) SCR 556, 2005 (10) SCC 51, 2005 (4) SCALE 117, 2005 (4) JT 472

### **Issue No. 4**

#### **Whether the suit is bad for non-joinder of necessary parties or not**

Pleadings supported by suffice evidence depicted that Smt. Lalkimi

also received Rs. 30,000/- from the plaintiff out of the sum total of Rs. 3 lakhs but not arrayed as defendants. While suing on the basis of Deed of Agreement Dt. 20/9/2010 the owner of Tipper B/R No. MZ-O1/D-6935 namely Mr. Lalrinpuia, Durtlang, Aizawl is not also implead as parties in the lis. The suit is therefore bad due to non-joinder of necessary parties as settled the law by Hon'ble Apex Court 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.

#### **Issue No. 5**

**Whether the plaintiff had taken back of Rs. 15,000/- from the defendant no. 2 on the night of 17.10.2010 or not. If so, whether it will be set off or not**

As admitted as the plaintiff arrayed as PW-1 as also deposed by PW-3, the plaintiff already received back of Rs. 15,000/- from the defendants. Issues on set off is not require to settle due lack of maintainability of the suit, bad for non-joinder of necessary parties and lack of cause of action.

#### **Issue No. 6**

**Whether the defendants are jointly liable in the case or not**

Due lack of maintainability of the suit, bad for non-joinder of necessary parties and lack of cause of action, this issue need not to adjudicate.

#### **Issue No. 7**

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

Due lack of maintainability of the suit, bad for non-joinder of necessary parties and lack of cause of action, the issue need not to adjudicate as non est effort.

#### **ORDER**

UPON hearing of parties and on the basis of the afore findings in various issues, the suit lack of merits is hereby dismissed but no order as to costs.

Before parting with the case, it may be interesting to boldly note that the plaintiff entered into money lending business with the defendants beyond the entity of law with excessive rate of interest, accepting fraud mortgaged vehicle, failure to pay requisite stamp duties, failure to pay ad valorem court fees although considered for deferred payment and failure to register document in accordance with law and also played some own desires to distribute money to others who are not arrayed in the parties in the lis, how the law can protect and remedied his malady as his all act and performance was beyond the entity of law. Let him firstly abide by the

efficaciousness of law and the law will later protect him if he is really dire in need of legal protection in the law court.

With this order, the case shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 10<sup>th</sup> Dec., 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. CS/160/2010, Sr. CJ (A)/

Dated Aizawl, the 10<sup>th</sup> Dec., 2012

Copy to:

1. Mr. Lalhlimpaia S/o R. Lalhluna (L), Tuikual North, Aizawl through Mr. Reuben L. Tochhawng, Adv.
2. Smt. Lalthianglimi D/o Lalthanzauva, Ramhlun, Aizawl through Mr. R. Lalhmingmawia, Adv.
3. Smt. Lalduhzuali D/o F. Sangthanga, College Veng, Aizawl through Mr. C. Lalrinchhunga, Adv.
4. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Case record

PESKAR