

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

*MONEYSUIT NO. 51 OF 2008*

*Plaintiff:*

Vijaya Bank  
(Owned by the Govt. of India)  
Head Office at No. 41/2, M.G. Road, Bangalore, 560001  
Represented by  
Senior Branch Manager  
Bara Bazar, Aizawl

*By Advocates* : 1. W. Sam Joseph  
2. Mr. Zochhuana  
3. Mr. F. Lalenglina  
4. Mr. Hranghmingthanga

*Versus*

*Defendants:*

Mr. R. Thangmawia  
S/o M. Selkunga (L)  
Electric Veng, Aizawl

*By Advocates* : Mr. Francis Vanlalzuala

Date of Arguments : 30-01-2012  
Date of Judgment & Order : 30-01-2012

**BEFORE**

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

**JUDGMENT & ORDER**

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**NUCLEUS OF THE CASE**

The plaintiff had sanctioned Overdraft facility to the defendant as applied on 14.10.2003 for Rs. 30,00,000/- (Rupees thirty lakhs) against the fixed deposits of Rs. 30,00,000/- under Vijaya Shree Units Certificate No. 024923 with the VSU account No. 231/01. The plaintiff also executed a letter of lien in favour of the plaintiff. The defendant thereby availed the said facility and had drawn different sums on different dates from the OD account No. CCM 230058. On 30.9.2005, the defendant also signed acknowledgement of his liability to the plaintiff worth amounting to Rs. 29,84,515/- which includes interest upto 30.9.2005 under the account No.

CCM 230058. Thereafter, as directed by the then court of learned Assistant to Deputy Commissioner, Aizawl, Rs. 7,69,826.20 paisa was withdrawn from the cash credit account No. 230058 of the defendant. The total amount due from the defendant to the plaintiff at the time of filing of the suit was Rs. 5,76,081.20 paisa. A requisite court fees at Rs. 9463/- is also paid in full. The plaintiff therefore prayed that- (i) a decree be passed in favour of the plaintiff declaring that the defendant is liable to pay the sum of Rs. 5,76,081.20 paisa (Rupees five lakhs, seventy six thousand eighty one and paisa twenty) to the plaintiff and the defendant be directed to pay the same to the plaintiff (ii) the cost of the suit ie pleaders fee, court fee and all other expenses to be incurred for realization of the loan amount and the interest pendente lite and future interest at the rate of 9.75% per annum with monthly rests be decreed in favour of the plaintiff against the defendant (iii) by way of permanent and mandatory injunction the defendant be restrained from disposing of any of his properties (iv) for attachment and sale of the defendant's properties moveable as well as immoveable and (v) a decree be passed in favour of the plaintiff for any other and further relief to which the plaintiff is entitled according to law, justice, equity and good conscience.

The defendant in his written statements stated that the defendant was never informed about withdrawal of the amount as directed by the court of Assistant to Deputy Commissioner. Withdrawal of Rs. 769826/- from CC account was done by the bank itself without the knowledge and consent of the defendant. Thus, a counter claim amounting to Rs. 682664/- is preferred accordingly. A requisite court fees at Rs. 5000/- is also paid by the defendant. In his counter claim, the defendant therefore prays that (i) a decree in favour of the defendant declaring that the plaintiff is liable to pay Rs. 682664/- with 12% interest per annum to the defendant and the plaintiff be directed to pay the same to the defendant (ii) cost of the suit and (iii) any other relief which this court deems fit and proper.

### **ISSUES**

The issues were framed on 25/5/2011 which were as under-

1. Whether the plaintiff has cause of action against the defendant
2. Whether the defendant had overdrawn any amount from the plaintiff's Bank. If so, what are the quantum
3. Whether the plaintiff is rather liable to pay Rs. 682664/- with 12% interest per annum w.e.f. 12.10.2006 to the defendant
4. Whether the plaintiff is entitled to the relief claimed. If so, to what extend

### **BRIEF ACCOUNT OF EVIDENCE**

For the plaintiff:

The plaintiff had produced two witnesses namely-

- (1) Mr. C. Neeraj Khanna, Manager, Vijaya Bank, Aizawl Branch  
(Hereinafter referred to him as PW- 1)

(2) Mr. C. Rohuapa S/o Taichhunga (L), Upper Republic, Aizawl (Hereinafter referred to him as PW- 2)

The **PW-1** in his examination in chief reiterated the submissions and averments made in the plaint and he further deposed that-

*Ext. P- 1 is a copy of deposit receipt/slip under Bijaya Shree Unit amounting to Rs. 30,00,000/-*

*Ext. P-2 is a letter of lien signed by the defendant on 14.10.2003*

*Ext. P-3 is a copy of acknowledgement of liability signed by the defendant on 30.9.2005*

*Ext. P-4 is a copy of balance confirmation signed by the defendant on 30.9.2005*

*Ext. P-5 is a copy of order passed by learned ADC, Aizawl dt. 7.10.2005*

*Ext. P-6 is a copy of order passed by the learned ADC, Aizawl dt. 25.10.2005*

*Ext. P-7 is a copy of cheque/pay order dt. 26.10.2005 issued by the plaintiff to the ADC, Aizawl amounting to Rs. 7,69,826.20*

*Ext. P-8 is a copy of letter sent to ADC, Aizawl by the then Chief Manager, Vijaya Bank, dt. 26.10.2005*

*Ext. P-9 is a copy of statement of account of the defendant containing three pages.*

In his cross examination, he deposed that the defendant was provided CC account upto Rs. 30 lakhs and could not overdraw beyond Rs. 30 lakhs according to their terms and conditions. He admitted as a fact that before receiving court order, the defendant had already withdrawn Rs. 29,84,515/- from his CC account and he can still withdraw Rs. 15,485/- from his CC account. He admitted that without the knowledge of the defendant, by complying court order, Rs. 7,69,826/- was withdrawn from the CC account of the defendant.

The **PW- 2** in his examination in chief reiterated the gist of submissions and averments made in the plaint

In his cross examination, he further deposed that the defendant was provided CC account upto Rs. 30 lakhs and could not overdraw beyond Rs. 30 lakhs according to their terms and conditions. He admitted as a fact that before receiving court order, the defendant had already withdrawn Rs. 29,84,515/- from his CC account and he can still withdraw Rs. 15,485/- from his CC account. He admitted that without the knowledge of the defendant, by complying court order, Rs. 7,69,826/- was withdrawn from the CC account of the defendant.

For the defendant:

The defendant had produced only one witness namely- Mr. R. Thangmawia S/o M. Selkunga (L), Electric Veng, Aizawl (Hereinafter referred to as **DW**). In his examination in chief, he deposed that he did not have any knowledge on the court order for withdrawal of the amount from his CC

account and he further reiterated the averments and contentions in his written statements and counter claim. He further deposed that –

*Ext. D-1 is a copy of letter sent by him to the Chief Manager, Vijaya Bank*

*Ext. D-1 (a) is his true signature*

*Ext. D-2 is a letter dt. 12<sup>th</sup> March, 2008 sent by him to the Chief Manager, Vijaya Bank*

In his cross examination, he deposed that he was the Chairman of Mizoram Chamber of Commerce since the year 1988 till date. In the year of 2005, he was the Chairman of Chamber of Commerce and on 25.10.2005, he was the Chairman of the same. He was aware about Money Suit No. 2 of 2004 filed against Mizoram Chamber of Commerce and also Execution Case No. 4 of 2005 arising out of Money Suit No. 2 of 2004. He denied that the staff of the plaintiff Bank informed him about court order for withdrawal of the amount from his CC account.

In his re-examination, he deposed that the staff of Mizoram Chamber of Commerce informed him about withdrawal of Rs. 7,69,826/- from his CC account after two weeks when the money was withdrawn.

## **FINDINGS**

### **Issue No. 1**

#### **Whether the plaintiff has cause of action against the defendant**

Only by honouring court order marked as Ext. P- 5 and 6, the plaintiff pursued withdrawal of the amount of Rs. 7,69,826.20 paisa was withdrawn from the cash credit account No. 230058 of the defendant. Before that evidence clearly elicited that the defendant could only withdrawn Rs. 15,485/- (Rupees fifteen thousand, four hundred and eighty five) from his CC account. The remaining due amount thereby falls Rs. 5,76,081.20 paisa (Rupees five lakhs, seventy six thousand eighty one and paisa twenty). Thus, cause of action in favour of the plaintiff against the defendant is cogently seen in the case at hand.

### **Issue No. 2**

#### **Whether the defendant had overdrawn any amount from the plaintiff's Bank. If so, what are the quantum.**

By virtue of the order of the court of Assistant to Deputy Commissioner in Execution Case No. 4 of 2005 in Money Suit No. 2 of 2004 as Ext. P- 5 and 6, withdrawal amounting to Rs. 7,69,826.20 paisa was made from the cash credit account No. 230058 of the defendant while the defendant remains having only Rs. 15,485/- (Rupees fifteen thousand, four hundred and eighty five) in his Cash Credit account.

### **Issue No. 3**

#### **Whether the plaintiff is rather liable to pay Rs. 682664/- with 12% interest per annum w.e.f. 12.10.2006 to the defendant**

Although the defendant preferred counter claim, as the plaintiff was not supposed to decide the matter on merit as a very stringent court order was received in respect of the liabilities of the defendant to others in the said Money Suit No. 2 of 2004, I find that the plaintiff has no liability to pay any amount to the defendant.

#### **Issue No. 4**

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

Evidences elucidated that by having liabilities by the defendant in Money Suit No. 2 of 2004 and as directed in Execution case No. 4 of 2005, solely for the purpose of the defendant, the plaintiff paid Rs. 7,69,826.20 paisa from the cash credit account No. 230058 of the defendant to the court of Assistant to Deputy Commissioner. In the said Execution case No. 4 of 2005, the defendant was liable and must known facts and proceedings of the said execution case. Thus, without the knowledge and consent of the defendant for permission to withdraw the amount from the CC account of the defendant will be no excuse as the plaintiff was not in a position to consult other persons like the defendant when a very stringent court order was received. The plaintiff will therefore be entitled to a decree by declaring that the defendant is liable to pay the sum of Rs. 5,76,081.20 paisa (Rupees five lakhs, seventy six thousand eighty one and paisa twenty) to the plaintiff with an interest rate at 9.75% per annum with effect from 15/9/2008 when institution of the suit and the defendant be directed to pay the same to the plaintiff. No other relief like attachment and sale of the properties of the defendant will not be appropriated like in the instant proceedings.

#### **ORDER**

On meticulously examining the above findings, the defendant is directed to pay the sum of Rs. 5,76,081.20 paisa (Rupees five lakhs, seventy six thousand eighty one and paisa twenty) to the plaintiff with an interest rate at 9.75% per annum with effect from 15/9/2008 (when institution of the suit) within a period of two months from the date of this order. No order as to costs of the suit in view of peculiar character of the suit.

The case shall stand disposed of accordingly.

Give this order copy to all concerned.

Given under my hand and seal of this court on this 30<sup>th</sup> January, 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/51/2008, Sr. CJ (A)/

Dated Aizawl, the 30<sup>th</sup> Jan., 2012

Copy to:

1. Vijaya Bank (Owned by the Govt. of India), Head Office at No. 41/2, M.G. Road, Bangalore, 560001 Represented by Senior Branch Manager, Bara Bazar, Aizawl through Mr. W. Sam Joseph, Advocate
2. Mr. R. Thangmawia S/o M. Selkunga (L), Electric Veng, Aizawl through Mr. Francis Vanlalzuala, Advocate
3. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District: Aizawl
4. Case Record

PESKAR