

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

**MONEY SUIT NO. 132 OF 2011**

**Plaintiff:**

Shri R. Lalmawia  
S/o Hrangthriauva (L)  
R/o Bawngkawn Venglai, Aizawl

*By Advocates* : Mr. Joseph Lalfakawma  
Mr. T.J Lalnuntluanga

*Versus*

**Defendant:**

Shri C. Lalsangvunga  
S/o C. Lalkunga (L)  
R/o Dinthar-I, R. Siamliana  
Building, Aizawl

*By Advocate's* : Mr. Lalbiakdika Sailo

Date of hearing : 11-06-2012

Date of Judgment & Order : 11-06-2012

**BEFORE**

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

**JUDGMENT & ORDER**

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**BRIEF STORY**

The plaintiff in his plaint stated that he is a pensioner residing at Bawngkawn Venglai, Aizawl. The defendant had borrowed a sum of Rs. 1,50,000/- from the plaintiff on 27.2.07 and promised to repay Rs.

2,50,000/- within a period of two months. On 10.11.07, the defendant had repaid the plaintiff the interest Rs. 60,000/-. However, no further payment was made by the Defendant to the plaintiff till date. On 7.12.08, the plaintiff and the defendant reconciled their accounts and had come to a conclusion that the defendant had agreed to repay the whole amount with interest @10% p.m till final realization and made an undertaking dt. 7.12.08 by which the defendant had acknowledged that he had to pay a sum of Rs. 4,50,000 as on November 2008. The said calculation/undertaking was duly signed by the defendant in the presence of two witnesses namely Lalrammawia and Lalrinawma. In the mean time, the name of the lender in the original Undertaking which was shown as K. Vanlalremi was changed in the name of her husband i.e. R. Lalmawia, the present plaintiff owing to certain reasons which is accepted by both parties. No further payment has been received by the plaintiff till date in spite of the consistent effort of the plaintiff to get back the money borrowed by the defendant. The failure of the defendant to pay back the loan amount with interest is highly illegal and amounts to cheating. In fact, the defendant has no excuse for not repaying the plaintiff his loan dues and that the cause of action still survives till date. Thus, the plaintiff pray the Court to pass a decree (i) in favour of the plaintiff and against the plaintiff and (ii) to direct the defendant to pay the plaintiff his loan amount amounting to Rs. 4,50,000/- along with pendent lite interest @12% per annum from the date the said amount fell due.

The defendant in his written statement stated that he is holding a post of Head Constable (HC/Opr), MPRO, SP Office, Khatla, Aizawl. He stated that he had borrowed a sum of Rs. 1,50,000 from the plaintiff on 27.2.07. On 10.11.07, he had repaid Rs. 60,000 to the plaintiff and that he now has to repay only the remaining balance/debt i.e. Rs. 90,000 to the plaintiff. He further stated that in the month of December, 2008, the plaintiff and the plaintiff's wife Smt. Vanlalremi went to the house of the defendant and made the Undertaking dt. 7/12/08 in Smt. Vanlalremi's name. There were no witnesses present while signing the Undertaking and the persons who signed as witnesses put their signature without the knowledge of the Defendant which renders that the said document is clearly invalid and unenforceable. The said Undertaking has also not been registered as required by The Registration Act, 1908 and no stamp duty has been paid on the document as per the Indian Stamp (Mizoram Amendment) Act, 1996. Moreover, the payment of interest at the rate of 10% pm according to the Undertaking is highly exorbitant and in

violation of Usurious Loan Act. He stated that although he could not repay the money he borrowed from the plaintiff due to financial hardship and constrain, he is trying his level best to pay the same and he even applied for some loan for repaying his remaining debt Rs. 90,000. He further submitted that he had borrowed money from the plaintiff while he was aiding Shri. T. Rozama (L) 1<sup>st</sup> Class Contractor in his Road Construction Work (Puilo-Chhawrtui) at Champhai District. Shri T. Rozama (L) was sick during the time of work, and the defendant was promised to be paid some amount of money from the Final Bill by Shri T. Rozama (L) for aiding him in his work. But unfortunately, Shri T. Rozama die on 4.3.10 before the completion of his Contract Work, and the Contract Work was thereafter cancelled by the Authority, and the defendant could not get his money/share from the Contractor as promised. Due to this unfortunate reason, the defendant could not repay the money as early as he wanted. Arranging money from all corners, the defendant is now ready to repay the remaining debt amount to Rs. 90,000 along with an interest as per the existing Bank interest rates. There is absolutely no reason for the defendant to pay Rs. 4,50,000 to the plaintiff as the so-called Undertaking is absolutely invalid, unenforceable and prohibited by law. Thus, prayed to dismiss of the suit with costs.

### **ADMISSION AND FINDINGS**

Learned counsels of both parties present and the defendant fairly admitted his liability on the principal sum of his debt but could not accept the excessive rate as claimed in the plaint. Section 2 (b) of the Interest Act, 1978 says that-

“(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)”

By virtue of section 3 of the said Interest Act, 1978, rate of interest can be allowed by the court as per the above rate so permissible cope with the provisions of the Usurious Loans Act, 1918.

So is the legal entity, learned counsel for the plaintiff also fairly admitted to settle the matter/dispute within the law. Thus, by virtue of

virtue of O. XII, R. 6 of the Code of Civil Procedure, 1908, the plaintiff will be entitled to a decree amounting to Rs. 1,50,000/- (Rupees one lakh, fifty thousand) with interest rate @ 12% per annum with effect from 27.2.2007 till realization. Learned counsel for the defendant further given assurance to repay the same within sixty days from the date of this order.

### **ORDER**

As fairly admitted facts and liabilities within the ambit of law and by virtue of O. XII, R. 6 of the Code of Civil Procedure, 1908, the defendant is directed to repay Rs. 1,50,000/ (Rupees one lakh, fifty thousand) as principal with interest rate @12% per annum with effect from 27.2.07 till realization to the plaintiff. As given assurance by the defendant, the defendant is directed to repay the said amount within sixty days from the date of this order.

No order as to cost of the suit.

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 11<sup>th</sup> June, 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/132/2011/Sr. CJ (A)/ Dated Aizawl, the 11<sup>th</sup> June, 2012

Copy to:

1. Mr. R. Lalmawia S/o Hrangthriauva (L), R/o Bawngkawn, Aizawl through Mr. Joseph Lalfakawma, Advocate

2. Mr. C. Lalsangvunga S/o Lalkunga (L), R/o Dinthar-I, R. Siamliana Building, Aizawl through Mr. Lalbiakdika Sailo, Advocate
3. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District: Aizawl
4. Case Record

PESKAR