

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

RFA NO. 06 OF 2010

Appellants:

Mr. Chawnghnuna
S/o Vanlalberema
Chhinga Veng, Aizawl

By Advocate's : Mr. F. Lalengliana

Versus

Respondents:

1. Smt. Rokhumi
W/o Dokhuma (L)
College Veng, Aizawl

2. Mr. F. Lalrinmawia
S/o Dokhuma (L)
College Veng, Aizawl

By Advocate's : Mr. Lalhriatpuia

Date of hearing : 08-05-2012

Date of Judgment & Order : 09-05-2012

BEFORE

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

JUDGMENT AND ORDER

INTRODUCTORY

As per the Notification issued by the Govt. of Mizoram under No. A. 51011/3/06- LJE Dated Aizawl, the 1st Dec., 2011 in pursuance of the resolution adopted by the Hon'ble Administrative Committee of Gauhati High Court dt. 1/11/2011 and in accordance with the later circular issued by the Hon'ble District Judge, Aizawl Judicial District, Aizawl under No. A. 22017/14/2009- DJ (A), Aizawl, the 5th Dec., 2011, case record being pending appellate case in the previous District Council Court, Aizawl is endorsed to me and proceed in this court. These all are the outcome of the nascent insulation of judiciary from the executives in Mizoram towards meeting globalization era in the very competitive globe where malfunctioning of the government is a *sine quo non* to vanish.

BRIEF STORY

This appeal is directed against the judgment & order passed by learned Magistrate, Addl. Subordinate District Council Court, Aizawl dt. 05.02.2010 in Declaratory Suit No. 8 of 2006. Wherein, the learned Magistrate dismissed the suit due to excessive rate of interest in the Mortgaged Deed and insufficient requisite court fees whilst consequential relief is also sought in the plaint.

Mr. F. Lalengliana, learned counsel for the appellant aggrieved in the impugned judgment & order submitted that the appellant admitted excessive rate of interest and further accepted any reasonable rate of interest which this court may deem fit and proper. More so, the appellant admitted that as and when the court directs, they are willing to make up deficiency of requisite court fees.

On the other hand, Mr. Lalhriatpuia, learned counsel for the respondent rather raised non-joinder of necessary parties in the lis as the respondent did not have liability as the name of the respondent is only posed in the agreement/deed.

FINDINGS AND REASONS

The fair admission of learned counsel for the appellant is also acceptable and praiseworthy like make up of deficiency of court fees and reduction of rate of interest of the loan. Howsoever, It may be Pertinent to express the pretext of application of only the spirit of the Code in Mizoram, it would meant that whenever and wherever the provisions of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 is silent for proceedings of the *lis*, the fundamental provisions of the CPC will be applied in the court established/constituted under the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953. Abuse of the process and travelled without basis will be beyond the spirit of the Code. The relevancy is already settled in **Rasiklal Manickchand Dhariwal & Anr. vs M/S M.S.S. Food Products** decided on 25 November, 2011 in connection with Civil Appeal No. 10112 of 2011 (Arising out of SLP (Civil) No. 27180 of 2008), wherein, the Supreme Court has held that-

“70. The doctrine of proportionality has been expanded in recent times and applied to the areas other than administrative law. However, in our view, its applicability to the adjudicatory process for determination of ‘civil disputes’ governed by the procedure prescribed in the Code is not at all necessary. The Code is comprehensive and exhaustive in respect of the matters provided therein. The parties must abide by the procedure prescribed in the Code and if they fail to do so, they have to suffer the consequences. As a matter of fact, the procedure provided in the Code for trial of the suits is extremely rational, reasonable and elaborate. Fair procedure is its hallmark. The courts of civil judicature also have to adhere to the procedure prescribed in the Code and where the Code is silent about something, the court acts according to justice, equity and good conscience. The discretion conferred upon the court by the Code

has to be exercised in conformity with settled judicial principles and not in a whimsical or arbitrary or capricious manner. If the trial court commits illegality or irregularity in exercise of its judicial discretion that occasions in failure of justice or results in injustice, such order is always amenable to correction by a higher court in appeal or revision or by a High Court in its supervisory jurisdiction.”

In the other arena, right to fair hearing is a guaranteed right and Hon’ble Apex Court lamented in incomplete hearing the case in **State of Uttaranchal & Anr. vs Sunil Kumar Vaish & Ors.** decided on 16 August, 2011 in connection with Civil Appeal No.5374 of 2005. For that purpose, It is therefore attracted the provisions of Section 17 (iii) of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) vis. ‘*Consequential relief*’ in the instant case as admitted by learned counsel for the appellant. The lacunae on the entity of Usurious Loans Act, 1918 and Section 3 read with clause (b) of section 2 of the Interest Act, 1978 also vitiated the proceedings as fairly admitted. Howsoever, whilst the suit is filed as Declaratory Suit, it itself is also arbitrary as the relief sought is based on Mortgaged Deed, In the case of **Vanlalveni vs Tlanglawma** decided on 15/11/2002 and reported in (2005) 1 GLR 240, the Gauhati High Court has observed that-

“13. Incidentally, it may be noted from contents of the plaint photo copy of which is available in the case record, that the present appellant as plaintiff had confused whether the basic document upon which cause of action for the Suit was traced was a hand-note, or a promissory note or an agreement. Then again the suit was instituted for as a declaratory suit with fixed court fees of Rs. 25/- but the basic documents will show that there was only a pecuniary liability on the part of the deceased Rokima and not the present respondent Tlanglawma. The present respondent was only a witness to the said agreement/hand note. There is nothing to show that the respondent Tlanglawma ever incurred any liability under the said hand note/agreement. It was mentioned in the said agreement ext.p-1 that LSC had been handed over to the lender/plaintiff but there is nothing in the judgment of trial court to show existence of any such document. Therefore, it will be opined that the judgment of the trial court was under misconception of law and without jurisdiction. It should have been either a Money Suit or Title Suit on mortgage. Therefore, there is a necessity to quash the entire proceedings starting from the original court upto the stage of first appellate court by exercising of the inherent power under Section 151 of C.P.C. for ends of justice. Such misconception of law cannot be allowed to be sustained”

More over, like in the instant case, where the suit is based on mortgaged deed, the drafting of plaint merely seeking declaration is also capricious, the suit will be governed by the provisions of O. XXXIV of the Code of Civil Procedure, 1908 like application for preliminary decree and later foreclosure and sale of the suit land which the plaint is lacking.

I therefore find no reasons to set aside and quash the impugned judgment & order passed by the learned Magistrate, Addl. Subordinate District Council Court, Aizawl dt. 05.02.2010 in Declaratory Suit No. 8 of 2006 except to give liberty to the appellant for filing a fresh suit bearing mind the above legal notions for the sake of justice, equity and good

conscience whilst the very doctrine of '*Ubi Jus Ibi Remedium*' remain recognized by the Hon'ble Apex Court in the case of **Fertilizer Corporation Kamgar Union (Regd.), Sindri & Ors. vs Union Of India And Others** decided on 13 November, 1980 and reported in 1981 AIR 344, 1981 SCR (2) 52.

ORDER

Due to the aforesaid reasons, the instant appeal petition is dismissed as devoid of merits but left liberty to file a fresh suit to the appellant as enshrined under O. XXXIV of the Code of Civil Procedure, 1908 subject to law of limitation. No order as to costs.

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 9th May, 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. RFA/6/2010, Sr. CJ (A)/

Dated Aizawl, the 9th May, 2012

Copy to:

1. Mr. Chawngnhnuna S/o Vanlalberema, Chhing Veng, Aizawl through Mr. F. Lalengliana, Adv.
2. Smt. Rokhumi W/o Dokhuma (L), College Veng, Aizawl through Mr. Lalhriatpuia, Adv.
3. Mr. F. Lalrinmawia S/o Dokhuma (L), College Veng, Aizawl through Mr. Lalhriatpuia, Adv.
4. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Case record

PESKAR