

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

MONEY SUIT NO. 51 OF 2012

Plaintiff:

State Bank of India
Through the Assistant General Manager
Aizawl Branch- Aizawl

By Advocates

: 1. Mr. M.M. Ali
2. Mr. H. Lalremruata

Versus

Defendants:

1. Smt. Rosy Remthangi
W/o Thanthuama
President, Vivala Self Help Group
Dawrpui Vengthar, Aizawl
2. Smt. Cindy Zaithani
W/o Vanlalhruaia
Secretary, Vivala Self Help Group
Dawrpui Vengthar, Aizawl
3. Mr. Lalpianpuia
S/o C.H. Zama
Dawrpui Vengthar, Aizawl
Member, Vivala Self Help Group
4. Smt. Zaithangpuii
W/o Thangliana
Dawrpui Vengthar, Aizawl
Member, Vivala Self Help Group
5. Mr. Lalmawia
S/o V.L. Nghaka
Dawrpui Vengthar, Aizawl
Member, Vivala Self Help Group
6. Mr. Thanthuama
S/o Biakkunga
Dawrpui Vengthar, Aizawl
Member, Vivala Self Help Group

7. Mr. Vanlalhruaia
S/o Lalbela
Dawrpui Vengthar, Aizawl
Member, Vivel Self Help Group

8. Smt. Zothansiami
W/o B. Lalbuta
Dawrpui Vengthar, Aizawl
Member, Vivel Self Help Group

9. Smt. Lalremmawii
W/o Doluta
Dawrpui Vengthar, Aizawl
Member, Vivel Self Help Group

10. Smt. L. Hmingthangi
W/o Liansiama
Dawrpui Vengthar, Aizawl
Member, Vivel Self Help Group

By Advocates : _____

Date of hearing : 02-11-2012

Date of Judgment & Order : 02-11-2012

BEFORE

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

JUDGMENT & ORDER

BRIEF STORY

This is a suit for recovery of Rs. 3,98,518/- (Rupees three lakhs, ninety eight thousand, five hundred and eighteen) due to the plaintiff with an interest at 12% per annum with effect from 01/05/2012 till realization in full from the defendants. As per the agreements of parties Dt. 24/05/2008, the plaintiff Bank realized loan amounting to Rs. 4,00,000/- (Rupees three lakhs) with an interest rate @ 12 % per annum to be repaid for 60 months commencing from Aug., 2008, the defendants thereby failed to repay the same in time hence the instant suit. Requisite court fees at Rs. 7,000/- is also paid by the plaintiff.

Although summons were duly served and the defendants engaged with learned Advocate Dr. C.V.L. Auva by executing Vakalatnama, the defendants neither appeared nor filed written statements till 13/8/2012 while the suit is filed on 28/6/2012, thus, by virtue of O. VIII, R. 10 of the CPC, ex parte proceedings is drawn.

POINTS FOR DETERMINATION

Although ex parte proceedings as held in **Ramesh Chand Ardawatiya vs Anil Panjwani** decided on 5 May, 2003 and reported in AIR 2003 SC 2508, 2003 (4) ALD 10 SC, the following points should determine the case such as-

1. Whether the suit is maintainable or not.
2. Whether the defendants had obtained a loan amounts to Rs. 4,00,000/- from the plaintiff Bank. If so, under what conditions
3. Whether the plaintiff is entitled to the relief claimed or not if so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

Although the suit is ex parte proceedings, evidence of the plaintiff is called upon for the satisfaction of the court as held in **Smt. Sudha Devi vs M.P. Narayanan & Ors** decided on 26 April, 1988 and reported in 1988 AIR 1381, 1988 SCR (3) 756, it was held that-

“6. On the failure of the defendants to appear in the suit, the learned trial Judge decided to proceed with the case ex-parte. Even in absence of a defence the court cannot pass an ex-parte decree without reliable relevant evidence. The fact that the plaintiff chose to examine some evidence in the case cannot by itself entitle her to a decree.”

The lone PW namely- Mr. Lalthuamlia, Assistant General Manager, State Bank of India, Aizawl Branch, Aizawl merely reiterated and affirmed the contents of the plaint, none remain contested to cross examine and to hear further from the defendants.

FINDINGS

Point No. 1

Whether the suit is maintainable or not.

Ad-valorem court fees in tune with the provision of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) is paid. Meanwhile, the plaintiff affirmed the contents of the plaint in terms of the provisions of sub-rule (4) of rule 15 under Order VI of the CPC. This issue is therefore decided in favour of the plaintiff.

Point No. 2

Whether the defendants had obtained a loan amounts to Rs. 4,00,000/- from the plaintiff Bank. If so, under what conditions

No other findings can be had except in the pleadings corroborated by evidence of the plaintiff saying that the plaintiff Bank had sanctioned secured loan amounting to Rs. 4,00,000/- to the defendant no. 1. As per the

agreements of parties Dt. 24/05/2008, the plaintiff Bank realized loan amounting to Rs. 4,00,000/- (Rupees three lakhs) with an interest rate @ 12 % per annum to be repaid for 60 months commencing from Aug., 2008

Point No. 3

Whether the plaintiff is entitled to the relief claimed or not if so, to what extend.

The plaintiff will certainly entitled to receive back of Rs. 3,98,518/- (Rupees three lakhs, ninety eight thousand, five hundred and eighteen) due to the plaintiff with an interest at 12% per annum with effect from 01/05/2012 till realization.

ORDER

Thus, it is hereby ORDERED and DECREED that the defendants (who are jointly liable) are directed to repay the loan outstanding amounts @ Rs. 3,98,518/- (Rupees three lakhs, ninety eight thousand, five hundred and eighteen) due to the plaintiff with an interest at 12% per annum with effect from 01/05/2012 till realization in full. The defendants are further directed to pay costs of the suit at Rs. 17,000/- (Rs. 10,000/- as lawyers fee + Rs. 7,000/- as court fees) with an interest rate at 12% per annum with effect from today. The defendants are further directed to realize the said amount within two months from the date of this order.

With this order, the case shall stand disposed of.

Give this copy to both parties along with decree.

Given under my hand and seal of this court on this 2nd Nov., 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/51/2012, Sr. CJ (A)/

Dated Aizawl, the 2nd Nov., 2012

Copy to:

1. State Bank of India, Aizawl Branch- Aizawl Represented by its Assistant General Manager through Mr. M.M. Ali, Advocate
2. Smt. Rosy Remthangi W/o Thanthuama, President, Vivela Self Help Group, Dawrpui Vengthar, Aizawl through Mr. M.M. Ali, Advocate
3. Smt. Cindy Zaithani W/o Vanlalhraia, Secretary, Vivela Self Help Group, Dawrpui Vengthar, Aizawl through Mr. M.M. Ali, Advocate

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11. Smt. L. Hmingthangi W/o Liansiama, Dawrpui Vengthar, Aizawl, Member, Vivala Self Help Group through Mr. M.M. Ali, Advocate
12. Case record

PESKAR