

IN THE COURT OF SHRI LALDINPUIA TLAU CIVIL JUDGE-2, AIZAWL DISTRICT,
AIZAWL, MIZORAM.
MONEY SUIT NO 109 OF 2012

Shri. J.H Vanlalkima
R/o Tuikual North
Aizawl, Mizoram

..... Plaintiff

VERSUS

1. Shri Zohmingthanga
C/o Hmingthanzami @ C.Thanzami
R/o Chanmari, Aizawl.

2. Hmingthanzami @ C.Thanzami
R/o Chanmari, Aizawl.

..... Defendants

Present

Mr. Laldinpuia Tlau, Civil Judge

For the Plaintiff : Mr. Hranghmingthanga Ralte, Advocate.
For the Defendants : Not to present.
Judgment Delivered on : 11.10.2013

This suit coming for final hearing on 20.09.2013 in the presence of Mr. Hranghmingthanga Ralte, Advocate for the plaintiff, and having stood for consideration of this day, the court delivered the following judgment.

JUDGMENT

1. This is a suit for recovery of a sum of Rs.1, 00,000/- on the basis of the simple money bond (Pawisa Puk Inremna) with interest @ 12% per annum and for cost and other consequential reliefs.

2. The case of the petitioner in brief is that the defendant No.1 approached the plaintiff and requested him to advance some money saying that he was in need of money for clearing motor loan and for his journey expenditure to his posting place. Accordingly, the plaintiff in good faith handed over a sum of

Rs.1,00,000/- (Rupees one lakh) to the defendant No.1 on 23.12.2011 as a loan by executing a deed "Pawisa Puk Inremna" and the defendant promised to repay the said loan within 10 months (i.e 23.10.2012) with an interest @ 10% per month. But the defendant No.1 could neither repay the principal nor the interest as promised by him. The defendant No.2 also promised to take all liabilities and to repay the said loan of Rs 1, 00,000/-with interest if the defendant No.1 fails to repay the same by executing a deed (Pawisa Puk Inremna) dated 23.12.2011 along with the plaintiff and the defendant No.1. The defendant No.2 gave the plaintiff the SBI blank cheque which she had signed but later the plaintiff handed over the cheque to the defendant No.2 as per the request made by the defendant No.2.

The defendant No.1 also gave one book of SBI, Happy Valley (Shillong) blank cheque which he had already signed to the plaintiff and told the plaintiff that if he could not repay the loan in cash, the plaintiff could fill up the cheque in order to withdraw the entire loan with interest; but, when the plaintiff went to the SBI Main Branch with one of the cheques to withdraw the loan, he discovered that there was no such amount in the said account. The plaintiff then asked the bank authority to seal the said cheque as insufficiency of balance; the bank authority told him that he could not do it as the cheque belongs to other SBI branch.

The defendant No.1 could not repay the said loan to the plaintiff as promised, he did not repay even a single penny to the plaintiff. When the plaintiff went to the house of the defendant No.1 to ask the matter, only the defendant no. 1's mother was there and he came to know that the defendant No.1 was no more in the service and his mother told the plaintiff that she did not know the whereabouts of her son and begged the plaintiff to wait for a while and promised to repay the said loan as soon as possible. The plaintiff, a kind hearted man understand the situation of the mother of the defendant No.1 and did nothing to take action against the defendant. He gave the defendant No.1 more time to repay the loan.

The plaintiff again went to the house of the defendant No.1 to demand the said loan with its interest, but his mother was the only person whom the plaintiff could deal with. All the words the plaintiff could hear were the same as before. Then, the plaintiff dissatisfied with the words of the mother of the defendant No.1, left the house by giving another chance to the mother of the defendant No.1 for repaying of the said loan with interest.

The plaintiff demanded the said loan several times, but the mother of the defendant No.1 made flimsy excuses in order to avoid repayment of the said loan with interest to the plaintiff. She told the plaintiff that the defendant No.1 was running business somewhere in Delhi, but she could not contact him to discuss about the said loan. The specified time for repayment of the said loan i.e 11.10.2012 was over, but the plaintiff did not recover any single rupee from the defendant No.1 or defendant No.2 he has no other option but to approach this Court.

The plaintiff gave up demanding the said loan from the mother of the defendant No.1 as he could not find or contact the defendant No.1 by himself, all he could find and contact was only his mother. The plaintiff therefore discovered that the whereabouts of the defendant No.1 was concealed by his mother in order to avoid repayment of loan to the plaintiff.

The defendant No. 2 being the necessary party to the suit has equal responsibility with the defendant No.1 and is liable to repay the loan of Rs 1, 00,000/-with interest @12% per annum along with the defendant No.1 to the plaintiff which the defendant No.1 had availed from the plaintiff.

As he could not recover the loan from both the defendants No.1 and 2, he had served legal notice to the defendants No.1 and 2 through his counsel, the same was delivered by the plaintiff himself and the same was received by the defendants. Therefore, the cause of action arose on 23.12.2011 when the plaintiff and the defendants executed a deed 'Pawisa Puk Inremna' and continue till realization of the entire loan amount with interest @ 12% per annum. Therefore the defendant No.1 and 2 are jointly and severally liable to repay the entire loan amount of Rs 1, 00,000/- with interest.

3. The defendants do not contest the suit by filing their written statement. Order sheet on Case Record reveals that C. Remmawii, mother of defendant no 1 appeared on 1.2.2012 and 4.3.2013. Defendant no. 2 appeared on 4.3.2013. Since then, defendants or their representatives are no more appear before this court. However, the appearance of mother of defendant no 1 for two times and appearance of defendant no 2 for one time make it clear that defendants have knowledge that a suit is instituted against them.

4. (1) In the case of Sudha Devi Vs. M.P. Narayanan, reported in air 1988, SC 1381, the Apex Court has held that even in the absence of defence, the Court cannot pass an ex parte decree without reliable and relevant evidence.

(2) In the case of Balraj Taneja & Anr. Vs. Sunil Madan & Anr. as reported in (1999) 8 SCC 396, the Hon'ble Supreme Court has held that in a case, where a written statement has not been filed by the defendants, court should be a little cautious in proceeding under Order VIII Rule 10 CPC and the Court should see that if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact, mentioned in the plaint.

(3) Order 8 Rule 5 Sub-rule (2) reads "where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved."

As already decided, this court is of considered view that provisions of Order 8, Rule 10 CPC are akin to the provisions of Order 8 Rule 5 and as such, guidelines given by the SC should have been followed in the present case also.

(4) There are many other judgments also, wherein, it has been held that even in an ex-parte judgment, the plaintiff must make out a prima facie case to get a decree.

5. On perusal of plaint, the following issues are framed.

- (1) Whether the plaintiff has lent to the defendant no. 1 a sum of Rs. 100000 with an interest at the rate of 10 pm to be recovered within ten months starting from the date of lending of the same w.e.f. 23.12.2011?
- (2) Whether the defendant no. 2 promised to bear the liability of the debt of the defendant no 1, in case of failure of defendant no 1 to make recovery of the said loan?

6. The only deposition in favour of the plaintiff is the examination in chief of the plaintiff, Shri. J.H Vanlalkima. The content is more or less the same with the plaint. The plaintiff is not cross examined. There is no defendants' evidence.

DECISION AND REASON FOR FINDING

7. For the sake of convenience, issued no 1 & 2 are clubbed together. The plaint and the deposition of the plaintiff are mainly based on the said letter 'PAWISA PUK INREMNA'. Copy of 'PAWISA PUK INREMNA' which is enclosed along the plaint and marked as annexure –I was compared with the original copy. According to this letter, defendant no 1 borrowed a sum of Rs. 100000 (one lakh) from the plaintiff on 23.12.2011 while the defendant no. 1 was in service. The same was to be recovered within ten months at the rate of Rs. 20000 pm. The rate of interest is 10 pc per month. If the defendant no 1 could not realize the terms and conditions of the agreement, defendant no 2, who is elder sister of defendant no 1, a Hindi Teacher at Dawrpui Middle School shall repay as per the said terms and conditions. It is also provided that the rate of interest shall be counted till full payment if defendants could not make full recovery within ten months.

The said 'PAWISA PUK INREMNA' was executed on 23.12.2011 before Notary Public Aizawl Mizoram. It was signed by parties and witnessed by three persons.

8. It is the fact that the persons who are alleged to have signed in the said letter are not examined before this court. The same is not registered as per Indian Registration Act. Besides, the rate of interest of contractual agreement is too excessive. Accordingly, this court opines that the said letter is not legally enforceable as it is.

On the other hand, a society where people are ignorant of law and of non-litigant, people used to maintain financial transaction among themselves according to their wisdom and carefulness. Therefore, this court is of considered view that non fulfillment of procedure of the relevant law does not by itself take away the civil right of any citizen in absence of a strong objection and denial of the claim from the opposite party.

In a civil suit, the plaintiff cannot be expected to prove his title beyond any reasonable doubt; a high degree of probability leading assurance of the availability of title with him would be enough to shift the onus on the defendant and if the defendant does not succeed in shifting back the onus, the plaintiff's burden of proof can safely be deemed to have been discharged.

Now coming to the suit, defendants have knowledge that a suit was instituted against them, however, they have not submitted their written statement and did not come forward to cross examine the evidence of the plaintiff. They have not contested the authenticity of the said letter. So, the said letter is considered deemed to be proved.

9. For reasons discussed above, this court is considered view that defendant no 1 had borrowed a sum of Rs. 100000 (one lakh) from the plaintiff and defendant no 2 had agreed to stand as guarantor of defendant no 2 by executing an agreement on 23.12.2011 and both the defendants failed to make any repayment toward the plaintiff. This court is of considered view that the defendant No.1 and 2 are jointly and severally liable to repay the entire loan amount of Rs 1, 00,000/- with interest.

With regard to the interest, it may be divided under three heads:

- (i) Interest prior to filing of suits – As stated, this court opines that the contractual rate of interest between parties is too excessive
- (ii) Interest *pendent lite*, i.e. from the date of the suit to the date of the decree and
- (iii) Interest from the date of decree till the payment.

For the sake of convenience, it is ordered that defendants are liable to pay the uniform simple interest from the date of agreement i.e. 23.12.2011 till full realization of the payment towards the plaintiff.

10. In the light of the above discussion, this court opines and makes an order that the defendant No.1 and 2 are jointly and severally liable to repay the entire loan amount of Rs 1, 00,000/- with interest at the rate of 10 pc per annum from 23.12.2011 till realization of the decree. Defendants are also liable to pay a sum of Rs. 5000 as Pleader's fee, court fee and all other etc. The principal along with the interest shall be paid within 3 months of this order.

11. With the above observations and direction, the suit shall be decreed without contest.

Given under my hand and seal of the court on this 11th, October, 2013.

Sd/-LALDINPUIA TLAU
Civil Judge,
Aizawl Judicial District,
Aizawl, Mizoram.

Memo No. CJ-2(A)/2013 : Dated Aizawl, the 18th, October, 2013

Copy to:-

- 1) District Judge, Aizawl Judicial District, Aizawl, Mizoram.
- 2) Trial Judge.
- 3) Shri. J.H Vanlalkima, R/o Tuikual North, Aizawl, Mizoram through Mr. Hranghmingthanga Ralte, Adovocate.
- 4) Shri Zohmingthanga c/o Hmingthanzami @ C. Thanzami of Chanmari, Aizawl.
- 5) Smt. Hmingthanzami @ C. Thanzami of Chanmari, Aizawl.
- 6) Judicial Branch.
- 7) Office copy.
- 8) Guard File

P E S H K E R

AIZAWL DISTRICT: AIZAWL**SIMPLE MONEY DECREE****MONEY SUIT NO. 109 OF 2012**

Shri J.H. Vanlalkima,
Tuikual North, Aizawl

.... Plaintiff

Versus

1. Shri Zohmingthanga,
c/o Smt. Hmingthangzami @ Thanzami,
R/o Chanmari, Aizawl.
2. Smt. Hmingthangzami @ Thanzami,
R/o Chanmari, Aizawl.

....Defendants

This suit coming on this 20.09.2013 for disposal before Shri Laldinpuia Tlau, Civil Judge-II in the presence of Mr. Hranghmingthanga Ralte, Advocate for the plaintiff, it is ordered and decreed that the defendants to repay to the Plaintiff, within three months from the date of this judgment and order, a sum of Rs. 1,00,000/- with an interest at the rate of 10 % per annum to be calculated from dt 23.12.2011 till full and final realization of the whole amount.

The defendant shall also pay Rs. 5,000/- to the plaintiff as cost of the suit.

Given under my hand and seal of the Court on this 18th day of October, 2013.

Seal of the Court
Judge

Judge

				Defendant			
		Rs.	P			Rs.	P.
1.	Stamp for plaint			1.	Stamp for plaint	3,770/-	
2.	Stamp for power			2.	Stamp for petitions and affidavits		
3.	Stamp for petitions and affidavits			3.	Costs of exhibits including copies made under the Banker's Books' Evidence Act, 1891.		
4.	Costs of exhibits including copies made under the Banker's Books' Evidence Act, 1891			4.	Pleader's fee on Rs.		
5.	Pleader's fee on Rs			5.	Subsistence and travelling allowances of witnesses (including those of a party, if allowed by a judge)		
6.	Subsistence and travelling allowances of witnesses (including those of a party, if allowed by a judge)			6.	Process fee		
7.	Process fee			7.	Commissioner's fee		
8.	Commissioner's fee			8.	Demi paper		
9.	Demi paper			9.	Cost of transmission of records		
10.	Cost of transmission of records			10.	Other costs allowed under the Code and Civil Rules and Orders.	1,230/-	
11.	Other costs allowed under the Code and Civil Rules and Orders			11.	Adjournment costs not paid in cash (to be deducted or added as the case may be)		
12.	Adjournment costs not paid in cash (to be added or deducted as the case may be)			12			
13.	Total			13.	Total	5000	

