

**IN THE COURT OF CIVIL JUDGE  
AIZAWL DISTRICT, AIZAWL**

Civil Suit No. 104 of 2011

Smt. Baby Vanramthangi  
W/o Lalrinchhana (L)  
R/o College Veng, Aizawl  
Aizawl District

... Plaintiff

-Vrs-

1. The Chief Manager  
State Bank of India  
Aizawl Branch, Aizawl  
Mizoram

2. Shri Lalrinawma,  
S/o Ramliana (L)  
R/o ITI Veng, Aizawl  
Aizawl District

... Defendants

BEFORE

H LALDUHSANGA, CIVIL JUDGE-II

Suit filed on	:	09.12.2011
Oral argument on	:	19.01.2018
Judgment & Order delivered on	:	24.01.2018
Counsel for the Plaintiff	:	Shri JC Lalnunsanga & ors, Advocate
Counsel for the Defendant No 1	:	Shri MM Ali, Standing Counsel & ors
Counsel for the Defendant No 2	:	Shri K Laldinliana & ors, Advocate

No of Total Pages of Judgment & Order: 17 (Seventeen)

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### PLAINTIFF'S WITNESSES

1. PW 1 : Smt Baby Vanramthangi
2. PW 2 : Smt PB Lalherliani

### PLAINTIFF'S EXHIBITS

1. Ext P-1 is the Complaint submitted by the Plaintiff
2. Ext P-1 (a), (b) and (c) are signatures of the Plaintiff
3. Ext P-2 is the Birth Certificate of minor Vanlalremruata
4. Ext P-3 is the Guardianship Certificate in respect of minor Vanlalremruata issued by Smt Sylvie Z Ralte.
5. Ext P-4 is Plaintiff's Bank Pass Book No 31324821883
6. Ext P-5 is the Pension Payment Order issued by Government of Mizoram, Directorate of Accounts & Treasuries.
7. Ext P-6 is the letter sent to Manager, SBI, Main Branch, Aizawl by the Commandant, 3<sup>rd</sup> Battalion MAP, Mualpui, Aizawl.
8. Ext P-7 is the letter sent by Chief Manager, PBD to the Commandant, 3<sup>rd</sup> Battalion MAP, Mualpui, Aizawl.
9. Ext P-8 is the letter sent by the Commandant, 3<sup>rd</sup> Battalion MAP, Mualpui, Aizawl to the Manager, SBI.
10. Ext P-9 is the letter sent by Shri Lahuliana Fanai to the Chief Manager, SBI.

### DEFENDANT NO 1 WITNESSES

DW 1 : Shri Lalfakawma

### DEFENDANT No 2 WITNESSES

DW 1 : Shri Lalrinawma

DW 2 : Smt Lalsangzuali

DW 3 : Smt Chhiarkhumi

### DEFENDANT No 2 EXHIBITS

Ext D – 1 : A written statement filed by Defendant No 2.

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## JUDGMENT & ORDER

**Dated 24.01.2018**

1. This is a Money Suit No 104 of 2011 for the recovery of a sum of Rs. 72,890 (Rupees Seventy Two Thousand Eight Hundred and Ninety Only) accumulated in the Plaintiff's Account and being withheld by Defendant No. 1 and other reliefs filed by the Plaintiff on 09.12.2011. The Defendant No 1 filed Counter-claim of Rs 1,54,326/- (Rupees one lakh fifty four thousand three hundred and twenty six) against the Plaintiff and the Defendant No 2.

2. The Plaintiff submitted in her *Plaint* inter alia Defendant No. 1 is the Chief Manager/ Manager, State Bank of India, Aizawl Branch where the Plaintiff is having Bank Account vide A/c No. 31324821883 through which the amount of Family Pension of deceased Shri Lalrinchhana in favour of the Plaintiff is being transacted and given to the Plaintiff. The Defendant No 2 is the father of deceased Shri Lalrinchhana who obtained terminal benefits of the deceased amounting to Rs. 2,40,735/- (Rupees two lakhs forty thousand seven hundred and thirty five only). The Plaintiff is the beneficiary of the Family Pension in respect of deceased Shri. Lalrinchhana under the class of pension in respect of the service of the deceased and she is the holder of Pension Payment Order (P.P.O. No. F/MR/DAT/11/5974). So, she is entitled to receive an amount of Rs. 4,825/- (Rupees Four thousand eight hundred twenty five) only per month as monthly Family Pension. The Plaintiff had been looking after Vanlalremruata (minor) who was born to deceased Lalrinchhana and the Plaintiff on 16.03.2010. The family pension that she receives is the sole income for looking after herself and the said minor child. The Directorate of Accounts & Treasuries on 07.03.2011 deposited an amount of Rs. 78,276/- (Rupees seventy eight thousand two hundred and seventy six only) under the heads of Leave Encashment i.e Rs. 26,971 (Rupees twenty six thousand nine hundred seventy one only) and Pension Arrear i.e Rs. 51,306 (Rupees fifty one thousand three hundred and six only) accumulated for the period of 12.04.2010 to 28.02.2011 in the Plaintiff's account under A/c No. 31324821883 in the State Bank of India. The Plaintiff had withdrawn certain sum of Rs. 78,276/- (Rupees seventy eight thousand two hundred and seventy six only) which has been encased into her account by the Directorate of Accounts & Treasuries under the Family Pension Arrear and Leave Encashment. However, to her utter surprise the said balance i.e Rs. 72,890 (Rupees seventy two thousand eight hundred and ninety only) has been withheld by Defendant No 1 till date. The Plaintiff thereby approached Defendant No 1 and inquired the reason for being withheld the said sum of money. The Defendant No 1 answered the Plaintiff that the said sum of money has been withheld for the repayment of Personal Loan borrowed by deceased Shri Lalrinchhana in December, 10, 2008 in respect of Loan Account No. 30603091752. The said loan had neither been used nor utilized by the Plaintiff as it was long before their marriage. It is the Defendant No 2 who actually utilized fully the said loan taken by deceased Shri Lalrinchhana. As a result, the Plaintiff approached the Office of the Commandant, Third Battalion MAP, Mizoram, Aizawl and informed the

matter of the balance withheld by Defendant No 1 and make request to take necessary steps in respect thereof. The Office of the Commandant, Third Battalion MAP, Mizoram, Aizawl requested Defendant No 1 to intimate the outstanding loan in respect of deceased employee Shri. Lalrinchhana vide Letter No. 3MAP/BANK LOAN/09/342 dated 4<sup>th</sup> May, 2010. In reply to the said Letter No. 3MAP/BANK LOAN/09/342 dated 4<sup>th</sup> May, 2010, Defendant No 1 stated in his Letter No. CM/PBD/41/814 dated 29.03.2011 that the position of Personal Loan A/c of deceased Shri. Lalrinchhana as on 05.05.2010 was that Loan Amount sanction through Loan A/c No. 306033091752 was Rs. 1,50,000/- and the Loan outstanding amount was Rs. 1,54,236/-. The Defendant No 1 in this Letter also requested the Office of the Commandant, Third Battalion MAP, Mizoram, Aizawl to arrange for the recovery of the said Loan balance from any terminal benefits of deceased Shri. Lalrinchhana, if there is any from his end and at the same time sought the advice of the Office of the Commandant, Third Battalion MAP, Mizoram, Aizawl to enable Defendant No 1 to take necessary action. In reply to the Letter No CM/PBD/41/814 dated 29.03.2011, the Office of the Commandant, Third Battalion Mizoram Armed Police, Aizawl, Mizoram vide Letter No 3MAP/PEN/LRCH/2010/292 dated 21<sup>st</sup> April, 2011 supplied the copy of the division made on the terminal benefits in respect of deceased Shri. Lalrinchhana between the Plaintiff and the Defendant No 2 stating that the GSLI (Rs. 1,01,213), GPF (Rs. 82,407), GIS (Rs. 30,614), Death Gratuity (Rs. 66,501) and Ex-Gratia (Rs. 20,000) which total comes up to Rs. 2,40,735/- (Rupees two lakhs forty thousand seven hundred and thirty five only) was received by Defendant No. 2 and the Plaintiff is to receive Leave Encashment (Rs. 26,971) and Pension Arrear (Rs. 51,306) accumulated for the period of 12.04.2010 to 28.02.2011 which totally comes up to Rs. 78,276 (Rupees seventy eight thousand two hundred seventy six only). The Office of the Commandant, Third Battalion Mizoram Armed Police, Aizawl, Mizoram advised the Defendant No 1 to take up the matter with the amount received by Defendant No 2 which could cover the outstanding loan amount for the liquidation of the loan amount taken by deceased Shri Lalrinchhana. The Plaintiff and deceased Shri. Lalrinchhana were married on June 30, 2009 and the Personal Loan of deceased Shri. Lalrinchhana was effective from December 10, 2008. As such, the Plaintiff did not enjoy any benefit from the Loan taken by the deceased but Defendant No 2 who is the father of the deceased enjoyed the whole benefit of the said Loan.

3. The Defendants No. 1 and 2 submitted their *written statements*. The Defendant No 1 submitted inter alia that the suit is hit by the Provisions of the CPC, 1908, the Indian Contract Act, 1872, the law relating to recovery of the dues of the Bank and among other Provisions of Act and Rules that have been traced by the Government. As per the law of inheritance, a person is entitled to inherit the property subject to payment of liability of the deceased person on whose property has been inherited. In the instance case, the Plaintiff inherited the property of deceased Shri Lalrinchhana with all his terminal benefits including pension. As such, the Plaintiff is entitled to clear the liability of her deceased husband which is presently outstanding with the answering Defendant No 1 for an amount of Rs. 1,60,000/- (One lakh sixty thousand) only in the loan Account No. 30603091752 calculated upto 03.01.2012. The Plaintiff is legally bound to repay the debt of her husband for the aforesaid amount of Rs. 1,60,000/- (Rupees One lakh sixty thousand) only. The prayer of the Plaintiff is neither legal nor enforceable against the answering Defendant and thereby the Plaintiff is not entitled to claim relief of defective prayer. That unless specifically herein below all the averment made in the plaint are denied by the answering Defendants. The averment made under Paragraph No 4, 5 & 6 of the Plaint are the fact of the exclusive admission of the fact that the Plaintiff has been given Pension benefits of deceased Shri Lalrinchhana. As such, the Plaintiff cannot deny the liability of making payment of the outstanding amount of Rs. Rs. 1,60,000/- as on 03.01.2012 which is due against the said deceased Shri. Lalrinchhana. The averment made under paragraph No. 7, 8, 9, 10 & 11 of the Plaint are the exclusive fact that the Plaintiff has been declared legal heir and recipient of the pension of deceased Shri. Lalrinchhana and as such as legal heiress of deceased Shri. Lalrinchhana, she is liable to the entire outstanding of deceased Shri. Lalrinchhana which is Rs. 1,60,000/- as due upto 03.01.2012. The averment made under paragraph No. 12 of the plaint. The answering Defendant denied the same as baseless allegations and stated that the answering Defendant never obtained any signature of the Plaintiff on a blank/white paper. The Defendant No 1 filed Counter-claim of Rs 1,54,326/- (Rupees one lakh fifty four thousand three hundred and twenty six) against the Plaintiff and the Defendant No 2.

4. The Defendant No. 2 submitted inter alia the Plaintiff is not the wife of Constable Lalrinchhana (L), 3rd Battalion MAP at the time of his death on 11.04.2010. However, the Plaintiff and Constable deceased Shri. Lalrinchhana who was the son of the answering Defendant No 2 had once married. However, due to some misunderstanding between them, they had divorced each other and the Plaintiff had returned to her parental home at College Veng, Aizawl during the lifetime of the deceased. Moreover, after divorcing her husband, when she was further intending to bring back all her belongings from the house of her husband, Constable Lalrinchhana had committed suicide on the night of 11.04.2010. In fact, the Plaintiff had not witnessed the funeral function of the deceased. Hence, the Plaintiff has no right to claim herself as the wife of Constable deceased Shri. Lalrinchhana. As such, the Plaintiff is put to strict proof of the same. In fact, the Defendant No 2 had spent up whatever amount of money received by him on different heads viz. (i) to clear the dues of deceased Constable Shri Lalrinchhana from different shops and from the 3rd Battalion, MAP Police Canteen i.e. Rs. 8,000/- (ii) for the purpose of preparing the memorial stone of the deceased i.e. Rs. 50,000/- (iii) for repairing their main house at ITI Veng i.e. Rs. 80,000/- (iv) for the purpose of constructing a water tanky in the name of the deceased i.e Rs. 30,000/- (v) for the purpose of making a show case in order to keep the personal properties of the deceased i.e. Rs. 20,000/- (vi) for the purpose of organizing feast (2 times) in remembrance to the deceased i.e. Rs. 25,000/- (vii) for the medical expenses for the deceased's grandmother who is suffering from hypertension and diabetes etc i.e. Rs. 30,000/-. Since all the money received by the Defendant No 2 from the terminal benefits of deceased Shri Lalrinchhana had already spent up for the benefits and welfare of the deceased, there is no point of raising the said amount at this time. The Plaintiff is not entitled to receive any benefits arising out of the Family Pension of Constable deceased Shri. Lalrinchhana as the deceased had already divorced her during his lifetime as stated above. In fact, Constable deceased Shri Lalrinchhana during his lifetime had not included the Plaintiff in his Service Book as his wife or a family member. Very strange is that as to how the Directorate of Accounts & Treasuries had deposited the Leave Encashment and Pension Arrear of Constable deceased Shri Lalrinchhana in favour of the Plaintiff since she had not been included during his lifetime by the deceased as a family's member in his Service Book as his wife. The Plaintiff is not entitled to any of the benefits mentioned in the said paragraph as the deceased had already divorced

her during his lifetime. The deceased on 10.12.2008 took the said loan and the money were utilized by him for obtaining his said job in the Police Department. In fact, a sum of Rs. 20,000/- was given to a person who had helped him get the said job and the rest was utilized by him while he was on training and for the expenses of his marriage celebration with the Plaintiff. Further, it may be respectfully submitted that the answering Defendant had not utilized the said loan for his own benefit as alleged by the Plaintiff. In fact, it was the Plaintiff who has continued to enjoy the outcome of the said loan taken by the deceased as she is now began to enjoy the Family Pension of the deceased. Hence, there is no illegality on the part of the Defendant No 1 by withholding the Family Pension Arrear and Leave Encashment of the deceased Constable as a huge amount of money are still due for the loan obtained by the deceased. The alleged advice of the said Office of the Commandant, 3rd Battalion, MAP, Aizawl, Mizoram could not be taken into account in order to liquidate the loan amount taken by the deceased. Moreover, the said Office has no right or authority to give advice in respect of the said loan. In fact, the legal heir/heiress of Constable deceased Shri Lalrinchhana, the person who is being granted the Family Pension has to take all the responsibilities to liquidate the said loan. Hence, if the Plaintiff refuses to repay the said loan she is not entitled to receive the said Family Pension of the deceased. Though the deceased before his marriage with the Plaintiff took the said loan, he utilized the said loan for obtaining a job in the Police Department. No cause of action arose in favour of the Plaintiff and against the answering Defendant. The Plaintiff is exclusively liable for the repayment of the said loan. Moreover, proper valuation of a suit has to be made for the purpose of Court fees and jurisdiction, however, in the instant suit, no such valuation has been made and as such the same has to be dismissed outright. The Plaintiff is not entitled to any of the reliefs claimed by her in the present suit and accordingly the suit is liable to be dismissed with exemplary costs.

5. The predecessor Court has framed the following issues.

- (1) Whether the suit is maintainable in its present form and style?
- (2) Whether there is any cause of action in favour of the Plaintiff and against the Defendants?
- (3) Whether the suit is bad in law for non-joinder/ misjoinder of necessary parties?
- (4) Whether the Plaintiff had been divorced by the deceased, Constable Lalrinchhana, if so, whether the Plaintiff is entitled to receive family pension of the deceased?
- (5) Whether the Plaintiff is the legal heir of the deceased Lalrinchhana and if so, whether she is liable to pay the liability of the said deceased which falls due on her?
- (6) Whether the counter-claim of Rs. 1,54,326/- of the Defendant State Bank of India,

Aizawl is enforceable against the Plaintiff?  
(7) Whether the SBI, Aizawl Branch is entitled for an amount of Rs. 1,54,236/- decree based on the counter claim against the Plaintiff?

6. The Plaintiff produced two witnesses, namely Smt Baby Vanramthangi and Smt P.B. Lalherliani while the Defendant No. 1 produced one witness Shri Lalfakawma and the Defendant No. 2 produced three witnesses Shri Lalrinawma, Smt Lalsangzuali and Smt Chhiarkhumi. I have heard both the Ld. Counsels on oral argument and received written arguments.

#### DECISIONS AND REASONS THEREOF

7. **ISSUE No 1, 2 and 3:** For the sake of brevity, the three issues i.e (1) Whether the suit is maintainable in its present form and style (2) Whether there is any cause of action in favour of the Plaintiff and against the Defendants (3) Whether the suit is bad in law for non-joinder/misjoinder of necessary parties are grouped together. In fact, the Predecessor Court had heard and maintained the case.

8. **ISSUE No 4:** Whether the Plaintiff had been divorced by the deceased, Constable Lalrinchhana, if so, whether the Plaintiff is entitled to receive family pension of the deceased? Shri Lalrinawma (Defendant No 2), Smt Lalsangzuali (DW 2 of Defendant No 2) and Smt Chhiarkhumi (DW 3 of Defendant No 2) deposed that the Plaintiff and the deceased had divorced each other. When the deceased died on 11.04.2010, the Plaintiff was not the wife of the deceased. The Plaintiff had gone back to her parental home at College Veng, Aizawl and she was not present even in the funeral process of the deceased. In fact, the Plaintiff herself did not deny that she had gone to her parental home and did not appear in the said funeral process. However, on cross-examination, Shri Lalrinawma (Defendant No 2) admitted that they had no documents to prove that the Plaintiff and the deceased had divorced each other. There was not any customary divorce by way of Mak or Sumchhuah. Therefore, it appeared that the Plaintiff and the deceased were married on 30.06.2009 and the deceased died on 11.04.2010. However, no formal dissolution of marriage was found. There was neither a divorce certificate nor any letter signed by the Plaintiff and the deceased showing that they had divorced each other. In fact, there was a marriage certificate on record but no documentary evidence to prove that the marriage between the Plaintiff and the



deceased during the lifetime of the deceased had stood dissolved. Although disputed by the Defendant No 2 and his witnesses, they have not provided any proof to rebut the same. The Defendant No 2 and Smt. Lalsangzuali (DW 2 of Defendant No 2) deposed that the deceased did not make the Plaintiff as a member of his family in his service Book. The Defendant No 2 further deposed that he got surprised when he knew that the Directorate of Accounts & Treasuries deposited the deceased's Service Benefits (Leave encashment and Pension arrear) into the Plaintiff's Account. The Plaintiff is not entitled any service benefits. However, on their cross-examination, they admitted that their deceased son nominated the Plaintiff to receive his pension and other benefits in his service book and the same was not changed till date. The Defendant No 2 admitted by saying, "Plaintiff is entitled to receive monthly pension arising out of the service of her deceased husband to look after his grandson". Smt Lalsangzuali (DW 2 of Defendant No. 2) also admitted by saying, "My son nominated the Plaintiff to receive his pension and other benefits in his service book which is not changed till date." Further, it appeared from the documents, the Plaintiff and the deceased had one minor Vanlalremruata who was also nominated to receive the Family Pension of the deceased as per the Pension Payment Order of deceased Shri Lalrinchhana (Annexure 4). Again, the Plaintiff has been looking after the said minor Vanlalremruata and obtained a Guardianship Certificate No. 5A of 2010 on 10<sup>th</sup> June, 2010. It is also found that the Plaintiff is the beneficiary of the Family Pension in respect of deceased Shri Lalrinchhana and she is the holder of Pension Payment Order No. F/MR/DAT/11/5974 (Annexure 4 and Exhibit P – 5). Therefore, *it is considered that subject to the CCS Pension Rules, 1972*, this Court opined that the Plaintiff is entitled to receive the family pension of deceased Constable Shri Lalrinchhana.

9. **ISSUE No 5:** Whether the Plaintiff is the legal heir of deceased Shri Lalrinchhana and if so, whether she is liable to pay the liability of the said deceased which falls due on her. In the light of the observation made in Issue No 4, it appeared that the Plaintiff was the legal wife of deceased Shri Lalrinchhana. No formal dissolution of marriage was found. Repeated that there was neither a divorce certificate nor any letter signed by the Plaintiff and the deceased showing that they had divorced each other. In fact, there was no documentary evidence to have shown that the marriage between the Plaintiff and the deceased during the lifetime of the

deceased had stood dissolved. The Plaintiff is also the natural Guardian of the said minor Vanlalremruata born on 16.03.2010 to the Plaintiff and the deceased and obtained Guardianship Certificate No 5A of 2010 in respect of the said minor Vanlalremruata issued by the competent Court. Hence, the Plaintiff is regarded as the legal heir of the deceased.

10. With regard to as to whether the Plaintiff is liable to pay the liability of the deceased, the Defendant No 1 in his written statement submitted that the Plaintiff inherited the property of deceased Shri Lalrinchhana with all his terminal benefits including pension. As such, the Plaintiff is entitled to clear the liability of her deceased husband which is presently outstanding with the answering Defendant No 1 for an amount of Rs. 1,60,000/- (One lakh sixty thousand) only in the Loan Account No. 30603091752 calculated upto 03.01.2012. The Plaintiff is legally bound to repay the debt of her husband for the aforesaid amount of Rs. 1,60,000/- (Rupees One lakh sixty thousand) only. Shri Lalfakawma (Defendant No 1) also deposed that the deceased obtained Personal Loan on 10.12.2008 amounting to Rs 1,50,000/- from their Bank. When he died he left Rs 1,60,000/- with interest which was calculated upto 03.01.2012. As being a legal heir of the deceased, the Plaintiff must repay the loan. The same is prayed by way of counter claim. However, in order to strengthen and consolidate his stand that a person who inherited the property of the deceased should also carry on the liability of such deceased person, but, no relevant specific provision of Law is mentioned. Shri Lalrinawma (Defendant No 2) and Smt Lalsangzuali (DW 2 for Defendant No 2) also deposed that the Defendant No 2 had spent up whatever amount of money received by him on different heads viz. (i) to clear the dues of deceased Constable Shri Lalrinchhhana from different shops and from the 3rd Battalion, MAP Police Canteen i.e. Rs. 8,000/- (ii) for the purpose of preparing the memorial stone of the deceased i.e. Rs. 50,000/- (iii) for repairing their main house at ITI Veng i.e. Rs. 80,000/- (iv) for the purpose of constructing a water tanky in the name of the deceased i.e Rs. 30,000/- (v) for the purpose of making a show case in order to keep the personal properties of the deceased i.e. Rs. 20,000/- (vi) for the purpose of organizing feast (2 times) in remembrance to the deceased i.e. Rs. 25,000/- (vii) for the medical expenses for the deceased's grandmother who is suffering from hypertension and diabetes etc i.e. Rs. 30,000/-. Smt Chhiarkhumi

(DW No 3 of the Defendant No. 2) deposed that Lalrinchhana thih lukhawng hi Defendant No. 2 hian a hui (the Defendant No 2 did receive the terminal benefit of the deceased). Smt Chhiarkhumi (DW 3 for Defendant No 2) further admitted that the Defendant No 2 received all the terminal benefits of the deceased except Leave Salary, 6<sup>th</sup> Pay Arrear and Family Pension. The Defendant No 2 and DW 2 of Defendant No 2 deposed in examination-in-chief that Rs 2,43,000/- had been spent from the terminal benefits of the deceased received by them for various purposes in connection with the deceased. The Defendant No 2 did not deny that he had enjoyed the terminal benefits of the deceased. On cross-examination, Defendant No 1 also deposed that he came to know that the family of Defendant No 2 received all the pension benefits except family pension. Hence, it appeared that the Defendant No 2 as being a natural father of the deceased received the terminal benefits of the deceased much more than the Plaintiff. From the above, it appeared that both the Plaintiff and the Defendant No 2 enjoyed the service benefits of the deceased.

11. In the meanwhile, it also appeared that the loan was taken before the deceased married the Plaintiff. The Defendant No 2 stated in his cross-examination that his deceased son obtained a loan on 10.12.2008 when the Plaintiff and her deceased husband were married on 30.6.2009. The Defendant No 2 in his written statement submitted that the said loan was taken by the deceased on 10.12.2008 and the money were utilized by him for obtaining his said job in the Police Department. A sum of Rs. 20,000/- was given to a person who had helped him get the said job and the rest was utilized by him while he was on training and for the expenses of his marriage celebration with the Plaintiff. Furthermore, Shri Lalrinawma (Defendant No 2), Smt Lalsangzuali (DW 2 for Defendant No 2) Smt Chhiarkhumi (DW 3 for Defendant No 2) during cross-examination admitted that he the Defendant No 2 Shri Lalrinawma stood as guarantor for deceased Shri Lalrinchhana in respect of Personal Loan amounting to Rs 1,50,000/- taken by the deceased. The Defendant No 2 had admitted by saying, "I stood as guarantor for my son when he availed loan from the Defendant No. 1 amounting Rs. 1,50,000." Smt Lalsangzuali (DW 2 of Defendant No 2) also admitted by saying, "The Defendant No. 2 (my husband) stood as guarantor for my son when my son availed loan from the Defendant No. 1 amounting Rs. 1,50,000/-." Smt Chhiarkhumi (DW 3 of Defendant No 2) also admitted by saying, "Lalrinchhana

loan lak a guarantor chu Defendant No. 2 hi a ni (It was the Defendant No 2 who stood as a guarantor in respect of the Loan taken by the deceased." Furthermore, the signature of Shri Lalrinawma (Defendant No 2) was also found in the Plaintiff's Annexure II where he put it as a guarantor **"A man may lie, but a document will never lie" (Afzauddin Ansary vs (1997) 2 Crimes 53 (Cal).**

*The Hon'ble Supreme Court has held in **Ram Kishun & Ors. Vs. State of U.P. & Ors, (2012) 11 SCC 511**, that there can be no dispute to the settled legal proposition that in view of the provision of Sec 128 of the Indian Contract Act, 1872 the liability of the guarantor/ surety is co-extensive with that of the debtor. Therefore, the creditor has a right to obtain a decree against the surety and the principal debtor. The surety has no right to restrain execution of the decree against him until the creditor has exhausted his remedy against the principal debtor for the reason that it is the business of the surety/ guarantor to see whether the principal debtor has paid or not. The surety does not have a right to dictate terms to the creditor as how he should make the recovery and pursue his remedies against the principal debtor at his instance.*

12. It is therefore considered that the Plaintiff does not stand as a guarantor in respect of the Personal Loan taken by the deceased and has no liability in making repayment of the said Loan.
13. **ISSUE No 6 and 7:** For the sake of brevity, Issue No 6 and 7 shall be considered together by making amendment as provided under Order XIV Rule 5 CPC as follows. Whether the counter-claim of Rs. 1,54,326/- of the Defendant State Bank of India, Aizawl is enforceable against the Plaintiff *or the Defendant No 2 Shri Lalrinawma* and whether the SBI, Aizawl Branch is entitled for an amount of Rs. 1,54,236/- decree based on the counter claim against the Plaintiff *or the Defendant No 2 Shri Lalrinawma*. In fact, in the light of observation made in Issue No 5, it is clear that not the Plaintiff but the Defendant No 2 as being a guarantor is liable for making repayment of personal Loan taken by the deceased.
14. **ISSUE No 8:** As provided under Order XIV Rule 5 CPC, one additional Issue is framed. i.e to what relief the Plaintiff is entitled for. The Plaintiff deposed that Defendant No. 1 is the Chief Manager/ Manager, State Bank of India, Aizawl Branch where she is having Bank Account vide A/c No. 31324821883 through

which the amount of Family Pension of deceased Shri Lalrinchhana in her favour is being transacted and given to her. The Defendant No 2 is the father of deceased Shri Lalrinchhana who obtained terminal benefits of the deceased amounting to Rs. 2,40,735/- (Rupees two lakhs forty thousand seven hundred and thirty five) only. She is the beneficiary of the Family Pension in respect of deceased Shri. Lalrinchhana under the class of pension in respect of the service of the deceased and she is the holder of Pension Payment Order (P.P.O. No. F/MR/DAT/11/5974) and so that she is entitled to receive an amount of Rs. 4,825/- (Rupees Four thousand eight hundred twenty five) only per month as monthly Family Pension. She had been looking after Vanlalremruata (minor) who was born to her and deceased Lalrinchhana on 16.03.2010. The family pension that she receives is the sole income for looking after herself and the said minor child. The Directorate of Accounts & Treasuries on 07.03.2011 deposited an amount of Rs. 78,276/- (Rupees seventy eight thousand two hundred and seventy six only) under the heads of Leave Encashment i.e Rs. 26,971 (Rupees twenty six thousand nine hundred seventy one only) and Pension Arrear i.e Rs. 51,306 (Rupees fifty one thousand three hundred and six only) accumulated for the period of 12.04.2010 to 28.02.2011 in her account under A/c No. 31324821883 in the State Bank of India. She had withdrawn certain sum of Rs. 78,276/- (Rupees seventy eight thousand two hundred and seventy six only) which has been encased into her account by the Directorate of Account & Treasuries under the Family Pension Arrear and Leave Encashment. However, to her utter surprise the said balance i.e Rs. 72,890 (Rupees seventy two thousand eight hundred and ninety only) has been withheld by Defendant No 1 till date. She thereby approached the Defendant No 1 and inquired the reason for being withheld the said sum of money. The Defendant No 1 answered her that the said sum of money has been withheld for the repayment of Personal Loan borrowed by deceased Shri Lalrinchhana in December, 10, 2008 in respect of the Loan Account No. 30603091752. The said loan had neither been used nor utilized by her as it was long before their marriage. It is the Defendant No 2 who actually utilized the said loan fully taken by deceased Shri Lalrinchhana. As a result, she approached the Office of the Commandant, Third Battalion MAP, Mizoram, Aizawl and informed the matter and requested to take necessary steps in respect thereof. The Office of the Commandant, Third Battalion MAP, Mizoram, Aizawl requested the Defendant No 1 to intimate the outstanding loan in respect of deceased

employee Shri. Lalrinchhana vide Letter No. 3MAP/BANK LOAN/09/342 dated 4<sup>th</sup> May, 2010. In reply, Defendant No 1 stated in his Letter No. CM/PBD/41/814 dated 29.03.2011 that the position of Personal Loan A/c of deceased Shri. Lalrinchhana as on 05.05.2010 was that Loan Amount sanction through Loan A/c No. 306033091752 was Rs. 1,50,000/- and the Loan outstanding amount was Rs. 1,54,236/-. The Defendant No 1 in this Letter requested the Office of the Commandant, Third Battalion MAP, Mizoram, Aizawl to arrange for the recovery of the said Loan Balance from any terminal benefits of deceased Shri. Lalrinchhana, if there is any, from his end and at the same time sought the advice of the Office of the Commandant, Third Battalion MAP, Mizoram, Aizawl to enable the Defendant No 1 to take necessary action. In reply to the said Letter, the Office of the Commandant, Third Battalion Mizoram Armed Police, Aizawl, Mizoram vide Letter No 3MAP/PEN/LRCH/2010/292 dated 21<sup>st</sup> April, 2011 supplied the copy of the division made on the terminal benefits of deceased Shri. Lalrinchhana between her and the Defendant No 2 stating that the GSLI (Rs. 1,01,213), GPF (Rs. 82,407), GIS (Rs. 30,614), Death Gratuity (Rs. 66,501) and Ex-Gratia (Rs. 20,000) which total comes up to Rs. 2,40,735/- (Rupees two lakhs forty thousand seven hundred and thirty five only) was received by Defendant No. 2 and the Plaintiff is to receive Leave Encashment (Rs. 26,971) and Pension Arrear (Rs. 51,306) accumulated for the period of 12.04.2010 to 28.02.2011 which totally comes up to Rs. 78,276 (Rupees seventy eight thousand two hundred seventy six only). The Office of the Commandant, Third Battalion Mizoram Armed Police, Aizawl, Mizoram advised Defendant No 1 to take up the matter with the amount received by Defendant No 2 which could cover the outstanding Loan amount for the liquidation of the Loan amount taken by the deceased. She married with Shri. Lalrinchhana on 30 June, 2009 and the Personal Loan of the deceased was effective from December 10, 2008. As such, she did not enjoy any benefit from the Loan taken by the deceased but Defendant No 2 who is the father of the deceased enjoyed the whole benefit of the said Loan. On 24.11.2011, the Defendant No 1 called her to appear in person at SBI, Aizawl Branch before Chief Manager and fraudulently insisted her to put her signature on a blank paper that the Defendant No 1 after obtaining her signature had an intention to effect the adjustment with the Balance of Rs 72,890/- in her AC No. 31324821883 alongwith her monthly family pension i.e Rs 4,825/- for the payment of an outstanding loan amount due under the loan AC No 30603091752, but she refused to effect the

same. On that day, the Defendant No 1 made known to her that he would still arrange the adjustment for the repayment of the said Loan Balance with Rs 72,890/- in her AC 31324821883 and the monthly Family Pension received by her despite refusal of putting her signature.

15. PW 2 Smt PB Lalherliani deposed that in the month of May, 2010 one Sub-Inspector from 2<sup>nd</sup> IR visited and asked them as to whether they had gone to the deceased's Office. She told him that they had not gone. On his instruction, they went to the Office. When they went to the deceased's Office, the employees of the Office told them that they were very late and the deceased's family came frequently and enquired the death benefits of the deceased. They could not do anything without the Plaintiff's consent and asked about their opinion. They informed them that there has been outstanding loan at SBI. They beg to give them at least pension benefit if they could not give other death's benefits. Hence, they made adjustment that pension benefit shall be taken by them and the family of Defendant No 2 shall take all death benefits. During the course of negotiation, the Commanding Officer mentioned about "WILL" allegedly left by the deceased in favour of the family of Defendant No 2 and asked to have a look. It was found that the signature of the deceased found on the alleged "WILL" and his Service Book are completely different. PW 2 further deposed that Smt Lalsangzuali (DW 2 of Defendant No 2 who is deceased's mother) came and instructed the Plaintiff to sign on a paper and told that it was for the Plaintiff to get pension. Smt Lalsangzuali stated further that she had talked to the Competent Court and the Directorate of Accounts & Treasuries. The Plaintiff would get the pension benefits at weekend if she put her signature on that paper. She asked Smt Lalsangzuali to have a look what had been written on the paper. She handed over it to her reluctantly. She then found that it was not about the pension but an application for Divorce Certificate allegedly written by the Plaintiff for which the Plaintiff's signature was required. She then told her daughter (Plaintiff) not to sign on it. Smt Lalsangzuali then got angry with them and trembled with fear. Smt Lalsangzuali told that the Plaintiff would not get the Family Pension and she even could forge the Plaintiff's signature and so left them.

16. From the evidence, it appeared that the Directorate of Accounts & Treasuries on 07.03.2011 deposited an amount of Rs. 78,276/- (Rupees seventy eight thousand

two hundred and seventy six only) under the heads of Leave Encashment i.e Rs. 26,971 (Rupees twenty six thousand nine hundred seventy one only) and Pension Arrear i.e Rs. 51,306 (Rupees fifty one thousand three hundred and six only) accumulated for the period of 12.04.2010 to 28.02.2011 in the Plaintiff's Account under A/c No. 31324821883 at State Bank of India. The Plaintiff had withdrawn certain sum of Rs. 78,276/- (Rupees seventy eight thousand two hundred and seventy six only). However, Rs. 72,890 (Rupees seventy two thousand eight hundred and ninety only) has been withheld by Defendant No 1 till date. In fact, the said amount could not be made for repayment of deceased personal Loan without the Plaintiff's consent. Hence, the Plaintiff is entitled to receive the amount prayed Rs 72,890/-.

17. In the light of the observation made in Issue No 5, it is found that the Plaintiff is the wife of the deceased but Defendant No 2 Shri Lalrinawma stood as a guarantor in respect of Personal Loan taken by the deceased. Therefore, the Defendant No 2 is liable to make repayment of the said loan which is being prayed by the Defendant No 1 by way of Counter-claim. The Defendant No 1 has no authority to neither withhold the balance that was to be paid to the Plaintiff nor adjust the same for making repayment of the Personal Loan taken by the deceased when the Defendant No 2 stood as a guarantor. Hence, the Plaintiff is entitled to receive Rs 72,890/- (Seventy two thousand eight hundred ninety) being withheld by the Defendant No 1.

18. *As mentioned by RBI, according to Sec 128 of the Indian Contract Act, 1872 that the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. Hence, when a default is made in making repayment by the principal debtor, the banker will be able to proceed against the guarantor/surety even without exhausting the remedies against the principal debtor. As such, where a Bank has made a claim on the guarantor on account of the default made by the principal debtor, the liability of the guarantor is immediate. If the said guarantor refuses to comply with the demand made by the creditor/banker, despite having sufficient means to make payment of the dues, such guarantor would also be treated as a willful defaulter.*



ORDER

19. In the light of the above observation, the Chief Manager, State Bank of India, Aizawl Branch (Defendant No 1 in the present case) is hereby directed to release in full the amount prayed by the Plaintiff amounting to Rs 72,890/- (Seventy two thousand eight hundred ninety) to Smt Baby Vanramthangi (Plaintiff in the present case) within a period of thrity days from the date of this Order.
20. The Defendant No 2 Shri Lalrinawma as being a guarantor is also directed to make repayment of loan taken by his son deceased Lalrinchhana immediately.
21. Parties shall bear their own costs.
22. With this order, the present case stands disposed of.

**Given under my hand and seal of this Court on this day of the 24<sup>th</sup> January, 2018 Anno Domini.**

**(H. LALDUHSANGA)**

Civil Judge - II

Aizawl, Mizoram.

Memo No.....:

Dated Aizawl, the 24<sup>th</sup> January., 2018.

Copy to:

1. Smt Baby Vanramthangi W/o Lalrinchhana (L) R/o College Veng, Aizawl through Counsel Shri JC Lalnunsanga & ors, Advocate.
2. The Chief Manager, State Bank of India, Aizawl Branch, Aizawl through Standing Counsel Shri MM Ali & ors.
3. Shri Lalrinawma S/o Ramliana (L) R/o ITI Veng, Aizawl through Counsel Shri K Laldinliana & ors, Advocate.
4. The District Judge, Aizawl.
5. i/c Judicial Section.
6. Case record.
7. Guard File.

PESHKAR