

IN THE COURT OF ADDITIONAL DISTRICT JUDGE
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional District Judge,
Aizawl Judicial District, Aizawl.

Regular First Appeal No. 25 of 2014

Shri T.Liansiama
S/o Thangneihkham,
R/o Venghlui, Aizawl.Appellant

-versus-

State Bank of India
Bawngkawn Branch,
Aizawl, Mizoram.
(Represented by its Chief Manager)Respondent

APPEARANCE

For the appellant	:	Ms N. Lalzawmliani, Advocate.
For the respondent	:	Ms Lalrinnungi Sailo, Advocate.
Hearing	:	12.3.2015
Order delivered on	:	23.3.2015

ORDER

1. The appeal petition has been filed against the order dated 4.7.2014 passed by Smt. M.Lallianmawii, learned Senior Civil Judge II, Aizawl in Title Suit No. 40 of 2009.

2. The case of the appellant is that there are two separate Judgments & Orders passed by the two different learned Senior Civil Judges on the same issue and cause of action.

3. In the Judgment & Order dated 22.5.2012 passed by Shri R.Vanlalena, learned Senior Civil Judge, the operative portion of the Order is **that the defendant shall pay a sum of Rs. 2,61,949/- (Rupees two lakhs sixty one thousand nine hundred fourty nine) to the plaintiff Bank with interest @ 12.24 % per annum w.e.f. 1.10.2008 till full realization of the aforementioned amount, he shall also pay the sum of Rs. 5,360/- for court fee stamps and Rs. 10,000/- for pleaders' fee as cost awarded to the plaintiff bank with effect from the date of order till full realization. It was also ordered and decreed that the defendant shall pay to the court on or before 25.7.2012 or later date upto which time for payment may be extended by the court till full realization. In case, the defendant still remains fail to make repayment of the above accrued amount till 25.7.2012, the said mortgaged landed property will be liable to foreclosure and sale by the authority as final decree. Both parties shall have a right to approach this court when changes of circumstances and situations occur even during the aforementioned stipulated period.**

4. According to the appellant, he had made payment to the respondent Bank through the court diligently during the proceedings by submitting receipts of payment to the court on the following dates:-

	Date of Payment	Amount
(i)	Nov. 2011	Rs. 1,00,000/-
(ii)	14.1.2012	Rs. 50,000/-
(iii)	17.2.2012	Rs. 5,000/-
(iv)	17.3.2012	Rs. 5,000/-
(v)	30.5.2012	Rs. 3,000/-
(vi)	22.6.2012	<u>Rs. 1,08,170/-</u>
Total=		Rs. 2,71,170/-

5. In the Judgment & Order dated 4.6.2014 passed by Smt. M.Lallianmawii, the learned Senior Civil Judge, in short, the learned Senior Civil Judge reiterated the amount payable to the plaintiff Bank by the defendant who is the appellant herein in

terms of the Judgment & Order dated 22.5.2012 passed by her predecessor with modification made in time of payment.

6. It is contended by the learned counsel Ms N.Zawmliani appearing for the appellant that the Judgment & Order dated 4.7.14 passed by Smt. M.Lallianmawii is hit by the principle of Resjudicata and therefore prays to set aside it.

7. I have perused the case records with the order passed by Smt. M.Lalianmawii, the learned Senior Civil Judge. I do not agree with the submission of the learned Counsel Ms Lalzawmliani that the Judgment & Order passed by the learned Senior Civil Judge is hit by the principles of Resjudicata. The Judgment & Order dated 4.7.14 passed by the learned Senior Civil Judge is in addition to the Judgment & Order 22.5.2012 passed by her predecessor since change of circumstances and situation compelled her to make the order. On scrutiny of the Judgment & Order dated 4.7.2014, I do not find that the learned Senior Civil Judge exercised her jurisdiction arbitrarily and not in consonance of law. Hence, the Judgment & Order stands upheld.

8. It was next contended by the learned Counsel Ms N.Zawmliani that the appellant was highly prejudiced by the Judgment & Order dated 4.7.2014 directing the appellant to pay a sum of Rs. 2,79,309/- to the plaintiff Bank inasmuch as the appellant had paid Rs. 2,71,1170/- to plaintiff Bank. I have carefully perused the Judgment & Order passed by Shri R.Vanlalena, the predecessor of the learned Senior Civil Judge. There is no mention in the Judgment & Order dated 22.5.2012 that the appellant had paid Rs. 2,71,1170/- to plaintiff Bank.

9. However, on perusing the available records of order of Shri Vanlalena, the predecessor of the learned Senior Judge Smt M.Lallianmawii, vide 21.2.12, a total sum of Rs. 1,55,000/- was deposited by the appellant to the respondent Bank as on 21.2.12. The appellant again paid Rs. 5,000/- on 19.2.2012 and Rs. 3,000/- on 11.4.12 to the respondent Bank. Hence, the photo payment receipts amounting Rs 1,63,000/- were received and recorded till the date of passing the Judgment & Order dated 22.5.2012 passed by the predecessor of the learned Senior Civil Judge.

10. The appellant is therefore advised to approach the learned Trial Court for extension of time if he has liability for payment of loan with the interest and the costs.

11. The learned Trial Court is directed to summon both the rival parties in order to find out how much liability of payment the appellant has including the costs payable to the respondent Bank in terms of the Judgment & Order dated 4.7.2014, and allow reasonable time if necessary payment is to be made to the respondent Bank by the appellant.

12. In case, the appellant has no liability to the respondent Bank, the learned Trial Court shall direct the respondent Bank to release Title Deed of the appellant forthwith i.e. L.S.C. No. 102701/01/53 of 1999.

13. Hence, the appeal petition is disposed off.

14. Send back the L.C.R. to the learned Senior Civil Judge-2., Aizawl.

Given under my hand and seal of this Court on this 23rd day of March, 2015.

Sd/- VANLALENMAWIA

Addl. District Judge,
Aizawl Judicial District
Mizoram : Aizawl

Memo No._____/ADJ(A)/2015 : Dated Aizawl, the 23rd March, 2015

Copy to: -

1. T. Liansiama through Counsel Ms. N. Lalzawmliani, Advocate.
2. State Bank of India, Bawngkawn Branch through Counsel Ms. Lalrinnungi Sailo, Advocate.
3. District Judge, Aizawl Judicial District, Aizawl.
4. Senior Civil Judge-II, Aizawl.
5. Registration Section.
6. Guard File.
7. Case Record.
8. Calendar Judgment.

P E S H K A R