

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

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

Money Suit No. 42 of 2014

Zoram Industrial Development Corporation Ltd. (ZIDCO)
(Represented by its Managing Director, New Secretariat
Complex, Aizawl).Plaintiff

-Versus-

1. Shri Lalsangmawia
S/o Darthuama,
R/o H/No. D-3/18, Zemabawk Tlang Veng, Aizawl
2. Shri Thanghmingliana
S/o Darthuama,
R/o H/No. VP/17, Zemabawk Venglai, AizawlDefendants

APPEARANCE

For the Plaintiff	:	Shri A.R. Malhotra, Advocate.
For the Defendants	:	Shri R. Lalawmpuia, Advocate

Hearing	:	27.4.2016
Judgment delivered on	:	27.4.2016

J U D G M E N T & O R D E R (Oral)

1. The application has been filed under Section 31 of the State Financial Corporation Act, 1951 for giving order to sell the property mortgaged/ hypothecated in favor of the plaintiff as security for the loan taken by the defendants and for enforcing their liabilities.

2. The plaintiff is a company incorporated under the Companies Act, 1956 having its head office in Aizawl with the aims and object of financing the Small Scale Industries/Small Business Entrepreneurs by giving loans within its jurisdiction.

3. The defendant No. 1 is the Proprietor of M/S Departmental Store located at Zemabawk, Aizawl, while the defendant No. 2 is the guarantor of the defendant No. 1.

4. The case of the plaintiff is that the plaintiff and the defendant No. 1 executed the Deed of Agreement dated 31.3.2003 whereby the plaintiff had agreed to advance a loan of Rs 1,20,000/- to the defendant No. 1 and the latter had agreed to pay interest on the principal amount or the balance outstanding of the loan at any time at the rate of 7% per annum, and the defendant No. 2 had also put his signature in the Deed of Agreement dated 31.3.2003 as one of the witnesses. The defendant No. 2 also executed Deed of Guarantee on 31.3.2003 in which he had agreed to act as Guarantor on behalf of the defendant No. 1. The plaintiff vide its letter No. ZIDCO/NMDFC/L/271/02 dated 21.3.2003 sanctioned a loan amounting to Rs. 1,20,000/- in favour of the defendant No. 1 for running M/S Departmental Store at Zemabawk, Aizawl in favor of the defendant No. 1 at the rate of 7% per annum after verifying the loan application of the defendant No. 1. In the terms and condition made between the parties, the loan had also to be repaid by the guarantor within 5 years and 6 months including a moratorium period of 6 months. The defendant No. 1 executed Mortgage Deed dated 31.3.2003 thereby mortgaging LSC No. 104704/01/99 of 1999 and LSC No. AZL-2515 of 1990 registered in the name of Lalthapuia S/o Lala R/o Zemabawk, Aizawl and P.C. Hmingi W/o Lallawma R/o Thuampui, Aizawl as security for loan taken by him. It is also the case of the plaintiff that the defendant No. 1 defaulted in repaying the loan in spite of several notices served upon him. The defendant No. 1 vide letter dated 27.2.2007 and 10.4.2007 admitted to receiving a loan from the plaintiff and had requested the plaintiff to allow him to take back his LSCs which he had mortgaged for the said loan and he would sell the same and make repayment from it. As there is no option choice left for the plaintiff, hence this application.

5. The defendants No. 1 & 2 filed a common written statement stating that there was no cause of action against them. The Deed of Agreement was not duly stamped and registered before competent authority. The instant suit was barred by limitation. The defendant No. 1 had agreed to take a loan of Rs. 1,20,000/-, but the plaintiff disbursed only Rs. 80,000/-. As such, the plaintiff is not entitled to claim the capital amount of Rs. 1,20,000/- with interest. The reason why LSC No. AZL-

2515 of 1990 registered in the name of P.C. Hmingi was mortgaged was for obtaining second installment. The first installment of Rs. 80,000/- was used for purchasing LSC No. AZL-2515 of 1990. The plaintiff had defaulted to sanction the balance amount of Rs. 40,000/- as second installment due to which the defendant No. 1 could not run the M/S Departmental Store. The respondent No. 1 submitted letter dated 27.2.2007 requesting the plaintiff for taking back the second LSC in order to sell it for repayment of his debt, but the plaintiff did not reply his request. As such, the defendant No. 1 was not in a position to repay the loan. The plaintiff by not releasing the full sanction amount of Rs. 1,20,000/- had cheated the defendant No. 1.

6. The following issues were framed here under;

- i) Whether the petitioner had sanctioned a loan amounting to Rs. 1,20,000/- in favor of the defendant No. 1?
- ii) Whether the defendant No. 1 had received Rs. 80,000/- from the plaintiff as a first installment for the loan sanctioned in his favor?
- iii) Whether the petition is maintainable in its present form and style?
- iv) Whether there is any cause of action in favor of the petitioner and against the defendants?
- v) Whether the plaintiff is entitled to the relief(s) claimed, if so, to what extent?

7. The plaintiff's witness Shri V.L. Ruala, Deputy Manager, ZIDCO submitted Examination-in-Chief on affidavit in order to support the application and the relief(s) thereon against the defendants. He proved the plaint, application form for financial assistance under NMDFC, Deed of Guarantee, Sanction Letter, Deed of Agreement dated 31.3.2003, Equitable Mortgage, LSC No. 104704/01/99 of 1999, LSC No. AZL-2515 of 1996, Cheque No. 22100 dated 1.4.2003 amounting to Rs. 80,000/- paid to the defendant No. 1, Notices dated 6.8.2003, 28.7.2004, 7.3.2007, 4.6.2007, 14.9.2010, 25.8.2011, 30.1.2013, 27.2.2007, 10.4.2007, 9.11.2006, 22.2.2011 and the Notification dated 7.5.1997 without objection. In his cross examination, he admitted that the defendant No. 1 had mortgaged LSC No. 104704/01/99 of 1999 and LSC No. AZL-2515 of 1990 as security for obtaining loan amounting to Rs. 1,20,000/-. He also admitted that only Rs. 80,000/- was given to

the defendant No. 1 and the second installment amounting to Rs. 40,000/- was not released to him.

8. The second witness for the plaintiff Jack L. Darkim, Managing Director, ZIDCO also appeared as witness for the plaintiff and he reiterated the deposition of the first witness. In his cross examination, he denied that the defendant No. 1 had mortgaged LSC No. AZL-2515 of 1990 registered in the name of P.C. Hmingi for obtaining second installment of the loan. He admitted although the defendant No. 1 had deposited all necessary documents for obtaining the sanctioned loan amount of Rs. 1,20,000/- yet he was released only first installment amounting to Rs. 80,000/- and the second installment amounting to Rs. 40,000/- was not released to him. In his re-examination, he stated that the second installment amounting to Rs. 40,000/- could not be released in favor of the defendant No. 1 because he could not submit the Utilization Certificate regarding the first installment as required by the agreement.

9. The defendants No. 1 & 2 failed to adduce any evidence.

10. The issues are discussed here under;

a) Whether the petitioner had sanctioned a loan amounting to Rs. 1,20,000/- in favor of the defendant No. 1? The witnesses for the plaintiff proved the letter No. ZIDCO/NMDFC/L/271/02 dated 21.3.2003 at Ext. P-7 sanctioning a loan amounting to Rs. 1,20,000/- in favor of the defendant No. 1 for running his M/S Departmental Store located at Zemabawk, Aizawl. Hence, the issue No. 1 is decided in favor of the plaintiff.

b) Whether the defendant No. 1 had received Rs. 80,000/- from the plaintiff as a first installment for the loan sanctioned in his favor? The witnesses for the plaintiff proved that the amount of Rs. 80,000/- was disbursed to the defendant No. 1 by way of Cheque bearing No. 221001 dated 1.4.2003 vide ZIDCO(L)NMDFC/271/02 at Ext. P-12. Hence, the issue No. 2 is decided in favor of the plaintiff.

c) Whether the petition is maintainable in its present form and style? The application contains the requirement stated under Order VII, Rule 1 CPC.

The application is not barred by limitation. Although sufficient amount of Court fees were not paid, the plaintiff has been exempted from paying court fees as per the Notification No.G.17013/8/96-FFC dated 7.5.1997 issued by the Jt. Secretary to the Govt. of Mizoram, Finance Department. Hence, the third issue is decided in favour of the plaintiff.

d) Whether there is any cause of action in favor of the petitioner and against the defendants?: The oral and documentary evidence adduced by the witnesses for the plaintiff clearly proved the defendant No. 1 was sanctioned a loan amounting to Rs. 1,20,000/- out of which Rs. 80,000/- was disbursed to him. However, inspite of repeated notices, the defendant No. 1 had failed to repay the loan amount disbursed to him. Hence, the fourth issue was decided in favor of the plaintiff.

e) Whether the plaintiff is entitled to the relief(s) claimed or not, if so, to what extent?: In view of material available on record and circumstances put forth in the foregoing paragraphs, the plaintiff is entitled to all the reliefs claimed in its application. The fifth issue was decided in favor of the plaintiff.

11. In the result, the application is allowed. The applicant is allowed to realize the sum of Rs. 80,000/- as on 1.4.2003 with pendentelite interest @ 6% per annum till the date of recovery of the said amount. The applicant shall first take the step to realize the amount by attaching hypothecated land covered by LSCs No. 104704/01/99 of 1999 and AZL. 2515 of 1990 and then to sell the mortgaged properties. If the sale amount of the mortgaged properties exceeds the loan amount of Rs. 80,000/- with interest @ 6% per annum, then the exceeded amount may be disbursed in favor of defendant No. 1.

12. With the above observations, the Application is disposed off.

Judgment and Order is delivered in the open court on this 27th day of April, 2016 under my hand and seal.

Sd/- VANLALENMAWIA
Addl. District Judge
Aizawl Judicial District,
Aizawl, Mizoram.

Memo No. _____/ADJ(A)/2016 : Dated Aizawl, the 27th April, 2016

Copy to: -

1. ZIDCO through Counsel Sh. A.R. Malhotra, Advocate.
2. Shri Lalsangmawia } through Counsel
3. Shri Thanghmingliana } Shri R. Lalawmpuia, Advocate.
4. District Judge, Aizawl Judicial District, Aizawl.
5. Registration Section.
6. Guard File.
7. Case Record.
8. Calendar Judgment.

P E S H K A R