

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. 154 of 2013

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

-Versus-

1. Shri P.C. Lalmalsawma  
S/o P.C. Ngurthanga,  
R/o Armed Veng, Aizawl
2. Shri Lalhmingmuana  
S/o R. Lalrawna,  
R/o Ramhlun North, Aizawl .....Defendants

APPEARANCE

For the Plaintiff	:	Shri A.R. Malhotra, Advocate.
For the Defendant No. 1	:	Shri S.L. Thansanga, Advocate
For the Defendant No. 2	:	Shri Lalhriatpuia, Advocate
Hearing	:	28.4.2016
Judgment delivered on	:	28.4.2016

**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 P.C. Tea Packing Industry located at Armed Veng, 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 20.7.2000 whereby the plaintiff had agreed to advance a loan of Rs 4,25,000/- 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 10% per annum, and the defendant No. 2 had also put his signature in the Deed of Agreement dated 20.7.2000 as one of the witnesses. The defendant No. 2 also executed Deed of Guarantee on 20.7.2000 in which he had agreed to act as Guarantor on behalf of the defendant No. 1. The plaintiff vide its letter No. ZIDCO(L)NMDFC/70/2000/2326 dated 19.7.2000 sanctioned a loan amounting to Rs. 4,25,000/- in favour of the defendant No. 1 for running M/S P.C. Tea Packing Industry located at Armed Veng, Aizawl in favor of the defendant No. 1 at the rate of 10% 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 including a moratorium period of 3 years. The defendant No. 1 executed Mortgage Deed dated 20.7.2000 thereby mortgaging LSC No. 104103/01/54 of 2000 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. As there is no option choice left for the plaintiff, hence this application.

5. The defendant No. 1 filed a written statement denying all the statements made in the plaint.

6. The defendant No. 2 filed a written statement claiming that the suit is not maintainable and that there was no cause of action in favor of the plaintiff. The defendant No. 2 stated that as he was requested by the defendant No. 1, he simply put his signature in the deed of agreement and deed of guarantee without knowing the consequences of default payment of the said loan. The defendant No. 1 having mortgaged his LSC No. 104103/01/54 of 2000 as security for the loan, the said mortgaged property should be used for liquidation of the loan taken by defendant

No. 1. The defendant No. 1 executed Intiamkamna dated 6.12.2013 wherein he promised that he would be solely responsible for repayment of the loan and that he would not allow any court or judicial institution to take action against the defendant No. 2.

7. The following issues were framed here under;

- i) Whether the suit is maintainable in its present form and style?
- ii) Whether the respondent No. 1 obtained loan from the plaintiff and whether the respondent No. 2 stood as guarantor?
- iii) Whether the respondent No. 1 defaulted in repayment of loan? If so, whether the mortgage property i.e. LSC No. 104103/54 of 2000 can be used for liquidation?
- iv) Whether the plaintiff is entitled to the relief(s) claimed, if so, to what extent?

8. The plaintiff's witness Shri Jack L. Darkim, Managing Director, 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 20.7.2000, Equitable Mortgage, LSC No. 104103/01/54 of 2000, Cheque No. 468033 dated 20.7.2000 amounting to Rs. 4,25,000/- paid to the defendant No. 1, Notices dated 19.9.2001, 15.10.2001, 7.1.2002, 14.5.2002, 13.8.2002, 18.9.2002, 29.6.2006, 12.9.2006, 10.1.2007, 9.5.2007, 25.7.2008, 8.4.2010, 21.7.2010, 24.1.2013 and the Notification dated 7.5.1997 without objection. In his cross examination by the defendant No. 1, he stated that he had not personally known the defendant No. 1. He started functioning as Managing Director, ZIDCO with effect from 16.11.2012. The transaction of giving loan and taking loan from ZIDCO to the defendant No. 1 was effected before he had come to the Corporation. The application for loan by the defendant No. 1 for Rs. 4,75,000/- was submitted before his tenure as Managing Director and the loan was given by the Corporation before he assumed office of Managing Director. 13 Notices were issued by ZIDCO to the defendant No. 1 for repayment of the loan. After he became Managing Director, he had issued one Notice to the defendant No. 1. He did not know whether all the Notices were received by the defendant No. 1. Although he had

not seen the replies made by the defendant No. 1, but there was a possibility that the defendant No. 1 might have written reasons like damage by cyclone to the tea farm of his father P.C. Ngurthanga. In his cross examination by the defendant No. 2, he stated that they could not give loan unless a guarantor is provided. We take lands on mortgage as collateral. In the event, the customer cannot pay the loan, as per law the loan should be recovered from the collateral. If a guarantor put his signature in one of the spaces allotted for putting his signature, then the guarantor's form is considered to be valid. He did not have any knowledge of the Intiamkamna executed between the defendants No. 1 & 2.

9. The defendant No. 1 did not adduce evidence while the defendant No. 2 produced three witnesses including himself.

10. The defendant No. 2 deposed that the defendant No. 1 at the time of applying for loan earnestly requested him to put his signature in the deed of agreement without knowing the consequences of default in payment of the loan. The defendant No. 1 mortgaged his LSC No. 104103/01/54 of 2000 as security for the loan and the mortgage property should be used for liquidation of the loan. The defendant No. 1 made a pledge vide Intiamkamna dated 6.12.2013 wherein he promised he would be solely responsible for repayment of the loan and that he would not allowed any court or financial institution to take action against him. In his cross examination, he admitted that he signed as a witness in the deed of agreement dated 20.7.2000 and that he had signed in the deed of guarantee. He knew that when he signed the deed of guarantee he was signing as the guarantor on behalf of the defendant No. 1. He denied that he knew the consequences of signing the deed of agreement and deed of guarantee. He stated that he was working as Sub-Divisional Agricultural Officer in the Agriculture Department.

The witness No. 2 & 3 for the defendant No. 2 both stated that the defendant No. 1 had taken a loan amounting to Rs. 4,25,000/- from the plaintiff and that the defendant No. 2 had acted as guarantor of the said loan. The defendant No. 1 made a pledge vide Intiamkamna dated 6.12.2013 that the defendant No. 2 would not be responsible for repayment of the loan and he would not allow any court or financial institution to take action against him. In their cross examination, they had admitted the defendant No. 2 had stood as guarantor for the loan taken by the

defendant No. 1 from the plaintiff and that no official from ZIDCO was present when the Intiamkamna dated 6.12.2013 was signed.

11. The issues are discussed here under;

**a) Whether the suit 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 first issue is decided in favour of the plaintiff.

**b) Whether the respondent No. 1 obtained loan from the plaintiff and whether the respondent No. 2 stood as guarantor?** The evidence on record proved that the plaintiff and the defendant No. 1 executed Deed of Agreement dated 20.7.2000 for loan amounting to Rs. 4,25,000/- and the loan amount of Rs. 4,25,000/- was disbursed to the defendant No. 1 by way of Cheque No 468033 dated 20.7.2000 drawn on SBI Main Branch, Aizawl. The defendant No. 2 had admitted to acting as the guarantor on behalf of the defendant No. 1 by executing Deed of Guarantee dated 20.7.2000 and the witnesses for the defendant No. 2 had also admitted that the defendant No. 2 had stood as guarantor for the defendant No. 1. Hence, the second issue is decided in favour of the plaintiff.

**c) Whether the respondent No. 1 defaulted in repayment of loan? If so, whether the mortgage property i.e. LSC No. 104103/54 of 2000 can be used for liquidation?** The evidence on record proves that the defendant No. 1 had default in repayment of the loan amount of Rs. 4,25,000/- inspite of numerous notices served upon him by the plaintiff. The defendant No. 2 and his witnesses had also prayed for using the mortgage property for liquidation of the loan taken by the defendant No. 1. Hence, the third issue is decided in favour of the plaintiff.

**d) 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 fourth issue is decided in favor of the plaintiff.

**12.** In the result, the application is allowed. The applicant is allowed to realize the sum of Rs. 4,25,000/- as on 20.7.2000 with pendente lite 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 LSC No. 104103/54 of 2000 and then to sell the mortgaged property. If the sale amount of the mortgaged properties exceeds the loan amount of Rs. 4,25,000/- with interest @ 6% per annum, then the exceeded amount may be disbursed in favor of defendant No. 1. If the sale amount is less than Rs. 4,25,000/-, then the plaintiff can recover the balance amount from the defendant No. 2.

**13.** With the above observations, the Application is disposed off.

Judgment and Order is delivered in the open court on this 28<sup>th</sup> 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 28<sup>th</sup> April, 2016**

**Copy to: -**

1. ZIDCO through Counsel Sh. A.R. Malhotra, Advocate.
2. Shri P.C. Lalmalsawma through Counsel Shri S.L. Thansanga, Advocate.
3. Shri Lalhmingmuana through Counsel Shri Lalhriatpuia, 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**