

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. 32 of 2014

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

-Versus-

1. Shri H.Lalchungnunga
S/o H.Lalrawna,
R/o Chandmari West, Aizawl.
2. Shri Sumeon Notlia
S/o Chhachho (L),
R/o House No.35, New Colony, Saiha.Opposite Parties

APPEARANCE

For the applicant	:	Shri A.R. Malhotra, Advocate.
For the opposite parties	:	None appears.

Hearing	:	22.2.2016
Judgment delivered on	:	23.2.2016

J U D G M E N T & O R D E R

1. The application has been filed under Section 31 of the State Financial Corporation Act, 1951 for giving order to sell the property hypothecated in favour of the applicant as security for the loan taken by the opposite parties and for enforcing their liabilities.

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2. The applicant 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.

3. The opposite property No. 1 is the proprietor of M/S Handloom Weaving situated at Chandmari West, Aizawl, while the opposite No. 2 is his guarantor working as Assistant Treasury Accountant at the time of executing the deed of guarantee on 22.1.2003.

4. The case of the applicant is that the opposite party No. 1 approached the applicant by submitting his loan application on 31.7.2002 for obtaining loan amounting to Rs. 2,00,000/- for setting up of M/S Handloom Weaving at Chaltlang, Aizawl and the opposite party No. 2 agreed to act as guarantor for the opposite party No. 1 and executed the deed of guarantee on 22.1.2003. In pursuance of the said loan application dated 31.7.2002, the applicant sanctioned a loan amounting to Rs 2,00,000/- in favour of the opposite party No. 1 at the rate of 7% per annum on simple interest vide its letter No. F.ZIDCO/NMDFC(L)/41/02 dated 13.12.2002 after verifying the loan application of the applicant vide dated 31.7.2002. In the terms and condition made between the parties, the loan had to be repaid within 5 years and 6 months including a moratorium period of 6 months. Thereafter, the applicant and the opposite party No. 1 executed the deed of agreement dated 22.1.2003, and the opposite No. 2 had also put his signature as one of the witnesses. It is further case of the applicant that the opposite party No. 1 executed equitable mortgage deed of the land covered by the LSC No. AZL. 1060 of 1994 registered in the name of Hmingthansanga S/o Lalchungnunga R/o Chandmary West, Aizawl and the LSC No. AZL. 1070 of 1997 registered in the name of Hmingthansanga S/o H.L.Chungnunga R/o Chandmary West, Aizawl in favour of the applicant as security for the loan taken by the opposite party No. 1. It is also the case of the applicant that the opposite party No. 1 defaulted in repaying the loan for reasons unknown to the applicant. Finally, it is the case of the applicant that several notices on different dates between 6.8.2003 to 31.1.2013 were sent to the opposite No. 1 calling upon him to repay the loan amount with interest, but the opposite party No. 1 had failed to repay the said loan till date. The action of the opposite parties No. 1 & 2 as stated above caused the applicant to file the present application praying for the reliefs stated on the body of the application.

5. On 20.8.2014, an affidavit was filed on behalf of the applicant to the effect that the personal service of the application along with the copy of the order dated 23.7.2014 was received by the opposite parties on 6.8.2014.

6. Sufficient chances were given, but the opposite parties did not contest the application and the case was proceeded in the absence of the opposite parties. vide Order dated 5.5.2015.

7. The following issues were framed here under;

- i) Whether the opposite party No. 1 had availed a loan from the applicant executing a loan application dated 31.7.2002, if so, whether the opposite parties had given any principal amount of the said loan to the applicant or not?
- ii) Whether the applicant and the opposite parties had signed a deed called 'Deed of Agreement' dated 22.1.2003?
- iii) Whether the applicant and the opposite parties had signed a deed called 'Equitable Mortgage' dated 22.1.2003, if so, whether the applicant has any right over the LSC No. AZL. 1060 of 1994 and LSC No. 1070 of 1997?
- iv) Whether the applicant is entitled to the relief(s) claimed or not, if so, to what extent?

8. The applicant's witness Shri Jack L.Darkim, Managing Director submitted the examination-in-chief on affidavit in order to support his application. He proved the application, the signature of the Managing Director, the signature of the Managing Director, the copy of Loan Application dated 31.7.2002, the copy of Agreement to act as guarantor, the Deed of Guarantee dated 22.1.2003, the Sanctioned Letter dated 13.12.2002, the Deed of Agreement dated 22.1.2003, the copy of Equitable Mortgage dated 22.1.2003, the copies of LSCs No. AZL. 1060 of 1994 and AZL. 1070 of 1997, the copy of Receipt of the Cheque bearing No. 740731 dated 27.2.2003, the copies of Notices dated 6.8.2003, 29.7.2004, 10.3.2005, 8.11.2006, 18.2.2011, 29.5.2012, 31.1.2013 and the Notification dated 7.5.1997.

9. I heard the learned counsel Shri A.R. Malhotra appearing for the applicant.

10. The issues are discussed here under;

a) Whether the opposite parties had availed a loan from the applicant executing a loan application dated 31.7.2002, if so, whether the applicant had given any principal amount of the said loan to the opposite parties or not?

In the present case, the applicant deposed that the opposite party No.1 had submitted his loan application dated 31.7.2002 to the applicant for obtaining a loan amounting to Rs. 2,00,000/- for setting up of M/s Handloom Weaving situated at Chanmari West, Aizawl and the opposite party No.2 had agreed to act as guarantor on behalf of the opposite party No.1, and executed a Deed of Guarantee on 22.1.2003. The applicant adduced the said loan application dated 31.7.2002 as evidence and marked it as Ext.P-4. In pursuance of the application, the applicant vides its letter No. ZIDCO/NMDFC(L)41/02 dated 13.12.02 sanctioned a loan amounting to Rs.2,00,000/- in favor of the opposite party No.1 for running his M/S Handloom Weaving situated at Chanmari West, Aizawl, Mizoram. The applicant released and disbursed the loan amounting to Rs. 1,10,000/- to the opposite party No.1 for the 1st installment by way of Cheque bearing No.740731 dt.27.2.2003 and the opposite party No.1 gave a receipt dated 27.2.2003 to this effect and the receipt dated 27.2.2003 was adduced as evidence and marked it as Ext.P-12. The applicant has sought for recovery of the loan amount along with interest @ 7% per anum since the opposite parties did not contest the present case by not adducing any document to show that they had repaid the loan taken by the opposite party No.1. Hence, the first issue is decided against the opposite parties.

b) Whether the Plaintiff and the Defendants had signed a deed called 'Deed of Agreement' dated 22.1.2003?

The applicant deposed that the opposite party No.1 had executed the Deed of Agreement dated 22.1.2003 whereby the applicant had agreed to advance a loan of Rs. 2,00,000/- to the opposite party No.1 and the opposite party No.1 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 including interest. In the Deed of Agreement dated 22.1.2003 Shri JH Pahlira, the then Deputy Manager, ZIDCO and Shri H.Lalchungnunga, the Opposite Party No.1

had put their respective signature. In fact, the opposite party No.2 had also put his signature in the Deed of Agreement dated 22.1.2003 as one of the witnesses. The applicant adduced the said Deed of Agreement dated 22.1.2003 as evidence and marked as Ext. P-8 to clarify that both the parties had put their respective signature thereto. The second issue is, therefore, decided in favour of the applicant.

c) Whether the Plaintiff and the Defendants had signed a deed called 'Equitable Mortgage' dt.22/1/2003, if so, whether the Plaintiff has any right over the LSC No.AZL 1060 of 1994? : The applicant further deposed that the opposite party No.1 had also executed an Equitable Mortgage on 22.1.2003 whereby he had mortgaged the LSC No. AZL 1060 of 1994, registered in the name of Hmingthansanga, S/o Lalchungnunga, R/o Chandmari West, Aizawl and the LSC No. AZL 1070 of 1997 registered in the name of Hmingthansanga, S/o H.L Chungnunga, R/o Chandmari West, Aizawl in favour of the applicant as security for the loan of Rs. 2,00,000/- taken by the opposite party No.1. The opposite party No.2 acted as one of the witnesses to the Deed of Guarantee dated 22.1.2003. As per the Mortgage Deed dated 22.1.2003, since the opposite party No.1 defaulted in payment of the said loan, the applicant has right to hold, possess and enjoy the same and receive the rents, income, profits and benefits arising thereof or to dispose by sale or auction, evict the tenant(s) etc. The applicant adduced the 'Equitable Mortgage' dated 22.1.2003 as evidence and marked as Ext. P-9 to clarify that both the parties had put their respective signature thereto. The third issue is, therefore, decided in favour of the Plaintiff.

d) Whether the applicant 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 applicant is found entitled to all the reliefs claimed by it in its petition.

11. In the result, the application is allowed. The applicant is allowed to realize the sum of Rs. 1,10,000/- as on 27.2.03 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. AZL. 1060 of 1994 and AZL. 1070 of 1997 and then by the sale of the mortgage property.

If the aforesaid properties do not satisfy the entire claim of the applicant, then the applicant shall be entitled to realize the claim from the properties of the M/S Handloom Weaving located at Chandmari West, Aizawl, Mizoram.

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

Judgment and Order is delivered in the open court on this 23th day of February, 2016 under my hand and seal.

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

Memo No. _____/ADJ(A)/2016 : Dated Aizawl, the 23rd February, 2016

Copy to: -

1. ZIDCO through Counsel Sh. A.R. Malhotra, Advocate.
2. Shri H. Lalchungnunga S/o H. Lalrawna, Chandmari West, Aizawl, Mizoram.
3. Shri Sumeon Notlia S/o Chhachho, H/No. 35, New Colony, Saiha, Mizoram.
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