

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

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

Money Application No. 62 of 2014

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

-Versus-

1. Shri Lalringa
S/o Laldawngliana,
R/o New Colony, Saiha,
Khurpui bul, Mizoram.
2. Shri C.Nundanga
S/o Chhiarkuma (L),
R/o Ramhlun Venglai,
Aizawl, Mizoram.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 mortgaged/ hypothecated in favor of the Applicant as security for the loan taken by the Opposite Parties and for enforcing their liabilities.

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 within its jurisdiction.

3. The Opposite Party No. 1 is the editor of Saikhawpui News Paper situated at Saiha, Mizoram. Whereas the Opposite Party No. 2 is the guarantor of the Opposite Party No. 1, the latter was working as Shopkeeper at Aizawl at the time of executing the deed of guarantee on 1.6.1988.

4. The case of the Applicant is that it sanctioned a loan amounting to Rs 86,000/- in favour of the Opposite Party No. 1 at the rate of 12.5% per annum on simple interest vide its letter No. ZIDCO(L)/361/88/SRTO after verifying the loan application of the Applicant vide dated 26.5.88. In the terms and condition made between the parties, the loan had to be repaid also by the guarantor within 5 years including a moratorium period of 3 months. It is also the case of the Applicant that the Opposite Party No. 1 defaulted in repaying the loan in spite of several notices served upon him. Even the Opposite Party No. 2 in his capacity as the guarantor, was requested to repay the loan taken by the Opposite Party no. 1. As there is no option choice left for the Applicant, hence this application.

5. On 9.3.2015, 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 17.2.2015 was received by the Opposite Parties on 7.3.2015.

6. On 5.5.2015, the learned Counsel Shri A.R. Malhotra appearing for the Applicant made a prayer for passing ex-parte order. In the analogous cases, the Opposite Parties rarely appeared. The prayer of the learned Counsel for the Applicant was allowed in view of the situation and also basing the affidavit submitted on behalf of the applicant, and also sufficient chances were given to the Opposite Parties to contest their case.

7. The following issues were framed here under;

- i) Whether the application is maintainable in its present form and style?
- ii) Whether there is any cause of action in favour of the Applicant and against the Opposite Parties?

- iii) Whether the Opposite Parties had availed a loan from the Applicant executing a loan agreement dt.22.2.88. If so, whether the Opposite Parties had given any principal amount of the said loan to the Applicant or not?
- iv) Whether the Applicant and the Opposite Parties had signed a deed called mortgage deed dt.1.6.88?
- v) 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 Examination-in-chief on affidavit in order to support his application and the relief(s) thereon against the Opposite Parties. He proved the Application, its annexures, like the Loan Application dated 22.2.88, the Deed of Guarantee dated 1.6.88, the Sanctioned Letter dated 26.5.88, the Deed of Agreement dated 1.6.88, the copies of Notices dated 9.3.89, 30.1.90, 29.7.93, 12.4.94, 12.7.94, 6.9.94, 23.4.99, 14.6.02, 4.11.03, 9.7.10, 25.5.11, 12.6.12, and the Notification dated 7.5.1997.

9. The issues are discussed here under;

a) Whether the Application is maintainable in its present form and style?: The application contains the requirement stated under Order VII, Rule 1 CPC. The application was not barred by limitation. Although sufficient amount of Court fees were not paid the Applicant has been exempted from paying court fees as per the Notification No.G.17013/8/96-FFC dt.7/5/97 issued by the Jt. Secretary, Finance Department, Govt. of Mizoram. The first issue is therefore decided in favour of the Applicant.

b) Whether there is any cause of action in favor of the Applicant and against the Opposite Parties?: The Applicant's witness proved that a loan amounting to Rs. 86,000/- was sanctioned by letter dated 26.5.88 which was disbursed to the Opposite Party No.1 in the month of June 1988. The Opposite Party No.1 had executed Deed of Agreement on 1.6.88 and inspite of several notices calling upon him to repay the loan amount with interest, the Opposite Parties had

failed to repay the same. Hence, the second issue is decided in favor of the Applicant.

c) Whether the Opposite Parties had availed a loan from the Applicant executing a loan agreement dt.22/2/88, if so, whether the Opposite Parties had given any principal amount of the said loan to the Applicant or not?:

The Applicant in the instant application has deposed that in pursuance of the loan application dt.22/02/1988 submitted by the Opposite Party No.1, the Applicant vide Letter No.ZIDCO(L)/361/88/SRTO dt.26/5/88 had sanctioned a loan amounting to Rs.86,000/- in favor of the Opposite Party No.1 for Jeep loan and the loan amounting to Rs.86,000/- were released/dispensed in favor of the Opposite Party No.1 by the Applicant in the month of June, 1998. As per terms and conditions of the Sanction Letter dt.26/5/1988 the said loan amount was to bear interest @ 12.5% per annum simple interest and the said loan amount with the interest shall be repaid on 60 monthly installments including 3 months moratorium period. However, the Opposite Party No.1 had defaulted in repaying the loan for reasons unknown to the Applicant. The Applicant, therefore, had sent a number of notices on different dates between 9/3/89 to 12/6/12 to the Opposite Party No.1 calling upon him to repay the loan amount with the interest but he had defaulted in repaying the said loan till date. The Applicant had even sent a notice dt.4/11/03 & 9/7/10 to the Opposite Party No.2 requesting him to repay the loan taken by the Opposite Party No.1 in his capacity as Guarantor of the Opposite Party No.1 but to no effect. The third issue is, therefore, decided in favour of the Applicant.

d) Whether the Applicant and the Opposite Parties had signed a deed called 'Mortgage Deed' dt.1/6/88? : That since the Opposite Party No.1 does not have any Mortgage and therefore, he did not sign any 'Mortgage Deed' with the Applicant. Hence, issue No.4 of the instant application need not be decided upon.

e) 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 entitled to all the reliefs claimed by him in his application.

10. In the result, the application is allowed. The applicant is allowed to realize the sum of Rs. 86,000/- as on June 1988 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 the properties of the Opposite Party No.1 including Saikhawpui Newspaper at Saiha Mizoram. 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 other properties of the Opposite Parties No.1 & 2.

11. 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 Lalringa S/o Laldawngliana, R/o New Colony, Saiha, Khurpui bul, Mizoram.
3. Shri C.Nundanga S/o Chhiarkuma (L), R/o Ramhlun Venglai, Aizawl, 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