

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. 22 of 2014

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

-Versus-

1. Shri Neihlaia
S/o Fehkhama (L),
R/o Hunthar Veng, Company Peng, Aizawl.
2. Shri K. Lalchhinga
S/o K. Chalhanga,
R/o Chhinga Veng, Aizawl.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.

.....2/-

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 party No. 1 is the proprietor of M/s Siloam, Village Leather Industries located at Chandmari West, Aizawl, while the opposite party No. 2 is his guarantor working as a Businessman by profession at the time of executing the deed of guarantee on 31.3.1986.

4. The case of the applicant is that the opposite party No. 1 approached the applicant by submitting his loan application on 6.8.1985 for obtaining loan amounting to Rs. 4,37,000/- for setting up of M/s Siloam, Village Leather Industries located at Chandmari West, 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 31.3.1986. In pursuance of the said loan application dated 6.8.85, the applicant sanctioned a loan amounting to Rs 4,37,000/- 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)44/86/ARS dated 15.3.86 after verifying the loan application of the applicant vide dated 6.8.85. In the terms and condition made between the parties, the loan had to be repaid within 8 years and 6 months including a moratorium period of 18 months. Thereafter, the applicant and the opposite party No. 1 executed the deed of agreement dated 31.3.86, 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. 1376 of 1984 registered in the name of Darthangpuui W/o Zathangpuia R/o Zemabawk SA Veng, Aizawl in favour of the applicant as security for the loan taken by the opposite party No. 1. The opposite party No.1 also executed Hypothecation Agreement on 11.8.87 hypothecating his plants and machineries described in the Schedule to the Hypothecation Agreement. The loan amounting to Rs. 1,20,884/-, Rs. 2,55,293/- and Rs. 60,823/- were released to the Opposite Party No.1 by way of crossed cheque B/R No. 001994 dated 3.4.86, crossed cheque B/R No. A/203-208849 dated 20.11.86 and crossed cheque B/R No. 025739 dated 10.9.87 for the first installment, second installment and final installment. The Opposite Party No.1 had given receipts dated 3.4.86, 20.11.86 and 10.9.87 for the same. The final amount of Rs. 99,500/- was released to the Opposite Party No.1 by way of crossed cheque B/R No. A/261

425055 dated 16.3.89 and the Opposite Party No.1 had given a receipt dated 16.3.89 to this effect. 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 5.7.90 to 30.1.13 were sent to the Opposite Party 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 9.3.2015, affidavits were 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 No.1 and 2 on 7.3.2015.

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 Parties had availed a loan from the Applicant executing a loan application dated 6.8.1985, 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 31.3.86?
- iii) Whether the applicant and the Opposite Parties had signed a deed called 'Equitable Mortgage' dated 31.3.86, if so, whether the applicant has any right over the LSC No. AZL. 1376 of 1984?
- 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 6.8.85, the copy of

Agreement to act as guarantor, the Deed of Guarantee dated 31.3.86, the Sanctioned Letter dated 15.3.86, the Deed of Agreement dated 31.3.86, the copy of Equitable Mortgage dated 31.3.86, the copy of LSC No. AZL. 1376 of 1984, the copy of Receipt of the Cheques bearing Nos. 001994 dated 3.4.86, A/203-208849 dated 20.11.86 025739 dated 10.9.87 and A/261 425055 dated 16.3.89, the copies of Notices dated 5.7.90, 7.8.91, 26.11.91, 21.2.92, 1.4.93, 8.3.94, 10.10.94, 17.10.94, 20.3.95, 18.4.95, 19.4.96, 3.10.96, 1.3.97, 28.4.97, 10.6.97, 8.9.99, 19.9.01, 10.12.01, 15.1.02, 8.4.04, 8.6.07, 23.7.10, 17.8.10, 1.2.11, 30.1.13 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 6.8.85, 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 6.8.85 to the applicant for obtaining a loan amounting to Rs. 4,37,000/- for setting up of M/s Siloam Village Leather Industries 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 31.3.86. The applicant adduced the said loan application dated 6.8.85 as evidence and marked it as Ext.P-4. In pursuance of the application, the applicant vides its letter No. ZIDCO(L)44/86/ARS dated 15.3.86 sanctioned a loan amounting to Rs.4,37,000/- in favor of the opposite party No.1 for running his M/S Siloam Village Leather Industries situated at Chanmari West, Aizawl, Mizoram. The applicant released and disbursed the loan amounting to Rs. 1,20,884/-, Rs. 2,55,293/- and Rs. 60,823/- to the Opposite Party No.1 by way of crossed cheque B/R No. 001994 dated 3.4.86, crossed cheque B/R No. A/203-208849 dated 20.11.86 and crossed cheque B/R No. 025739 dated 10.9.87 for the first installment, second installment and final installment. The Opposite Party No.1 had given receipts dated 3.4.86, 20.11.86 and 10.9.87 for the same. The final amount of Rs. 99,500/- was released to the Opposite Party No.1 by way of crossed cheque B/R No. A/261

425055 dated 16.3.89 and the Opposite Party No.1 had given a receipt dated 16.3.89 to this effect. The applicant has sought for recovery of the loan amount along with interest @ 12.5% per annum 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 Applicant and the Opposite Parties had signed a deed called 'Deed of Agreement' dated 31.3.86? : The applicant deposed that the opposite party No.1 had executed the Deed of Agreement dated 31.3.86 whereby the applicant had agreed to advance a loan of Rs. 4,37,000/- 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 12.5% per annum including interest. In the Deed of Agreement dated 31.3.86 Shri JH Pahlira, the then Deputy Manager, ZIDCO and Shri Neihlaia, 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 31.3.86 as one of the witnesses. The applicant adduced the said Deed of Agreement dated 31.3.86 as evidence and marked as Ext. P-7 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 Applicant and the Opposite Parties had signed a deed called 'Equitable Mortgage' dt.31.3.86, if so, whether the Applicant has any right over the LSC No.AZL 1376 of 1984? : The applicant further deposed that the opposite party No.1 had also executed an Equitable Mortgage on 31.3.86 whereby he had mortgaged the LSC No. AZL 1376 of 1984, registered in the name of Darthangpuui W/o Zathangpuia R/o Zemabawk SA Veng, Aizawl in favour of the applicant as security for the loan of Rs. 4,37,000/- taken by the opposite party No.1. The opposite party No.2 acted as one of the witnesses to the Deed of Guarantee dated 31.3.86. As per the Mortgage Deed dated 31.3.86, 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 31.3.86 as evidence and marked as Ext. P-8

to clarify that both the parties had put their respective signature thereto. The third issue is, therefore, decided in favour of the Applicant.

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. 4,37,000/- as on 31.3.86 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 LSC No. AZL. 1376 of 1984 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 Siloam Village Leather Industries 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.

(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 Neihlaia S/o Fehkhama (L), R/o Hunthar Veng, Company Peng, Aizawl.
3. Shri K. Lalchhinga S/o K. Chalhanga, R/o Chhinga Veng, Aizawl.
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