

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. 52 of 2014

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

-Versus-

1. Smt. Vanlalveli
W/o Vanlalnghaka,
R/o Chaltlang Lily Veng,
Biak In Chhak, Thangsiama Building,
Aizawl, Mizoram.
2. Shri Vanlalnghaka
S/o Lianzika,
R/o M-82, Chaltlang,
Aizawl, Mizoram.Respondents

APPEARANCE

For the petitioner	:	Shri A.R. Malhotra, Advocate.
For the respondents	:	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 favour 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.

3. The opposite party No. 1 is the proprietor of M/S General Store situated at Chaltlang, Aizawl, while the opposite party No. 2 is her guarantor working as Sub-Inspector, Economics & Statistics at the time of executing the deed of guarantee on 11.2.1999.

4. The case of the applicant is that the opposite party No. 1 approached the applicant by submitting her loan application on 28.10.1998 for obtaining loan amounting to Rs. 55,250/- for setting up of M/S General Store, at Chaltlang, Aizawl and the opposite party No. 2 agreed to act as guarantor for the opposite party No. 1 and executed a deed of guarantee on 11.2.1999. In pursuance of the said loan application dated 28.10.1998, the applicant sanctioned a loan amounting to Rs 55,250/- in favour of the opposite party No. 1 at the rate of 7% per annum on simple interest vide its letter No. F.ZIDCO(L)/NMDFC/89/99/2007 dated 10.2.1999 after verifying the loan application of the opposite party No.1 vide dated 28.10.1998. In the terms and condition made between the parties, the loan had to be repaid within 5 years including a moratorium period of 6 months. Thereafter, the applicant and the opposite party No. 1 executed the deed of agreement dated 11.2.1999. It is further case of the applicant that the opposite party No. 1 executed mortgaged deed of the land covered by LSC bearing Registration No. AZL. 1939 of 1991 in the name of the opposite party No. 2 with his consent in favor of the applicant. 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 her. 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 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. On 12.9.2014, an affidavit was also filed on behalf of the applicant to the effect that the personal service of the application along with the copy of the Order dated 1.9.2014 was also received by the opposite parties on 10.9.2014.

7. On 17.3.2015, an affidavit was again filed on behalf of the applicant to the effect that the personal service of the application along with the copy of the Order dated 1.9.2014 was also received by the opposite parties on 13.3.2015.

8. 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 case, the opposite parties failed to appear without showing cause. The prayer of the learned Counsel for the applicant was allowed in view of the situation and also basing the affidavits submitted on behalf of the applicants, and also sufficient chances were given to the opposite parties to contest their case.

9. The following issues were framed here under;

- i) Whether the application is maintainable in its present form and style?
- ii) Whether the opposite party No. 1 obtained a loan from the applicant and the opposite party No. 2 acted as her guarantor?
- iii) Whether the opposite party No. 1 defaulted in repayment of the loan? If so, whether the mortgaged property i.e. the land covered by L.S.C. No. AZL 1939 of 1991 located at Edenthar, Aizawl is sufficient enough for liquidation?
- iv) Whether the applicant is entitled to the relief(s) claimed or not, if so, to what extent?

10. The applicant's witness Shri Jack L.Darkim, Managing Director submitted the examination-in-chief on affidavit in order to support his application and the relief (s) thereon against the respondents. He proved the application, its annexures, like the Loan Application dated 28.10.1998, the Deed of Guarantee dated 11.2.1999, the Sanctioned Letter dated 10.2.1999, the Deed of Agreement dated 11.2.1999, the Mortgaged Deed dated 11.2.1999, the copy of LSC bearing Registration No. AZL. 1939 of 1991, the copy of Receipt of the Cheque bearing No. 0744840 dated 11.2.1999, the copies of Notices

dated 15.7.1999, 31.3.2000, 18.4.2000, 26.5.2000, 7.8.2000, 5.9.2000, 27.11.2000, 6.9.2001, 9.5.2002, 23.9.2002, 25.7.2003, 22.11.2004, 25.8.2005, 5.3.2007, 20.7.2010, 30.1.2013, 7.8.2006, 28.8.2007 and the Notification dated 7.5.1997.

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

12. The issues are discussed here under;

a) On the first issue, I do not find any impediment by any law in force and also relatable to payment of the Court Fee referring to the Notification No. G.17013/8/96-FFC dated 7.5.97 issued by the Jt. Secretary, Finance Department, Government of Mizoram. The Hon'ble Gauhati High Court in the case of Parag Saikia & Ors. Vs. Assam Financial Corporation reported in 2001(3) GLT 581 relied upon the Judgment passed in Civil Revision No. 237 of 1990 in Shri Bani Barua & Ors. Vs. The Assam Financial Corporation, Guwahati-5 in which it is stated that Limitation Act shall not apply to an application u/s 31 of the aforesaid Act. Hence, the first issue is decided in favour of the applicant.

b) On the second issue, the oral evidence of the applicant's witness Jack L. Darkim is that the opposite No. 1 submitted her loan application on 28.10.98 for obtaining a loan amounting to Rs. 55,250/- for setting up of M/S General Store, Chaltlang, Aizawl, and the opposite No. 2 agreed to act as guarantor on behalf of the opposite party No.1 and executed a Deed of Guarantee on 11.2.99. Further, the opposite party No.1 acted as one of the witnesses to the Deed of Guarantee dated 11.2.99. In pursuance of the said loan application dated 28.10.98 the applicant vide letter F. No. ZIDCO(L)/NMDFC/89/99/2007 dated 10.2.99 sanctioned a loan amounting to Rs.55,250/- in favor of the opposite No.1 for running her M/S General Store located at Chaltlang, Aizawl, Mizoram. Subsequently, the loan amounting to Rs. 55,250/- was released and disbursed to the opposite party No.1 by way of Cheque bearing No.0744840 dated 11.2.99 vide ZIDCO(A)89/NMDFC/99 and the opposite party No.1 gave a receipt dated 11.2.99 of the same to this effect. A copy of the receipt dated 11.2.99 was adduced as evidence and marked as Ext. P-10 to clarify that the opposite

party No.1 had obtained the said loan amounting to Rs.55,250/-. In this present case, the opposite party No.2 namely Sh. Vanlalnghaka stood as guarantor on behalf of the opposite party No.1 and he executed the Deed of Guarantee on 11.2.99 which elucidates that the opposite party No.2 stood as guarantor for the opposite party No.1. The said Deed of Guarantee dated 11.2.99 was adduced as evidence and marked as Ext.P-5. The second issue is therefore decided in favour of the applicant.

c) On the third issue, the applicant further deposed that after taking the loan on 11.2. 99, the liability of the opposite parties to repay the loan along with 7% interest arose and the said loan amount with the interest shall be repaid within 5 years including a moratorium period of 6 months. However, the opposite party No.1 defaulted in repaying the loan for reasons unknown to the applicant. Subsequently, the applicant sent a number of notices on different dates between 15.7.99 to 30.1.13 to the opposite party No.1 calling upon her to repay the loan amount with interest. However, the opposite party No.1 had failed to make any repayment of the said loan till date. The applicant had even sent a Notice dated 7.8.2006 and 28.8.2007 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. However, the opposite party No.2 failed to give any reply to the applicant. The said notices sent to the opposite party No.1 & 2 were adduced as evidence and marked as Ext. P-11 to Ext.P-28 respectively to affirm that the opposite party No.1 defaulted in repayment of the loan.

The applicant also deposed that the opposite party No.1 had also executed mortgage deed on 11.2.99 whereby she had mortgaged the LSC No.AZL.1939 of 1991 registered in the name of Vanlalnghaka, S/o Lianzika, R/o Chaltlang, Aizawl in favor of the applicant as security for the loan of Rs.55,250/- taken by her. As per the said Mortgage Deed dated 11.2.99 since the opposite No.1 had made default 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 thereof or to dispose by sale or auction, evict the tenant(s) etc. The third issue is, therefore decided in favour of the applicant.

d) That in view of the materials available on record and circumstances put forth in the foregoing paragraphs, the reliefs claimed by the applicant in its application is found appropriate. Hence, the fourth issue is also decided in favor of the applicant.

13. In the result, the application is allowed. The applicant is allowed to realize the sum of Rs. 55,250/- as on 11.2.99 with pendentelite interest interests @ 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-1939 of 1991 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 General store located at Chaltlang, Aizawl, Mizoram.

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

Judgment and Order is delivered in the open court on this 23rd 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. Smt. Vanlalveli W/o Vanlalnghaka, R/o Chaltlang Lily Veng, Biak In Chhak, Thangsiama Building, Aizawl, Mizoram.
3. Shri Vanlalnghaka S/o Lianzika, R/o M-82, Chaltlang, 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