

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. 270 of 2015

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

-Versus-

1. Shri C. Lalhmingthanga
S/o Khuangthiauva (L),
R/o J-69, Republic Veng, Aizawl
2. Smt. R. Lalveni
W/o L.V. Malsawma,
R/o Chaltlang, AizawlDefendants

APPEARANCE

For the Plaintiff	:	Shri A.R. Malhotra, Advocate.
For the Defendants	:	None appears.

Hearing	:	30.3.2016
Judgment delivered on	:	30.3.2016

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 C.L. Dental Clinic located at Temple Square, Tuikual South, 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 18.5.1995 whereby the plaintiff had agreed to advance a loan of Rs 2,00,000/- 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 13.5% per annum, and the defendant No. 2 had also put her signature in the Deed of Agreement dated 18.5.1995 as one of the witnesses. The defendant No. 2 also executed Deed of Guarantee on 18.5.1995 in which she had agreed to act as Guarantor on behalf of the defendant No. 1. The plaintiff vide its letter No. ZIDCO (L) 1029/93/ARS dated 10.5.1995 sanctioned a loan amounting to Rs. 2,00,000/- in favour of the defendant No. 1 for running C.L. Dental Clinic at Temple Square, Tuikual South, Aizawl in favor of the defendant No. 1 at the rate of 13.5% per annum vide its letter No. ZIDCO(L)/1029/93/ARS 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 8 years including a moratorium period of 1 year. The defendant No. 1 executed Mortgage Deed dated 15.5.95 thereby mortgaging LSC No. AZL-1084 of 1986 and LSC No. AZL-3263 of 1986 registered in the name of C. Lalruata S/o Mawitea R/o ITI Veng and F. Zonghinga S/o Saikhuaia R/o ITI Veng, Aizawl as security for loan taken by him. The defendant No. 1 also executed hypothecation agreement for plant and machineries on 27.5.96 in favor of the plaintiff. 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. The defendant No. 1 vide letter dated 26.5.15 admitted to receiving a loan from the plaintiff and had requested the plaintiff to allow him to repay his loan by availing the OTS Scheme. The plaintiff had allowed the said application and had extended the time upto 31.7.15 vide letter No. ZIDCO(L)1029/93/ARS/129 dated 27.5.15 for repayment of the loan. As there is no option choice left for the plaintiff, hence this application.

5. On 29.2.2016, an Affidavit was filed on behalf of the plaintiff to the effect that the personal service of the application along with the copy of the Order dated 17.2.2016 was received by the defendants on 19.2.2016.

6. On 1.3.2016, the learned Counsel Shri A.R. Malhotra appearing for the plaintiff made a prayer for passing ex-parte order. The prayer of the learned Counsel for the plaintiff was allowed in view of the situation and also basing the affidavit submitted on behalf of the plaintiff, and also sufficient chances were given to the defendants to contest their case.

7. The following issues were framed here under;

- i) Whether the application/suit is maintainable in its present form and style?
- ii) Whether the defendant No. 1 had availed a loan amounting to Rs. 2,00,000/- from the plaintiff by executing Deed of Agreement dated 18.5.1995?
- iii) Whether the defendant No. 1 had executed mortgage Deed dated 15.5.1995 mortgaging LSC No. AZL. 1084 of 1986 registered in the name of C. Lalruata S/o Mawitea R/o ITI veng, Azawl and LSC No. AZL. 3263 of 1986 registered in the name of F. Zonghinga S/o Saikhuaia R/o ITI Veng as security for the loan taken by him from the plaintiff?
- iv) Whether the defendant No. 2 executed a Deed of Guarantee dated 18.5.1995 agreeing to act as Guarantor on behalf of the defendant No. 1?
- v) Whether the plaintiff is entitled to the relief(s) claimed or not, if so, to what extent?

8. The plaintiff's witness Shri Lianchungnunga, Manager, ZIDCO submitted Examination-in-Chief on affidavit in order to support application and the relief(s) thereon against the defendants. He proved the copy of Application, the copy of Deed of Agreement dated 18.5.1995, the copy of Deed of Guarantee dated 18.5.1995, the copy of Sanctioned Letter dated 10.5.1995, the copy of Mortgage Deed dated 15.5.1995, the copies of LSC No. AZL 1084 of 1986 and LSC No. 3263 of 1986, the copy of Hypothecation Agreement dated 27.5.1996, the copies of Notices dated 8.11.96, 11.2.2000, 28.7.2000, 22.11.2000, 12.5.2003, 17.7.2007, 1.2.2012, 26.2.2013, the letter of the defendant No.1 dated 26.5.2015, the letter of the plaintiff dated 27.5.2015 and the Notification dated 7.5.1997.

9. The issues are discussed here under;

a) Whether the application/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. The first issue is therefore decided in favour of the plaintiff.

b) Whether the defendant No. 1 availed a loan amounting to Rs. 2,00,000/- from the plaintiff by executing Deed of Agreement dated 18.5.1995? The plaintiff's witness proved that a loan amounting to Rs. 2,00,000/- was sanctioned by the letter dated 10.5.1995 which was disbursed to the defendant No.1. The defendant No.1 executed Deed of Agreement on 18.5.1995 whereby the plaintiff had agreed to advance a loan of Rs. 2,00,000/- to the defendant No. 1 and the latter also agreed to pay interest on the principal amount or the balance outstanding of the loan at any time at the rate of interest of 13.5% per annum. The defendant No. 2 also put her signature in the Deed of Agreement. Hence, the second issue is decided in favor of the plaintiff.

c) Whether the defendant No. 1 had executed mortgage Deed dated 15.5.1995 mortgaging LSC No. AZL. 1084 of 1986 registered in the name of C. Lalruata S/o Mawitea R/o ITI veng, Azawl and LSC No. AZL. 3263 of 1986 registered in the name of F. Zonghinga S/o Saikhuaia R/o ITI Veng as security for the loan taken by him from the plaintiff? The plaintiff's witness in his affidavit stated that defendant No. 1 had executed Mortgage Deed dated 15.5.1995 mortgaging LSC No. AZL. 1084 of 1986 registered in the name of C. Lalruata S/o Mawitea R/o ITI veng, Azawl and LSC No. AZL. 3263 of 1986 registered in the name of F. Zonghinga S/o Saikhuaia R/o ITI Veng as security for the loan taken by him from the plaintiff. The Mortgage Deed as well as the two LSCs was also proved by the plaintiff's witness by exhibiting the documents. Hence, it is cleared that the plaintiff has proved the execution of Mortgage Deed by the

defendant No. 1 along with LSC No. AZL. 1084 of 1986 and LSC No. AZL. 3263 of 1986. The third issue was also decided in favor of the plaintiff.

d) Whether the defendant No. 2 executed a Deed of Guarantee dated 18.5.1995 agreeing to act as Guarantor on behalf of the defendant No. 1?: The plaintiff's witness in his affidavit stated that the defendant No. 2 executed Deed of Guarantee dated 18.5.1995 agreeing to act as guarantor on behalf of the defendant No. 1. The Deed of Guarantee was proved by the plaintiff's witness by exhibiting it. Hence, it is cleared that the plaintiff has proved the execution of Deed of Guarantee by the defendant No. 2. The fourth issue was also decided in favor of the plaintiff.

e) 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 fifth issue was also decided in favor of the plaintiff

10. In the result, the application is allowed. The applicant is allowed to realize the sum of Rs. 2,00,000/- as on 10.5.1995 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. 1084 of 1986 and AZL. 3263 of 1986 and then by the sale of the mortgaged 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 C.L. Dental Clinic located at Temple Square, Tuikual South, Aizawl, Mizoram.

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

Judgment and Order is delivered in the open court on this 30th day of March, 2016 under my hand and seal.

(VANLALENMAWIA)
Addl. District Judge
Aizawl Judicial District,
Aizawl, Mizoram.

Memo No. _____/ADJ(A)/2016 : Dated Aizawl, the 30th March, 2016

Copy to: -

1. ZIDCO through Counsel Sh. A.R. Malhotra, Advocate.
2. Shri C. Lalhmingthanga S/o Khuangthiauva (L), R/o J-69, Republic Veng, Mizoram.
3. Smt. R. Lalveni W/o L.V. Malsawma, R/o 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