IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), IMPHAL EAST, MANIPUR.

Original (Money) Suit No. 38 of 2022
(Under Order XXXVII of the Code of Civil Procedure, 1908)

Shri Takhelmayum Jiten Singh, aged about 50 years, S/o (L) T. Goberdhon of Khurai Kongpal Chingangbam Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur, PIN - 795005.

...........**Plaintiff.**

- Versus -

Sorokhaibam Indrakumar Singh, S/o Sorokhaibam Ibotombi Singh of Khurai Sajor Leikai, Tinsid Road, P.O. & P.S. Porompat, Imphal East District, Manipur, PIN - 795005.

............**Defendant.**

PRESENT:

Dr. Laishram Rina Devi,
Civil Judge (Senior Division), Imphal East

Counsel for the plaintiff	:	Shri N. Bhogendrajit & K. Gonmei, Advocates;
Counsel for the defendant	:	Nemo;
Date of hearing	:	26-04-2023 & 17-07-2023

JUDGMENT AND ORDER
Dated 26th July, 2023

[1] This is to dispose of a suit instituted by the plaintiff under Order XXXVII of the Code of Civil Procedure, 1908 for recovery of a total sum of Rs. 20,00,000/- (Rupees twenty lakh) only.

[2] The facts of the plaintiff's case, in brief, are that the plaintiff being the known person and being from the nearby locality of the defendant, the defendant so as to meet his financial exigency, had approached the plaintiff to extend his hand. As agreed the plaintiff had lent a total sum of Rs. 20,00,000/- (Rupees twenty lakh) only to the defendant on three different dates particularly a sum of Rs. 10,00,000/- on 10-02-2019, another sum of Rs. 5,00,000/- on 21-12-2019 and lastly a sum

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of Rs. 5,00,000/- on 05-02-2020. And as a token of acceptance against the borrowing of the aforesaid total sum of Rs. 20,00,000/-, the defendant had executed three Promissory Note payable on demand viz. 1) Promissory Note dated 10-02-2019 for the sum of Rs. 10,00,000/-, 2) Promissory Note dated 21-12-2019 for the sum of Rs. 5,00,000/- and 3) Promissory Note dated 05-02-2020 for the sum of Rs. 5,00,000/-.

As time passed by the Covid-19 pandemic for almost 2 years, the plaintiff had given a chance to the defendant for some more months to repay the said total sum on his request. However, the defendant failed to repay the said total sum of Rs. 20,00,000/- even after repeated request made by the plaintiff. Instead, the defendant had threatened the plaintiff to do whatever he wishes to take up any action against the defendant. And thereafter, the defendant started avoiding the plaintiff with an intention not to repay back the aforesaid total sum of Rs. 20,00,000/- in any case. Even after waiting for many months the defendant still failed to repay the said sum to the plaintiff and the defendant has been playing delaying tactics by fixing dates one after another with malafide intention not to repay the said amount to the plaintiff.

On account of failure on the part of the defendant to repay the said sum, the plaintiff through one Advocate namely Kiujinang Gonmei had sent a demand legal notice on 18-07-2022 for repayment of the sum of Rs. 20,00,000/- (Rupees twenty lakh) only within 15 days from the date of receipt of the same through speed post being receipt No. EE4296197231N dt. 18-07-2022. And it was confirmed through tracking online that the Legal Notice was delivered on 29-07-2022. Even after receiving the said legal notice the defendant is still avoiding the plaintiff and kept silent without any response to the plaintiff and hence, it is crystal clear that the defendant's intention is to confiscate or to corrupt the said sum from repaying to the plaintiff.

Hence, the plaintiff has instituted the present suit thereby praying for the following reliefs:

(i) a decree for recovery of total sum of Rs. 20,00,000/- (Rupees twenty lakh) only may kindly be passed in favour of the

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plaintiff and against the defendant.

(ii) a decree for interest at the rate of 20% per annum on the said amount with effect from the day of filing of the present suit till the repayment of the entire claimed amount may be awarded in favour of the plaintiff and against the defendant.

(iii) attachment of the immovable properties belonging to the defendant.

(iv) costs of the litigation may be awarded in favour of the plaintiff and against the defendant.

(v) or any other relief which this Hon'ble court deems fit and proper may kindly be granted in favour of the plaintiff and against the defendant.

[3] Summons was served to the defendant in prescribed Form but he has not entered appearance. On 17-02-2023, Shri Yumkham Prameshor Singh, process server was examined as court witness. From his deposition, it is seen that summons was duly served to the defendant. Thus, the suit was proceeded ex-parte against the defendant on the same day i.e., on 17-2-2023.

[4] Heard learned counsel for the plaintiff and perused relevant record of the case.

[5] The plaint of the plaintiff is supported by the following documents viz.,

i. An original copy of Promissory Note executed by the defendant in favour of the plaintiff on 10th February, 2019;

ii. An original copy of Promissory Note executed by the defendant in favour of the plaintiff on 21st December, 2019;

iii. An original copy of Promissory Note executed by the defendant in favour of the plaintiff's wife on 05th February, 2020;

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iv. Legal Notice dated 18th July, 2022;

v. Original Postal Receipt and

vi. Copy of Track Consignment.

[6] Upon perusal of the Promissory Note payable on Demand dated 10th February, 2019 which is stated to have been executed by the defendant in favour of the plaintiff, it is seen that the defendant had promised to pay a sum of Rs. 10,00,000/- (Rupees ten lakh) only at the rate of 4% to the plaintiff on demand by putting his signature therein in presence of two witnesses namely L. Rajesh Singh and Huidrom Malemnganba.

[7] Further, upon perusal of the Promissory Note payable on Demand dated 21st December, 2019 which is stated to have been executed by the defendant in favour of the plaintiff, it is seen that the defendant had promised to pay a sum of Rs. 5,00,000/- (Rupees five lakh) only to the plaintiff on demand by putting his signature therein in presence of two witnesses namely L. Rajesh Singh and Huidrom Malemnganba.

[8] Furthermore upon perusal of the Promissory Note payable on Demand dated 5th February, 2020 which is stated to have been executed by the defendant in favour of the plaintiff's wife namely Huidrom Chitra Devi, it is seen that the defendant had promised to pay a sum of Rs. 5,00,000/- (Rupees five lakh) only to the plaintiff's wife on demand by putting his signature therein in presence of two witnesses namely L. Rajesh Singh and Huidrom Malemnganba.

[9] For clarity, the relevant provision of law as given in Order XXXVII, Rule 2(3) of the Code of Civil Procedure, 1908 is reproduced hereunder-

"The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum

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for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith."

[10] As per Section 13 of the Negotiable Instruments Act, 1881 a "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer. Further, Section 19 of the Negotiable Instruments Act, 1881 deals with Instruments payable on demand which provides as- "A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

[11] Further Section 80 of the Negotiable Instruments Act, 1881 deals with interest when no rate specified which provides as- When no rate of interest is specified in the instrument, interest on the amount due thereon shall [notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of [eighteen per centum] per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

[12] And Section 34 of the Code of Civil Procedure deals with Interest which runs as- Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six percent per annum as the Court deems reasonable on such principal sum], from the date of decree to the date of payment, or to such earlier date as the Court thinks fit.

[13] In the instant suit, the defendant neither appeared nor defended whatever alleged in the plaint. In default of his entering an appearance, the averments or allegations made by the plaintiff in the plaint shall be deemed to be admitted. Hence, the plaintiff is entitled to a decree under Order XXXVII of the Code.

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[14] However, under Article 35 of the Limitation Act, 1963 the period of limitation is three years on a Bill of Exchange or promissory note payable on demand and not accompanied by any writing, restraining or postponing the right to sue. Further time from which period begins to run is the date of the Bill or Note. Hence, a suit on such instrument is governed by this Article.

[15] Further, Section 18 of the Limitation Act, 1963 provides as- where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. Moreover, under Section 25(3) of the Indian Contract Act, 1872 an agreement made without consideration is void unless it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

[16] Upon perusal of relevant record of the case, it appears that the plaintiff has instituted the present suit on behalf of his wife also. Legal notice dated 18-07-2022 for repayment of the total amount of Rs. 20,00,000/- (Rupees twenty lakh) only was sent to the defendant. And it is the plea of the plaintiff that the said legal notice was delivered to the defendant on 29-07-2022 which was confirmed through online tracking. The present suit was instituted/registered on 04-11-2022. However, there is neither an acknowledgement under Section 18 of the Limitation Act, 1963 nor a promise under Section 25(3) of the Indian Contract Act, 1872 in respect of the Promisory Note Payable on Demand dated 10th February, 2019. Thus, as far as the Promissory Note dated 10th February, 2019 is concerned, it is barred by limitation.

[17] But Promissory Notes dated 21st December, 2019 and 5th February, 2020 produced by the plaintiff remain resolute without any rebuttal from the side of the defendant. However, interest is not specified therein.

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ORDER

[18] In view of relevant provisions of law as mentioned above and after due consideration of the facts and circumstances of the case, it is hereby ordered that-

i. The defendant shall pay to the plaintiff the principal amount of Rs. 10,00,000/- (Rupees ten lakh) only with interest at the rate of 18% per annum from the date of the institution of the suit till the date of decree.

ii. The defendant shall further pay future interest at the rate of 6% per annum on the principal sum adjudged from the date of decree till full realization of the decretal amount with cost of litigation.

B.C. shall prepare a decree accordingly.
Pronounced in open court.
Accordingly, the present suit stands disposed of.

Dr. L. Rina Devi.

(**Dr. Laishram Rina Devi**)
Civil Judge (Senior Division),
Imphal East.