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GAHC020001092022 2026:GAU-NL:190

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : FA/1/2022

SHRI. TOSHIPOKBA LONGKUMER AND ANR
S/O LATE MERENNUNGSANG LONGKUMER, R/O HALF NAGARJAN,
DIMAPUR, NAGALAND

2: SHRI. C. AMONG JAMIR

S/O SHRI. S.C.JAMIR
R/O HALF NAGARJAN
DIMAPUR
NAGALAN

VERSUS

SHRI. HUKAVI MURU
R/O 2 HALF MILE, DIMAPUR, NAGALAND

Advocate for the Petitioner : R. IRALU, SR. ADV, L. IRALU,MHECHIETE,MHABENI

Advocate for the Respondent : N K LUIKHAM, C D RUNGSUNG

Linked Case : FA/4/2014

TOSHIPOKBA LONGKUMER
S/O LT. MERENNUNGSANG LONGKUMER
R/O HALF NAGARJAN
DIMAPUR

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2: C.AMONG JAMIR
S/O S.C JAMIR
R/O HALF NAGARJAN
DIMAPUR
VERSUS

HUKAVI MURU
R/O 21/2 MILE
DIMAPUR

Advocate for : R. IRALU
SR. ADV
Advocate for : N K LUIKHAM appearing for HUKAVI MURU

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocate for the Appellants	: Mr. R. Iralu, Sr. Advocate Ms. Mhabeni
Advocate for the respondent	: Mr. N.K. Luikham
Date of hearing	: 10.03.2026
Date of judgment	: 30.03.2026
Whether the pronouncement is of the Operative part of the judgment ?	: No
Whether full judgment has been pronounced ?	: Yes

:JUDGMENT & ORDER (CAV):

Date : 30-03-2026

First Appeal No. 4 of 2014 and First Appeal 1 of 2022 are filed under Rule 29 of the Rules for Administration of Justice and Police in Nagaland R/W Section 96 of the Code of Civil Procedure by the appellants assailing

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the judgment and decree dated 31.03.2014 passed in Civil Suit No.13/2008 and Counter Claim 1 of 2008.

2. Heard the Sr. counsel for the appellants Mr. R. Iralu assisted by Ms. Mhabeni. Also heard Mr. N.K. Luikham, learned counsel for the respondent.

3. The case of the appellants/plaintiffs is that the appellant No.1 is the brother-in-law of the appellant No.2. The plaintiff 2/appellant No.2 is the owner of the land covered by Patta No.559, Block No.6 in Mouza No.1 of Dimapur town having an area of 05B-01K-19Ls where upon stands two buildings. In May 2006, the plaintiff/appellant No.1 through one Mrs.Zhano(PW-9) and Mrs. Lily(PW-3) obtained a loan of Rs.50,00,000/-(fifty lakhs) from the defendant whereby the appellant 2/plaintiff No.2 agreed to secure his loan and building aforementioned against the loan. The defendant fixed the loan interest @8% per month. A mortgage deed was executed on 13.05.2006 which was to be effective from 13.05.2006 to 14.01.2007 and the monthly interest was to be paid after every two months. A stipulation was made in the mortgage deed that in the event of the plaintiff No.1 failing to repay the loan amount with the agreed interest within the time frame, the said land and building was to be forfeited to the defendant. The plaintiffs/appellants received Rs.45,00,000/- by cheque and Rs.5,00,000/- in cash.

4. Pursuant to the execution of the mortgage deed, the plaintiff/appellant No.1 on 26.08.2006 paid the defendant a sum of Rs.12,00,000/-(Twelve lacs) towards interest for the first three months. This amount was paid to the defendant through Mrs. Zhano(PW-9) and Mrs. Lily(PW-3) as the loan was also procured through them. Thereafter,

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on account of financial constraints, the appellants/plaintiffs could not pay the interest for the next two months. For the default in payment, the defendant calculated the default interest for three months on 03.11.2006 amounting to Rs.12,00,000/-(Twelve lacs) and this amount was compounded towards the principal amount and by extending another Rs.8,00,000/-(Eight lacs) to the appellant 2/plaintiff 2 the defendant enhanced the principal amount to Rs.70,00,000/-(Seventy lacs) with interest @6% per month.

5. The appellants/plaintiffs through Mrs. Lhamu (PW-1), wife of the plaintiff/appellant No.1 paid the defendant an amount of Rs.38,60,000/-(Thirty eight lacs sixty thousand) in 7 installments between the period beginning from 07.02.2007 to 03.11.2007 towards repayment of the loan. Another sum of Rs. 10,00,000/- (ten lacs) was paid to the defendant by the appellant/plaintiff No.2 on 20.01.2008 in the presence of Mrs. Imotila (PW-4) and Mrs. Arennungla(PW-6). The plaintiffs/appellants insisted on receipts on all the occasions of making the payments, however, the defendant refused to issue receipts stating that the parties are maintaining proper accounts of the loan and it was not necessary to issue receipts.

6. When the details about the loan were inquired by the brother of the plaintiff No.2, Shri Lanu Jamir/PW-2 and the uncle of the plaintiff No.2, Shri Imli Jamir(PW-8), the defendant furnished a rough account statement and left it at the residence of one Mr. Tsukjum Jamir(PW-7), the then GB of $2^{1/2}$ Mile Dimapur who was a neighbor of the defendant. At that relevant time, Mr. Tsukjum Jamir/PW-7 was in Kohima and he was informed telephonically by the defendant himself about the rough loan

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account being kept at his residence. As per the rough loan account, bearing no signature, the total amount due as on 21.02.2008 i.e. principal plus interest stood at Rs.88,60,000/- (Eighty eight lacs sixty thousand). The plaintiffs/appellants again paid the defendant a sum of Rs.40,00,000/- (Forty lacs) on 22.02.2008. On this date the defendant asked his brother-in-law Shri Piketo(court witness) to write down the receipt for the amount. This payment was made at the residence of Mr. Tsukjum Jamir, GB $2^{1/2}$ Mile Dimapur and the defendant duly acknowledged the receipt of Rs.40,00,000/- (Forty lacs) and that the balance amount was Rs.48,60,000/-.

7. As per the defendant's rough account, the balance due to him was Rs,48,60,000/-(forty eight lacs sixty thousand) as on 22.02.2008. However, by then the plaintiffs had already paid the defendant a total amount of Rs,1,00,60,000/- (One crore sixty thousand),i.e., Rs.38,60,000+40,00,000+12,00,000+10,00,000. But, contending that the plaintiffs had failed to repay the loan or to pay with interest within the stipulated time, the defendant locked the main gate into the land of the building of the plaintiff No.2 on 03.05.2008. On earlier occasions also, the defendant had locked the shops which were rented out in the building of the plaintiff/appellant No.2 for failure to pay timely interest to the defendant.

8. On 15.05.2008, the plaintiffs/appellants and their family members met the defendant and having expressed their problems requested him to exempt the plaintiffs/appellants from further payment or to allow the plaintiffs to pay a nominal amount against the outstanding balance as claimed by him and to remove the lock from the gate of the plaintiff No.2.

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The defendant refused and insisted on payment of the alleged balance amount of Rs.48,60,000/-(Forty eight lacs sixty thousand). Being aggrieved, the appellant/plaintiffs have preferred the Civil Suit 13/2008 praying for a declaration of 8% and 6% interest per month as excessive and illegal and to declare the mortgage deed dated 13.05.2006 as unlawful and legally unenforceable; to re-open the account for the purpose of adjusting the amount of Rs.1,00,60,000/- already paid to the defendant and to refund the excess amount if any and also prayed for a direction to return the original copy of jamabandi against Patta No.559 to plaintiff No.2.

9. The defendant/respondent filed his written statement wherein he admitted the receipt of only Rs.40,00,000/- on 22.02.2008. The defendant claimed of having an outstanding due of Rs.1,31,80,000/- (One crore thirty one lacs eighty thousand) from the plaintiffs out of which the principal amount being Rs. 70,00,000/- (Seventy lacs) and Rs.61,80,000/- (Sixty one lacs eighty thousand) as interest. The defendant also claimed that on 03.11.2006, the plaintiffs took another Rs.20,00,000/-(Twenty lacs) in cash due to which the initial principal amount of Rs.50,00,000/- (fifty lacs) was enhanced to Rs.70,00,000/-(Seventy lacs). The defendant claimed that out of total interest of Rs.1,01,80,000/-(one crore one lakh eighty thousand) from 15.05.2006 to 04.06.2008, he had received Rs.40,00,000/- only. The defendant also claimed in the written statement that since the plaintiffs failed to clear the outstanding due for a period of two years, the defendant intended to foreclose the mortgage and accordingly, locked the main gate in the suit land. A counter claim was also put forward by the defendant under Order VIII Rule 6-A of the CPC to

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foreclose the mortgage.

10. The learned Trial Court framed as many as 16 issues:-

ISSUE NO. 1: Whether the suit is maintainable in its present form?

ISSUE NO. 2: Whether the suit is bad for mis-joinder of parties?

ISSUE NO. 3: Whether on 13.05.06 the plaintiff No. 2 obtained a loan of Rs. 50,00,000/- (Rupees fifty lacs) from the defendant @ 8% monthly interest by mortgaging the land covered by Patta No. 359, Dag N0, 597 in Block 6 of Dimapur town, measuring an area of 05B-01K-19L with standing building thereon?

ISSUE NO.4: Whether on 03.11.06 the plaintiff further received cash loan of Rs.8,00,000/-(eight lacs) from the defendant and by compounding the three months defaulted interest of Rs.12,00,000/- the principal amount of Rs. 50,00,000/- was enhanced to Rs. 70,00,000/- and the plaintiff asked to pay 6% monthly interest on the enhanced loan amount?

ISSUE NO. 5: Whether the correct principal loan amount as on 03.11.06 is Rs. 58,00,000/- or Rs. 70,00,000/-?

ISSUE NO. 6: Whether the plaintiff No. 1 stood as guarantor in the mortgage deed in question?

ISSUE NO. 7: Whether the plaintiff has paid Rs. 40,00,000/- or Rs. 1,00,60,000/- against the loan to the defendant?

ISSUE NO. 8: Whether as on 22.02.08 the defendant demanded Rs. 48,60,000/- from the plaintiffs as outstanding loan amount as per the rough account furnished by the defendant?

ISSUE NO. 9: Whether the mortgage deed entered between the parties is validly executed and enforceable in the eye of the law?

ISSUE NO. 10: Whether the Nagaland Money Lenders Act 2005 is

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applicable in the instant suit?

ISSUE NO. 11: Whether the plaintiff rescinded the mortgage deed? If so, whether the principle of promissory estoppel is attracted?

ISSUE NO. 12: Whether the plaintiff is entitled to any relief?

ISSUE_NO. 13: Whether the transaction between the plaintiff and defendant attracts the provision of Article 371A of the Constitution of India?

ISSUE NO. 14: Whether the plaintiff can invoke protection under the Money Lenders Act 2005 after utilizing the loan amount of Rs.70,00,000/- for more than two years?

ISSUE-NO.15: Whether the plaintiff No. 2 during the subsistence of mortgage deed and pending the present suit clandestinely transferred a portion of the mortgaged land in the name of one Shri. Pongsang Jamir?

ISSUE NO. 16: Whether the defendant is entitled to the relief claimed in the counter-claim?

11. The learned Trial Court examined the evidence and arrived at a finding that the mortgage deed dated 13.05.2006 was subsequently modified on 03.11.2006 and is valid and legally enforceable as it is admitted by the parties even if not registered. The Trial Court held that the Nagaland Money Lenders Act 2005 is applicable in the instant case. The learned trial Court also arrived at a finding that the plaintiffs/appellants had received Rs.20,00,000/- as additional loan amount thereby enhancing the principal amount to Rs.70,00,000/- on 03.11.2006. The learned trial Court also held that the plaintiffs had paid only Rs.40,00,000/- lacs to the defendant towards re-payment of the loan amount. The rough account estimate which was exhibited as exhibit P/3

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claimed by the plaintiffs to have been furnished by the defendant was held to be not proved as issued by the defendant. The trial Court held that the unsigned rough account estimate could not be accepted as evidence that the defendant had demanded Rs.48,60,000/- from the plaintiffs as outstanding loan amount.

12. Finally, the trial Court by impugned decree dated 31.03.2014 decreed as under:

"*In terms of the aforestated judgment and order passed, it is hereby ordered and decreed as follows:-*

1. The Mortgage Deed dated 13.05.05 and modified on 03.11.06 is valid and enforceable.

2. The defendant is entitled to recover the outstanding loan amount from the plaintiffs together with 14% simple interest per annum w.e.f. 13.05.06 to 02.11.06 on principal amount of Rs. 50 lacs and thereafter on enhanced principal amount of Rs. 70 lacs w.e.f. 03.11.06 till full and final realization after adjustment of Rs. 40 lacs paid on 22.02.08 towards the loan".

Grounds of Appeal:

13. The learned Sr. counsel for the appellants submits that the trial Court failed to consider the entire evidence in the case in accordance with law. The trial Court committed illegality by distorting the deposition and cross examination of PW.1 while discussing Issue No.4 and again distorted the deposition of PW.1, PW.3 And PW.9 while discussing issue No.7 in order to unduly favour the defendant. The trial Court did not appreciate the evidence in the right manner inasmuch as the Court has adopted the method of picking and choosing a discrepancy here and there instead of

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considering the entire evidence resulting in miscarriage of justice.

14. The learned Sr. counsel submits that the trial Court committed an illegality in not discussing the evidence of PW.4, PW.5, PW.6, PW.7 and PW.8 without indicating any reasons whereas the said witnesses are the material witnesses of the plaintiffs. The evidence of PW.1, PW.3 and PW.9 has also not been discussed in whole except choosing one or two sentences that too by distorting the statements while fully relying on the uncorroborated statements of the defendant. The learned Sr. counsel further states that the so called un-stamped and unregistered mortgage deed dated 13.05.2006 falls short of the requirements of section 17 of the Registration Act and cannot affect any transfer of immovable property under section 49 of the Registration Act. The unregistered mortgage deed cannot be therefore legally enforceable. Therefore, the trial Court had committed a grave error in holding that the mortgage deed dated 13.05.2006 and modified on 03.11.2006 is valid and enforceable.

15. The learned trial Court did not consider the deposition of the court witness Shri Piketo who admitted that there are some similarities of handwriting in exhibit P/3 and P/7 and illegally concluded that the unsigned account estimate cannot be relied upon. On the other hand, even an ordinary man can see the similarities of writings in exhibit P/3 and exhibit P/7. The learned trial Court failed to consider the fact that the defendant in his written statement did not specifically deny the rough account/exhibit P/3 left at the residence of Mr. Tsukjum Jamir by the defendant on 21.02.2008 and further the evidence of Mr. Tsukjum Jamir as PW.7 was not even discussed. The trial Court has not been guided by the provision of Order 8, Rule 3 and 4 of the Code of Civil Procedure and

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adopted its own illegal procedure by exercising a jurisdiction not vested in it. The learned trial Court failed to consider the settled position of law that evasive denial amounts to admission and that admitted facts becomes a non issue.

16. The learned Sr. counsel for the appellants has also submitted that the trial court did not discuss the entire plaintiffs evidence and did not consider the fact that the plaintiffs established the payment of Rs.1,00,60,000/- and the veracity of the plaintiffs evidence could not be rebutted by the defendant. The learned Sr. counsel submitted that the grant of 14% interest against the alleged principal sum of Rs.70,00,000/- is legally erroneous, excessive, unreasonable and penal in nature as the trial Court has not considered the admitted receipt of Rs.40,00,000/- lacs towards interest at 6% per month which goes to show that the trial Court has allowed the charging of excessive rate of interest at 6% per month. It is stated that the charge of 8% and 6% interest per month is against the provisions of Usurious Loans Act 1918. The trial Court failed to take into account the fact that the Rs.40,00,000/- lacs paid and received by the defendant on 22.02.2008 is the interest at the rate of 6% per month.

17. In view of the above submissions, the learned Sr. counsel for the appellants has prayed for quashing and setting aside of the impugned judgment and decree dated 31.03.2014 passed in Civil Suit 13/2008. The learned Sr. counsel has also relied on the following cases in support of his submissions:-

i. ***Dayawati and Another (Smt) vs Inderjit and Others*** reported in ***1966 SCC online SC 44: AIR 1966 SC 1423,***

ii. ***State of Haryana and Others vs S.L. Arora & Company***

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reported in ***2010 (3) SCC 690***

iii. ***Azizi Wani vs Director Consolidation, Srinagar & Others*** reported in ***AIR 1971 J & K 67***

Arguments of respondent:

18. The learned counsel Mr. N.K. Luikham appearing for the respondent submits that a mortgage by deposit of original jamabandi/title deed does not require registration under Section 17 of the Registration Act. Therefore, the mortgage deed dated 13/05/06 is valid as the same does not require registration. In support of the contention the respondent rely on the decision of the Apex Court in the case of ***State of Haryana & Ors. -Vs- Narvir Singh & Anr*** Reported in ***(2014) 1 SCC 105***. Hence, the question of payment of registration and stamp duty does not arise.

19. The mortgage deed dated 13/05/06 was rectified on 03/11/06 by inserting the enhanced loan amount as Rs. 70 Lakhs on the same terms and conditions and reducing the interest rate to 6% p.m. Learned counsel submits that the plaintiff 2/appellant 2 in his cross examination has admitted that he received the loan of 20 lacs on 3.11.2006 and accordingly the mortgage deed dated 13/5/06 was amended by entering Rs. 70,00,000/- and interest rate at 6% which he acknowledged and signed on the said mortgage deed on 3/11/06. Similarly, the plaintiff No. 1/ appellant No. 1 also admitted receipt of Rs. 50 Lacs as loan on 13/05/06 and further amount of Rs. 20 Lacs as enhanced loan amount in his cross-examination. Similarly, Mrs. Lhamu Longkumer (PW-1) in her cross-examination and re-cross deposed that she was present when the loan amount was enhanced to Rs 70 lacs on 3.11.2006. Thus, from the depositions of the plaintiffs/appellants as well as the PW-1 the receipt of

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Rs. 20 Lacs on 3/11/06 by the plaintiff 2/appellant 2 as enhanced loan from the defendant was established and proved. The respondent relied on the case of ***Bharati Cellular Limited - Vs- Union of India & Ors*** reported in ***(2010)10 SCC 174***, where it was held that the doctrine of 'one who approbates cannot reprobate' is firmly embodied in English common law and often applied by courts in this country. It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying the latter.

20. Learned counsel relying on ***B.L. Sreedhar & Ors. -Vs- K.M. Munireddy (Dead) & Anr*** reported in ***(2003) 2 SCC 355*** submits that Estoppel is a rule of evidence and the general rule is enacted in Section 115 of the Indian Evidence Act, 1872 which lays down that when one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

21. Learned counsel states that the purported receipt dated 26.08.2006 signed by the PW-3 and PW-9 and the said payment of Rs. 12 Lakhs was an afterthought and introduced by the plaintiffs after filing of the suit by way of amendment of the plaint at a later stage. Moreover, as deposed by the PWs the said receipt was not prepared by the PW-3 and PW-9 and they do not know the writer of the said receipt date 26/8/06. The said receipt was not marked as exhibit and the author was also not produced

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and subjected to cross-examination in the trial court. Thus, the said receipt dated 26/8/06 is inadmissible in evidence. Unless the author is examined, and subjected to cross-examination in a court of law, the contents thereof cannot be held to have been proved.

22. It is submitted that Mrs. Arennungla (PW-6) was not produced for cross-examination as she was dropped. Whereas, the statements of the appellants/plaintiffs with regard to payment of Rs. 10 Lakhs towards interest to the defendant/respondent on 20/1/08 has been contradicted by their own witness PW-4 (Mrs. Imotila). As such, the plaintiffs/appellants miserably failed to establish and prove the payment of Rs. 10 Lakhs to the defendant/respondent.

23. The counsel for the respondent submitted that the writer of the so called 'Rough Account' could not be established and proved as the writer of the Rough Account could not be identified.

24. It is submitted that the defendant/respondent has claimed and prayed for pre-suit interest in his counter claim to the tune of Rs. 61,80,000/- and also interest pendente-lite and for a decree foreclosing the Mortgage. Thus, the Court below upon taking into consideration the claim and prayer of the defendant/respondent made in the counter-claim and the evidence adduced, passed the impugned judgment and decree. As such, there is no infirmity in decreeing the pre-suit, pendent lite and future interest at 14% per annum by the Court below.

25. The counsel for the respondent contends that the Proviso to Section 34(1) CPC provides that when the liability had arisen out of a commercial transaction, the rate of interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no

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contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions. Thus, the interest at the rate of 14% simple interest per annum is permissible in terms of the proviso to Section 34(1) CPC. Therefore, the Court below has rightly decreed 14% Simple interest per annum after taking into account the proviso to Section 34 CPC and also the provisions of Section 7 and Section 27 of the Nagaland Money Lenders Act, 2005. In support thereof, the counsel for the respondent submits that the loan amount was taken for business purpose and electioneering of the plaintiff No. 1/appellant No. 1. Therefore, the said loan transaction undertaken between the parties falls under the definition of a commercial transaction and post decree interest could be awarded @14 % p.a. The respondent relies on the case of ***Punjab and Sind Bank -Vs- Allied Beverage Company Private Limited and Others***, reported in ***(2010) 10 SCC 640*** in support of his contention.

26. The Counsel for the respondent submits that reappraisal of evidence is possible only when findings arrived at by the lower courts are vitiated with serious infirmity or where lower courts committed an error of law or procedure resulting in a perverse conclusion. In the instant appeals the appellants have failed to bring out any infirmity in the impugned judgment and decree. And as such, it is prayed that this Court may be pleased to dismiss the appeals filed by the appellants and uphold the judgment and decree dated 31.03.2014.

Points for determination:

(i) *Whether the Transfer of Property Act 1882 and the Nagaland Money Lenders Act 2005 are applicable in the instant case.*

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(ii) *Whether the mortgage deed dated 13.05.2006 is valid and enforceable.*

(iii) *Whether the principal amount borrowed by the plaintiff/appellant is Rs 50 lacs or Rs.58 lacs or Rs.70 lacs? And whether appellants/plaintiffs have repaid any amount? And whether the interest of 14% per annum decreed by the trial court is excessive?*

(iv) *Whether the plaintiffs/appellants or the defendant/respondent is entitled to relief?*

Discussion and Decision:

27. This Court has given due consideration to the submissions made by the learned counsel for the parties and has perused the trial court records as well as the authorities relied upon by the parties.

28. The impugned judgment and decree dated 31.03.2014 passed by the learned District & Session Judge Dimapur in Civil Suit 13/2014 and Counter Claim 1 of 2008 has also been examined in detail.

29. The facts as brought out in the pleadings of the appellants show that the plaintiffs/appellants herein had borrowed a sum of Rs.50 lacs from the defendant in May 2006. This fact is not disputed by the appellants/plaintiffs. The alleged mortgage deed was executed on 13.05.2006 between the two plaintiffs and the defendant by which it was agreed that the plaintiff No.2/appellant No.2 would mortgage his land covered by Patta No.559, Block No.6 in Mouza No.1 of Dimapur covering 05B-01K-19Ls with all the buildings and fixtures therein for a consideration of Rs.50 lacs at 8% interest per month to the defendant/Shri Hukavi Muru and society for a period from 13.05.2006 to 14.01.2007 failing which the mortgaged land/building will be forfeited to the respondent. The interest

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was to be paid every two months and the original jamabandi of the said land was delivered to the respondent.

30. It is the further stand of the appellants that on 26.08.2006, the plaintiff No.1 paid the defendant an amount of Rs.12 lacs as interest for three months through PW.3 and PW.9 whereupon the defendant did not give any receipt. Thereafter, the appellants could not pay interest for the next two months. For the default in payment the defendant calculated the defaulted interest for three months on 03.11.2006 amounting to Rs.12 lacs and compounded this amount towards the principal amount of Rs.50 lacs and after extending Rs. 8 lacs in cash to the plaintiff No.2 in the presence of PW.1, the total principal amount was enhanced to Rs 70 lacs with interest @ 6% per month. No new agreement was signed and the earlier mortgage paper was simply over written on 03.11.2006.

31. It is also the case of the plaintiffs/appellants that on 20.11.2008, the wife of the plaintiff No.1 gave an amount of Rs.10 lacs to the plaintiff No.2 to be paid to the defendant. This amount was paid by the plaintiff No.2 in the presence of PW.4 and PW.6 to the defendant in the residence of the defendant. On this occasion also, the defendant did not give any receipt. The appellants contended that as on 03.11.2007, the defendant was paid a total amount of Rs.38,60,000/-(Rupees Thirty eight lacs sixty thousand) in 7 installments excluding the amount of Rs.12 lacs paid for the first three months interest on 26.08.2006. The appellants also claimed that the defendant had provided a rough account wherein it was shown that a total amount of Rs.88,60,000/- was due to the defendant counting interest at 6% per month as on 21.02.2008. It is also claimed that subsequently, on 22.02.2008, another Rs.40 lacs was paid to the

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defendant and a receipt had been given for the same.

32. As per the calculation of the plaintiffs/appellants, a total amount of Rs.1,00,60,000/- (Rupees One crore sixty thousand) has already been paid to the defendant i.e. Rs.38,60,000/- + Rs. 12 lacs + Rs.10 lacs + Rs.40 lacs. The appellants have further contended that the payment of Rs.38,60,000/- has been proved by the two plaintiffs and PW.1; the payment of Rs.12 lacs proved by PW.3 and PW 9; and the payment of Rs.10 lacs to the defendant proved by the two plaintiffs, PW.1, PW.4 and PW.6.

30. Further, the appellants/plaintiffs have also contended that the principal loan amount should be Rs.58 lacs (50 lacs on 13.05.2006 and Rs 8 lacs on 03.11.2006) and not Rs.70 lacs as claimed by the defendant.

33. The learned trial Court had held in the impugned judgment dated 31.03.2014 that the principal amount borrowed by the plaintiffs was Rs.70 lacs. It was also held that the plaintiffs had paid only Rs.40 lacs in total to the defendant towards recovery of the loan and also held that the mortgage deed dated 13.05.2006 and subsequently modified on 03.11.2006 is valid and enforceable. The learned trial Court also held that the defendant is entitled to recover the outstanding loan amount by adjusting Rs.40 lacs paid on 22.02.2008 with simple interest of 14% per annum w.e.f. 13.05.2006 to 02.11.2006 on principal amount of Rs.50 lacs and interest at 14% per annum on principal amount of Rs.70 lacs from 03.11.2006 till full and final realization.

34. In respect of Point No (i) for determination, it is to be noted that the Transfer of Property Act 1882 is not applicable in the State of Nagaland as it has not been adopted by the Legislative Assembly in view of Article 371

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A(1)(a)(iv) of the Constitution of India. A coordinate bench of this Court in Judgment & Order dated 27.03.2024 in Civil Revision 3/2023 held that only the spirit of the Transfer of Property Act 1882 is applicable in the State of Nagaland. In the instant case also at best the spirit of the Transfer of Property Act can be applied. Another issue which has been brought up during the hearing of the present case is the question as to whether the Nagaland Money Lenders Act, 2005 is applicable in the present case. In section 3 of the Money Lenders Act, 2005, it is provided that *"No person shall, on or after the date on which the provisions of this Act come into force, carry on business of money lending at any place in the State, unless he has obtained a money-lender's license under this Act."* Admittedly, the defendant does not have a money lender license under this Act. Accordingly, it is held that the Nagaland Money Lenders Act 2005 is also not applicable in letter and spirit in the present case, except as a guideline or recommendation. Point No (1) is therefore decided in the negative.

35. In respect of point for determination no (ii), Section 58 of the Transfer of property Act defines a mortgage. Section 58 states that *"A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability."* Section 58 (f) of the Transfer of Property Act, defines an equitable mortgage. In the present case, one of the contentions of the defendant is that the mortgage was a mortgage by deposit of title deeds/equitable mortgage. However, it is seen from the records that the sale deed/transfer deed/gift deed which is the primary

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document proving ownership is not deposited. Only the Jamabandi has been deposited which is not a title deed, but simply a revenue record showing possession details but does not constitute proof of title. A perusal of the mortgage deed/Exhibit D/1 further shows that there is a stipulation that automatically forfeits the mortgaged property to the lender upon failure to repay by a certain date. Such a stipulation preventing the borrower's rights to redeem his property makes the mortgage deed unlawful. Such a clog on the right of redemption is not permissible under the Transfer of Property Act. The Borrower has to retain the right to redeem his property upon re-payment. The Hon'ble Supreme Court in the case of ***Seth Ganga Dhar vs Shankar Lal*** reported in ***AIR 1958 SC 770*** has held that a term in the mortgage contract that on the failure of the mortgagor to redeem the mortgage within 6 months the mortgagor will have no claim over the mortgaged property cannot be sustained. The alleged mortgage deed/Exhibit D-1 similarly has a condition that upon failure to repay the loan with the 8% interest by 14th January 2007 the borrower shall forfeit the property. Such a stipulation preventing the borrower's rights to redeem his property in the alleged mortgage deed/Exhibit D/1 makes the mortgage deed unlawful and the same is not a legally enforceable document. The alleged mortgage deed/Exhibit D/1 is also not executed on proper stamp paper as per the Indian Stamp Act 1899. A mere memorandum recording the act of depositing title deeds may not require compulsory registration under the Registration Act 1908. However, if the memorandum *itself* creates the rights, it requires registration. In the instant case the 'mortgage deed' itself is structured to create, transfer, or extinguish all legal rights/ownership in the property,

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and therefore required formal registration. On this ground also the 'mortgage deed' is not valid. At best, the document 13.05.2006 can be treated as an acknowledgment of debt by the plaintiffs/appellants towards the defendant.

36. This court has also examined the rate of interest stipulated in the 'mortgage deed' dated 13.05.2006/Exhibit D/1. In the case of ***Dayawati and Another*** (supra), the Hon'ble Supreme Court held that Section 3 of the Usurious Loans Act 1918 is mandatory because it makes it obligatory for a Court to reopen a transaction if there is a reason to believe that the interest is excessive. Further, it was held that when the rate of interest exceeds seven and half percent per annum, the Court must hold that it is excessive. It is seen that the loan in the instant case was availed at monthly interest rates of 8% and 6% (i.e., 72%–96% per annum) which is usurious and exploitative, specially when the case involves a private money lender like in the present case. The present case is certainly not a commercial transaction as it was a purely private transaction between private individuals. The Hon'ble Supreme Court in the case of ***Central Bank of India Vrs Ravindra and others, (2002) 1 SCC 367*** through a 5 Judge Constitution Bench held that;

> *"55(5) The power conferred by Sections 21 and 35-A of the Banking Regulation Act, 1949 is coupled with duty to act. The Reserve Bank of India is the prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory force, in the interest of the public in general and preventing banking*

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affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. The Reserve Bank of India is one of the watchdogs of finance and economy of the nation. It is, and it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would invite its policy decisions. RBI has been issuing directions/circulars from time to time which, inter alia, deal with the rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalised. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy".

The Banking Regulation Act 1949 will not strictly apply to private money lenders. The transaction between the plaintiffs/appellants and the defendant also does not come under the ambit of the Nagaland Money Lenders Act 2005. Nevertheless, the spirit of the said Act and the RBI circulars can certainly be referred to as guidelines for the purpose of deciding whether the interest charged is excessive or usurious. Section 7 (1) and (2) of the Nagaland Money Lenders Act 2005 in respect of Interest and charges allowed to money lenders is reproduced as below:

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(1) *no money lender shall charge interest on any loan advanced whether on a pledge or otherwise, at a rate exceeding more than 3 (three) percent above the prevailing average bank rates of interest on loans advanced by it.*

(2) *The rate of interest shall be per annum simple interest on the principal amount of the loan.*

The interest rates of 6% and 8% monthly can certainly be considered usurious and illegal. Hence, on all counts the mortgage deed dated 13.05.2006 cannot be held to be valid and is not enforceable. Point no (ii) is decided accordingly.

37. Upon appreciating the evidence on record we come to point no (iii) for determination. Having come to a finding that the alleged mortgage deed dated 13.05.2006 is not a valid document, it is trite to say that the contents stipulated therein cannot be enforced. Be that as it may, the plaintiffs/appellants have admitted to borrowing an amount of Rs.50 lacs on 13.05.2006 from the defendant. And also admitted to have received additional Rs.8 lacs in cash on 03.11.2006. Therefore the only disputed fact in the instant case is regarding the amount which has been paid back to the defendant by the plaintiffs/appellants and also whether the total principal loan amount is Rs.50 lacs, 58 lacs or Rs.70 lacs.

38. This Court finds that the issue No.4, 5, 7, 8, 12 and 16 are vital to decide the matter. However, the learned trial court has not appreciated the evidence in accordance with law. Any judgment without discussing the evidence of all the witnesses is no judgment in the eye of law. This Court is of the view that the trial Court has not discussed any of the evidence adduced by the PWs 1, 2, 3, 4, 5, 6, 7, 8 and 9.

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39. Regarding the award of interest by the Court, it is provided in Section 34 of the Civil Procedure Code that when a decree is passed for payment of money, the Court may 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 day of the decree at such rate not exceeding 6% per annum.

40. In the case of ***S.L. Arora and Company (supra),*** the Hon'ble Supreme Court held that compound interest can be awarded only if there is a specific contract, or authority under a statute, for compounding of interest. There is no general discretion in Courts or Tribunals to award compound interest or interest upon interest. The trial Court therefore, could not have awarded interest exceeding 6% per annum.

41. Point No (iii) and (iv) for determination are therefore decided by holding that the evidence has not been appreciated correctly by the trial court and the matter needs to be remanded back to the trial court for a fresh finding on Issue no. 4, 5, 7, 8, 12 and 16. It is further held that the award of interest of 14% per annum decreed by the trial court is excessive in view of the provisions of Section 34 of the Civil Procedure Code.

42. The findings in Issue no.1, 2, 3, and 6 are not interfered with as these are not disputed issues. The Issue no.9, Issue no.10, Issue no 11 and Issue no.13 has already been decided in the Point for consideration no.(i) and (ii) herein. Issue no.14 is also interfered with as it has been already held that the Nagaland Money Lenders Act 2005 is not strictly applicable in the instant case. With regard to Issue no.15, it is observed that during the pendency of the Civil Suit 13 of 2008 the mutation in

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favour of one Pongsang Jamir has been cancelled and therefore no finding is required.

43. For the reasons and findings arrived at hereinabove the Judgment & Decree dated 31.03.2014 in Civil Suit 13 of 2008 with counter claim 1 of 2008 is quashed and set aside.

44. The authorities relied upon by the respondent do not espouse the case of the respondent in the instant case inasmuch as the alleged mortgage deed dated 13.05.2006 has been held to be invalid.

45. The case is remanded back to the learned trial Court for a fresh and proper finding on Issue no.4, 5, 7, 8, 12 and 16 after appreciating and discussing the evidence of PWs 1, 2, 3, 4, 5, 6, 7, 8 and 9 in accordance with law, specifically to ascertain the amount which has been repaid by the plaintiffs/appellants to the defendant and also to arrive at a finding as to whether the total principal amount is Rs.50 lacs or Rs.58 lacs or Rs.70 lacs. The learned trial Court shall take up the matter from the stage of final arguments and thereafter pass judgment and decree.

46. In the event the trial court arrives at a finding that the defendant is still entitled to recover any amount from the plaintiffs/appellants, the court may decree the same and may also award reasonable rate of interest covering both the duration of the civil suit (pendente lite) and the period until full payment if deemed fit and proper in accordance with Section 34 of the CPC. This case pertains to the year 2008 and therefore the learned trial court is directed to dispose of the Civil Suit 13 of 2008 with counter claim expeditiously.

47. With the above findings and modifications, the appeals are disposed of. No costs.

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Registry shall send back the trial Court records forthwith.

48. The parties are directed to appear before the learned Principal District & Session Judge Dimapur on 4th May 2026.

Sd/-
JUDGE

Comparing Assistant

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