IN THE COURT OF THE PRINCIPAL CIVIL JUDGE (JUNIOR DIVISION)::ONGOLE.

Present: **SMT.NETTEM RADHIKA**
Principal Civil Judge (Junior Division), Ongole

(Friday, this the 01st day of March, 2024)

O.S.No.1122/2022

BETWEEN:

Velpula Chandra Rao ...... Plaintiff

AND

Kancherla Venkata Rao ...... Defendant

*This Suit came up on 20-02-2024 for final hearing before me in the presence of **Sri M.Gangadhara Rao,** Learned Counsel for the Plaintiff and of **Sri M.Krishna Rao,** Learned Counsel for the Defendant, upon hearing the arguments, upon considering the material available on record and the matter having been stood over for consideration till this day, the Court doth order and delivered the following:*

// J U D G M E N T //

1. This is a Suit filed by the Plaintiff against the Defendant for recovery of **Rs.3,74,332/-** (Rupees Three Lakhs Seventy Four Thousand Three Hundred and Thirty Two only) with subsequent interest and costs, basing on the strength of the Two (2) Promissory Notes dated 15.09.2020, with the following averments:-

2. **THE CASE OF THE PLAINTIFF IN BRIEF:**

2.1) On 15.09.2020 the Defendant borrowed an amount of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) from the Plaintiff for his Family necessities, agreeing to repay the same with interest at the rate of 24% per annum either to the Plaintiff or to his order on demand. Evidencing the same the Defendant executed Two (2) Promissory Notes for Rs.1,25,000/- each (Rupees One Lakh and Twenty Five Thousand each only) on the same day in favour of the Plaintiff at Gadiparthivaripalem Village of Chimakurthy Mandal in his own handwriting in the presence of attestors.

2.2) The Defendant promised to repay the amount within One (1) year, but he failed to fulfill his promise. The Defendant is doing sheep business at Hyderabad and trying to alienate his immovable properties to evade the debt of the Plaintiff. The Plaintiff came to know that the Defendant borrowed amounts from others also. Finally the Plaintiff approached the Defendant on 06.10.2022 and requested him to repay the debt covered under the Suit Promissory Notes, but the Defendant did not give proper reply. The Defendant is not entitled for any benefits under the Debt Relief Act. Hence, the Suit.

3. THE CASE OF THE DEFENDANT IN BRIEF:

The Defendant admitted about the borrowing of amount from the Plaintiff as mentioned in the Plaint and execution of the Promissory Notes but contended that he paid an amount of Rs.30,000/- through PhonePe to the Plaintiff, an amount of Rs.50,000/- to the Plaintiff's son-in-law and Rs.40,000/- to the Plaintiff's daughter as Three (3) times to discharge the Promissory Notes debt with interest and he requested the Plaintiff to endorse the same on the backside of the Promissory Notes, but the Plaintiff stated that the Promissory Notes were misplaced in his house and promised that he will bring the Promissory Notes for making endorsement after they are traced out in his home. Believing the words of the Plaintiff the Defendant kept silent. The Plaintiff got evil idea for the purpose of wrongful gain and filed the Suit. The Plaintiff did not issue any Legal Notice to the Defendant prior to filing of the Suit. It clearly shows the nature of the Plaintiff that he filed frivolous Suit. The Defendant has no necessity to pay any amount to the Plaintiff under the Suit Promissory Notes as he already discharged the debt. The attestors of the Suit Promissory Notes are the henchmen of the Plaintiff and they have colluded for wrongful gain from the Defendant. Finally, the Defendant prayed the Court to dismiss the Suit.

4. ISSUES:-

Based on the respective pleadings of the Plaintiff and Defendant, the following issues are settled for Trial on 24.04.2023.

1. **Whether the Defendant discharged the debt covered under the Suit Promissory Notes as contended by him in the Written Statement ?**
2. **Whether the Plaintiff is entitled for recovery of the Suit amount from the Defendant as prayed for ?**
3. **To what relief ?**

5. TRIAL:-

On 24.04.2023 after framing of issues, this Court directed the Defendant to adduce his evidence stating that the burden on Issue No.1 casts upon him. Accordingly, the Defendant adduced his evidence at first instance. He himself examined as **DW.1,** but did not adduce any documentary evidence on his behalf. On behalf of Plaintiff, he himself examined as **PW.1** and got marked **Ex.A1 & A2**.

6. Heard both sides. Perused the material available on record.

7. ISSUE NO.1:-

Whether the Defendant discharged the debt covered under the Suit Promissory Notes as contended by him in the Written Statement ?

7.1) The point for difference between both the parties since the inception is that the Plaintiff has been contending that the Defendant has not paid any amount covered under Ex.A1 & A2/Promissory Notes, as such he was constrained to file the Suit. But the Defendant has been contending that he paid an amount of Rs.30,000/- through PhonePe to the Plaintiff, an amount of Rs.50,000/- to the Plaintiff's son-in-law and Rs.40,000/- to the Plaintiff's daughter as Three (3) times in respect of the Two (2) Promissory Notes with interest and he requested the Plaintiff to endorse the same on the backside of Ex.A1 & A2/Promissory Notes but he stated that the Promissory Notes were misplaced; and that the Defendant believed the words of Plaintiff and kept quite but the Plaintiff filed the Suit for the purpose of unlawful gain. Thus, it is evident that the plea of Defendant is discharge of the debt covered under Ex.A1 & A2/Promissory Notes. Since the Defendant having admitted about borrowal of amount and execution of Ex.A1 & A2/Promissory

Notes, took the specific plea of discharge of the debt covered under Ex.A1 & A2/Promissory Notes, hence, the burden lies on the Defendant to establish the same.

7.2) In order to discharge the burden casts upon him, the Defendant himself stepped into witness box as DW.1 but no documentary evidence was adduced on his behalf and the Defendant failed to cross-examine PW.1.

7.3) In the cross-examination DW.1 deposed that he has no documentary proof except his statement to show that he has discharged the debt covered under the Suit Promissory Notes and he did not issue any Legal Notice to the Plaintiff demanding him to return the Promissory Notes as he discharged the amount. DW.1 denied the suggestion that he has not discharged the Suit Promissory Notes amount of Rs.2,50,000/- along with interest to the Plaintiff as such he is liable to pay the Suit amount.

7.4) In order to counter blast the testimony of DW.1 and to prove his case, the Plaintiff himself stepped into witness box as PW.1 by filing Chief-Examination Affidavit reiterating the contents of the Plaint and got marked the Suit Promissory Notes as Ex.A1 & A2. The Defendant failed to cross-examine PW.1 despite availing number of opportunities and passing conditional orders. Hence, the testimony of PW.1 remained unchallenged.

7.5) As seen from the Written Statement and the testimony of PW.1 the Defendant has been contending that he paid an amount of Rs.30,000/- through PhonePe to the Plaintiff, an amount of Rs.50,000/- to the Plaintiff's son-in-law and Rs.40,000/- to the Plaintiff's daughter as Three (3) times in respect of the Two (2) Promissory Notes with interest to the Plaintiff. But in the Written Statement and in the testimony of DW.1 it was not specified as to the date, month and year on which the Defendant paid an amount of Rs.30,000/- through PhonePe to the Plaintiff, an amount of Rs.50,000/- to the Plaintiff's son-in-law and Rs.40,000/- to the Plaintiff's daughter as Three

(3) times in respect of the Two (2) Promissory Notes with interest; and that the Defendant requested the Plaintiff to endorse the same on the backside of Ex.A1 & A2/Promissory Notes.

7.6) As seen from the contents of the Written Statement, it is evident that the Defendant on one hand has been contending that he partially discharged the debt covered under the Suit Promissory Note, why because the amount alleged to have repaid to the Plaintiff, his daughter and son-in-law i.e., Rs.30,000/-, Rs.50,000/- & Rs.40,000/- respectively comes to Rs.1,20,000/- only whereas he has categorically admitted that he borrowed an amount of Rs.2,50,000/- from the Plaintiff agreeing to repay the same with interest at the rate of 24% per annum and executed Ex.A1 & A2/Promissory Notes; and that on the other hand the Defendant has been contending that he has discharged the debt covered under Ex.A1 & A2/Promissory Notes.

7.7) In the cross-examination DW.1 categorically admitted that he has no documentary proof to show that he has discharged the debt covered under the Suit Promissory Notes. If at all the version of Defendant that he paid an amount of Rs.30,000/- through PhonePe to the Plaintiff, an amount of Rs.50,000/- to the Plaintiff's son-in-law and Rs.40,000/- to the Plaintiff's daughter as Three (3) times in respect of the Two (2) Promissory Notes with interest is true, he would have obtained receipts from the Plaintiff evidencing the repayment. The entire Written Statement and the testimony of DW.1 are silent whether he requested the Plaintiff to issue receipts with regard to payment of the Promissory Notes amount when the Plaintiff said to have stated that the Promissory Notes were misplaced. There is no explanation from the Defendant what restrained him to take any receipts from the Plaintiff evidencing the repayments.

7.8) Further, if at all the version of the Defendant that PW.1 did not return the Promissory Notes despite he repaid the entire amount with interest is true, the Defendant would have taken steps like issuance of Legal Notice and giving of Police Report to that effect. In the cross-examination DW.1 categorically admitted that he did not get issue any Legal Notice to the Plaintiff demanding him to return the Promissory Notes as he discharged the amount. No prudent man will keep quite when he paid an amount of Rs.30,000/- through PhonePe to the Plaintiff, an amount of Rs.50,000/- to the Plaintiff's son-in-law and Rs.40,000/- to the Plaintiff's daughter as Three (3) times in respect of the Two (2) Promissory Notes with interest and when the lender did not return the Promissory Notes even after discharge of the debt. Further, the Defendant did not file any piece of paper or his Bank statement to show that he has paid an amount of Rs.30,000/- to the Plaintiff through PhonePe. Furthermore, except the self-serving statement of Defendant, he did not place any iota of evidence to prove his case that he paid an amount of Rs.30,000/- through PhonePe to the Plaintiff, an amount of Rs.50,000/- to the Plaintiff's son-in-law and Rs.40,000/- to the Plaintiff's daughter as Three (3) times in respect of the Two (2) Promissory Notes with interest and discharged the debt covered under Ex.A1 & A2/Promissory Notes with interest and PW.1 did not return the Promissory Notes and the Defendant did not examine any person to substantiate his case. Thus, it is evident that the Defendant failed to place any piece of material to establish his case that he discharged the debt covered under Ex.A1 & A2/Promissory Notes and hence, it can safely be held that the version of the Defendant that he discharged the debt covered under Ex.A1 & A2/Promissory Notes is Unbelievable.

7.9) In view of the above attending and surrounding circumstances, this Court is of the considered view that the Defendant failed to prove that he discharged the debt covered under Ex.A1 & A2/Promissory Notes and hence, he failed to discharge the burden casts upon him. This Issue is answered accordingly in favour of the Plaintiff and against the Defendant.

8. <u>ISSUE NO.2:-</u>

Whether the Plaintiff is entitled for recovery of the Suit amount from the Defendant as prayed for ?

This Court already held at Issue No.1 that the Defendant failed to establish that he paid an amount of Rs.30,000/- through PhonePe to the Plaintiff, an amount of Rs.50,000/- to the Plaintiff's son-in-law and Rs.40,000/- to the Plaintiff's daughter as Three (3) times in respect of the Two (2) Promissory Notes with interest and discharged the debt covered under Ex.A1 & A2/Promissory Notes and hence, the Defendant is liable to pay the debt due under Ex.A1 & A2/Promissory Notes and the Plaintiff is entitled to recover the Suit amount from the Defendant. This Issue is answered accordingly in favour of the Plaintiff and against the Defendant.

9. ISSUE NO.3:-

To what relief ?

In view of the discussion and findings of this Court on Issue Nos.1 and 2, this Court is of the considered opinion that the Suit of the Plaintiff is liable to be decreed with costs.

10. **IN THE RESULT,** the suit is **decreed with costs** against the Defendant for a sum of **Rs.3,74,332/-** (Rupees Three Lakhs Seventy Four Thousand Three Hundred and Thirty Two only) and subsequent interest at the rate of 12% per annum from the presentation of the Suit till the date of Decree, and thereafter, at the rate of 6% per annum till realization on the principal sum of **Rs.1,25,000/-** (Rupees One Lakh and Twenty Five Seventy Thousand only) **+ Rs.1,25,000/-** (Rupees One Lakh and Twenty Five Seventy Thousand only) respectively.

*{{Typed to my dictation to the Stenographer (Grade-III), corrected, signed and pronounced by me in the open Court, this the **01st day of March , 2024.**}}*

SD/-NETTEM RADHIKA
PRL.CIVIL JUDGE (Junior Division),
ONGOLE

APPENDIX OF EVIDENCE
WITNESS EXAMINED

FOR PLAINTIFF		FOR DEFENDANT	
PW:1	Velpula Chandra Rao	DW:1	Kancherla Venkata Rao

DOCUMENTS MARKED

FOR PLAINTIFF		FOR DEFENDANT
Ex.A1:	Original Promissory Note for Rs.1,25,000/- dated 15.09.2020.	- None -
Ex.A2:	Original Promissory Note for Rs.1,25,000/- dated 15.09.2020.	

ID/-NR
PCJ(JD)/OGL