KACM210046562023

IN THE COURT OF THE III ADDL. CIVIL JUDGE & J.M.F.C., AT KADUR.

PRESENT: Shri. Thahakaleel K A, B.A., L.L.,B
III Addl. Civil Judge and JMFC, Kadur
Dated: This the 28th day of June 2024

PLAINTIFF : **Sri. Channakeshava Investments,**
Ballary Camp, Birur Town, Kadur Taluk.
Represented by its Proprietor,
Sri. K. Vasudeva, S/o. Late. Kempaiah, aged about 58 years, R/o. Ballary Camp, Birur Town, Kadur Taluk,
Chikkamagaluru District.
(By Sri. B.R Advocate)

Versus

DEFENDANT : **S.Ravikumar,**
S/o. Shekarappa,
Aged about 33 years,
Vegetable business and grower,
R/o. Somenahalli Village,
Birur Post and Hobli,
Kadur Taluk, Chikkamagaluru District.
(By Sri.A.S.N.B Advocate)

Date of Institution of Suit	11.09.2023
Nature of Suit	Recovery of Money
Date of Commencement of recording of evidence	12.06.2024
Date of Judgment	28.06.2024

Total Duration	**Year/s**	**Month/s**	**Day/s**
	00	09	17

THAHAKALEEL K A

III Addl. Civil Judge and JMFC

:J U D G M E N T:

This is a suit for recovery of an amount of Rs. 4,50,440/- along with interest at the rate of 16% per annum.

2. The brief facts of the case of plaintiff:

It is the case of plaintiff that the Plaintiff is a proprietory concern, dealing in money lending business at Birur town and having valid money lending license. The defendant has approached the plaintiff and borrowed a sum of Rs. 3,70,000.00/- on 03.05.2022 for his family necessities and to improve his business and agreed to repay the same with interest at the rate of 16% p.a. The defendant on the same day executed on demand promissory note, consideration receipt in favour of the plaintiff by agreeing to repay the loan amount with interest whenever demanded by the Plaintiff. After borrowing the amount the defendant failed to repay the amount in spite of repeated requests and demands made by the plaintiff. The Plaintiff also issued legal notice to the Defendant on 15.07.2023. Despite of service of legal notice, the defendant failed to repay the loan amount. Thus, left with no alternative, plaintiff filed this suit for recovery of an amount of Rs. 4,50,440/-along with interest calculated at the rate of 16% per annum and legal notice charges.

3. In pursuance of service of suit summons, the defendant appeared before this court. But, not filed written statement. Hence, matter is posted for Plaintiff Evidence. The proprietor of plaintiff firm examined himself as P.W.-1 and produced Pronote and consideration receipt dated 03.05.2022 executed by the Defendant, Form No. 6, Money lending license dated 10.04.2023 and 05.03.2018, copy of the legal notice dated 15.07.2023 and copy of postal acknowledgement.

4. On the basis of plaint, and documents produced at initial stage, the following points arise for my consideration:

:POINTS:

1. ***Whether plaintiff proves that defendant borrowed a sum of Rs. 3,70,000 on 03.05.2022 from plaintiff by executing on demand***

promissory note in favour of plaintiff?

2. ***Whether plaintiff proves that defendant is liable to pay interest at the rate of 16% % per annum on the loan amount advanced?***

3. ***Whether plaintiff is entitled to the relief claimed?***

4. ***What order or decree?***

5. Heard learned counsel for plaintiff. Though the opportunities has been provided to the defendants to address arguments, he has not addressed argument, Perused oral and documentary evidence placed on record and my answer to above points is as follows:

Point No.1 : In the Affirmative
Point No.2 : In the Affirmative
Point No.3 : In the Affirmative
Point No.4 : As per final order for the following:

: R E A S O N S :

6. Point No. 1 and 2: I have taken these points together for common discussion, as these points are inter-related and to avoid the repetition of facts.

7. As per provisions of Section 101 of Indian Evidence Act, the entire burden of proof lies on the plaintiff to prove that the defendant had borrowed a sum of Rs.3,70,000/- with interest at the rate of 16% p.a on 03.05.2022 and executed promissory note in favor of the plaintiff.

8. So as to prove his case, plaintiff being the proprietor of the firm examined himself as P.W.-1 and filed affidavit in lieu of examination in chief reiterating contents of plaint. The P.W.-1 categorically deposed that, defendant borrowed an amount of Rs. 3,70,000/- from plaintiff for his family necessities and to improve his business by executing Ex.P.-1 promissory note and Ex.P2 consideration receipt and agreed to repay the same along with interest. Therefore, on the oral evidence of P.W.-1 execution of Ex.P.-1 Promissory note Ex.P.-2 consideration receipt are proved to the satisfaction of this Court. Thus, on the oral evidence of P.W.-1, it is clear that, defendant executed Ex.P.-1 and Ex.P-2 at the time availing loan of Rs. 3,70,000/- from the plaintiff.

9. I have carefully perused Ex.P.-1 /promissory note, wherein it appears that, defendant availed loan of Rs. 3,70,000/- from plaintiff and agreed to repay the same along with 16% per anum. Further, Ex.P.-1/ Promissory note being negotiable instrument has presumption under section 118 of the Negotiable Instruments Act, 1881 to the effect that, the same is drawn for consideration. Since, the execution of promissory note is proved by the evidence of P.W.-1, the statutory presumption U/Section 118 of the Negotiable Instruments Act can be drawn in favor of plaintiff by holding that Ex.P.-1 promissory note is drawn for consideration as per the consideration receipts dated 03.05.2022 produced at Ex.P-2. Therefore, in my considered opinion plaintiff, by producing both oral and documentary evidence and with aid of presumption available under law has satisfactorily proved that, defendant borrowed an amount of Rs. 3,70,000 from plaintiff by executing promissory note and agreed to repay the same along with interest at the rate of 16% per month **Thus, I answer Point No. 1 & 2 in the Affirmative.**

10. Point No. 3: This point is framed with respect to entitlement of claim made by plaintiff. The plaintiff claims for a decree to recover an amount of 4,50,440/- with interest at the rate of 16% per anum. While answering point No.1 and 2, I have concluded that, defendant borrowed a sum of Rs. 3,70,000/- from plaintiff and agreed to pay interest at the rate of 16% per annum. The allegation with respect to non-payment of principal amount and interest remained unchallenged. This being the case, plaintiff is entitled to principal loan amount of Rs. 3,70,000/-

11. Further, plaintiff claimed future interest at the rate of 16% p.a. from the date of suit till realization. The interest till filing of the suit is governed by suit document, which is at the rate of 16% per annum. Therefore plaintiff is entitled to interest of Rs. 78,940/- from date of instrument till filing of this suit. As per section 34 of CPC, this Court has got ample of power to reduce rate of interest *pendente lite* and future interest. The plaintiff sought future interest at rate of 16% per annum. The transaction as narrated in the plaint is a commercial transaction as provided under section 34 of CPC. This being the case, in my considered opinion plaintiff is entitled to interest at the rate of 16% per annum on the loan amount advanced from the date of suit till realization. Therefore, in my opinion plaintiff is entitled to suit claim amount. Apart from this, plaintiff filed this suit within the period of limitation as prescribed under the provisions of Limitation Act. The Plaintiff is having valid money lending license at the time of lending and filling of the suit as per Ex. P4 and E.P5. Hence, in view of section 11 of Karnataka Money lenders Act, 1981 there is no legal bar to grant decree in favour of plaintiff. Thus, plaintiff is entitled to the relief claimed. **Accordingly, I answer this Point in the Affirmative.**

12. Point No. 4: In view of discussion and conclusion arrived at point No.1 to 3, I proceed to pass following:

:O R D E R:

The suit of Plaintiff is decreed in part with costs.

It is ordered and decreed that, defendant is liable to pay an amount of **Rs. 4,50,440/- (Rupees Four Lakh Fifty Thousand Four Hundred and Forty Only)** to plaintiff with interest at the rate of 16% per annum from the date of suit till realization.

Draw up decree accordingly.

(Directly typed by me and then pronounced in open court on this 28th day of June 2024)

THAHAKALEEL K A
III Addl. Civil Judge and JMFC

: A N N E X U R E :

LIST OF WITNESSES EXAMINED ON BEHALF OF PLAINTIFF:

P.W.-1: Sri. K. Vasudeva

LIST OF DOCUMENTS MARKED FOR PLAINTIFF:

Ex.P.-1	:	Promissory notes dated 03.05.2022
Ex.P.-1(a)	:	Signatures of defendant
Ex.P.-1(b)	:	Thumb impression of Defendant.
Ex.P.-2	:	Consideration receipt dated 03.05.2022
Ex.P.-2(a)	:	Signatures of defendant.
Ex.P.-2(b)	:	Thumb impression of Defendant.
Ex.P.-3	:	carbon copy of the Form No.6 .
Ex.P.-4	:	Notarized copy Money lending license dated 01.04.2023
Ex.P.-5	:	Certified copy Money lending license dated 05.03.2018
Ex.P6	:	Copy of the legal notice dated 15.07.2023
Ex.P7	:	Postal acknowledgment.

LIST OF WITNESSES MARKED ON BEHALF OFDEFENDANTs:

--------------- Nil ----------------

LIST OF DOCUMENTS MARKED FOR DEFENDANTs:

--------------- Nil ----------------

Digitally signed by THAHAKALEEL K A
Location: Kadur
Date: 2024.06.28 10:34:57 +0530

THAHAKALEEL K A

THAHAKALEEL K A

III Addl. Civil Judge and JMFC