IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC., HOLALKERE.

PRESENT : **Smt. Prema Vasantrao Pawar.**
B.Com. LL.B.(Spl.)
Senior Civil Judge & JMFC.,
Holalkere.

ORIGINAL SUIT No.13/2020

Dated this the 23rd day of December 2020

PLAINTIFF : Sri. G.H. Veeranna Raju
S/o G.S. Halppa,
Aged about 60 years,
Occ: Agriculturist & Business,
Residing at Shiva Nilaya,
Behind Ladies Hostel,
Murugarajendra Extension,
Holalkere Town,
Chitradurga District,
Pin: 577526.

(By Sri. K.E.M., Advocate)

V/s.

DEFENDANT : Smt. I. H. Sudha W/o
Late E.S. Devarajappa,
Aged about 48 years,
Occ: House wife, Residing at 1st Stage,
Rudreshwara Nilaya, Beside Auto Stand,
Sharavathi Nagara,
Shivamogga, PIN-577202,
and also at Smt. I.H. Sudha
W/o Late E.S. Devarajappa
R/at S.R.E. Lay Out, 1st Cross,
Chitradurga Town,
Chitradurga District PIN-577501.

(Exparte)

Date of institution of the suit : 29-06-2020

Nature of the suit : For recovery of money

Date of the commencement of recording of the evidence	: 08-09-2020
Date on which the judgment was pronounced	: 23-12-2020

		Years	Months	Days
Total duration	:	00	05	24

(Smt. Prema Vasantrao Pawar)
Senior Civil Judge & JMFC.,
Holalkere.

J U D G M E N T

The plaintiff has filed a suit against the defendant for recovery of loan amount of Rs.31,00,000/- together with interest at the rate of 12% and claiming the cost of the suit.

2. **The brief case of the plaintiff is as under:**

It is the specific case of the plaintiff is that, the plaintiff is doing Kirani Business under the name and style Sri. Gunderi Provision Store at Holalkere and also an agriculturist, having plenty of Arecanut gardens and having sufficient means and income. Further plaintiff has submitted that defendant deceased husband by name E.S. Devarajappa and plaintiff are very close family friends and also to the defendant and both have came to the house of plaintiff residence at Holalkere and during the visits they were expressed their financial difficulties, since the defendant deceased husband was having various financial commitments and requested the plaintiff to lend a sum of Rs.31,00,000/- as short term loan and agreed to return as and when the plaintiff demands together with interest at the rate of 12% per annum. Further plaintiff has submitted that the defendant deceased husband E.S. Devarajappa was a Government Employee and he could not borrow such amount and therefore he requested to lend the aforesaid loan amount to his wife, the defendant and as per their request the plaintiff has agreed to give the aforesaid loan amount in view of their long standing friendship. Further plaintiff has submitted that on 25-08-2017 the defendant and her deceased husband were came to the plaintiff residence at Holalkere Town and borrowed the loan amount of Rs.31,00,000/- and on the same day the defendant towards the repayment of the loan issued a duly signed cheque bearing No.448405 drawn on Canara Bank, Vinobhanagar Branch, Davanagere. Further plaintiff has submitted that in addition to that the defendant has also given the certified copy of the sale deed with respect to landed property bearing Re.Sy.No.30/4 situated at Gopanal Village, Channagiri Taluk, Davanagere District for security purpose.

3. It is further case of the plaintiff that he requested the defendant and her husband several times for repayment of the loan amount and both of them were agreed to return the same within a short period of time and believing the words of defendant and keep on waiting in anticipation of getting his money back and when the things stood thus the plaintiff came to know that the defendant husband was unfortunately died on 20-07-2018 in a Road Traffic Accident and again the plaintiff was quite for some time and thereafter plaintiff has requested the defendant and her son several times for repayment of loan amount but they intimated that the death benefits are not settled and they have filed Motor Vehicle Claim case before the Hon'ble Prl. Civil Judge at Chitraduga in MVC No.856/2018 and further assured to return the loan amount at the earliest. Further plaintiff has submitted that on several times requested the defendant and her son they did not obliged to returned the loan amount and without any alternative way the

plaintiff has presented the said cheque dated 29-12-2019 at his banker Holalkere on 04-03-2020, the said cheque was returned on 06-03-2020 with an endorsement “Account Closed”. Further plaintiff has submitted that even after the dishonor of the aforesaid cheque he has intimated to the defendant and her son and requested and demanded to return the said loan amount they could not oblige the request and avoid the plaintiff and try to escape from the liability without any reasons. Further plaintiff has submitted that he has issued legal notices to defendant through his counsel on 12-03-2020 with RPAD but they are returned with an endorsement “Unclaimed” on 23-03-2020 and another notice returned with an endorsement “Addressee Not Known” on 20-03-2020. Further plaintiff has submitted that the defendant filed MVC case before the Hon'ble Prl. Senior Civil Judge at Chitradurga in MVC No.856/2018 and in the said claim petition the defendant declared her address stating that she is residing in the same address as the plaintiff sent the legal notice but the defendant has not replied the said notices and not refund the amount on receipt of the said notices. Hence plaintiff has constrained to file this suit.

4. Suit summons were served to defendant and summons was returned with an endorsement unclaimed 07 days absent. The RPAD summons returned with an endorsement unclaimed and the service is sufficient and deemed to be served. The defendant called out before the court and remained absent. Hence, the defendant is placed exparte. However the matter is for recovery of money, even though the defendant is placed exparte the court has issued court notice to plaintiff and defendant to appear before the Mega Lok-Adalath to resolve their dispute but the defendant has not appeared and case is taken on regular court and posted for plaintiff evidence.

5. The plaintiff is examined as PW-1 and produced as many as 18 documents which are marked as Ex.P1 to Ex.P18 and close the plaintiff side evidence.

6. Based upon the pleadings of the plaintiff the following points will arise for my consideration:-

1. *Whether the plaintiff proves that defendant has borrowed a short term loan of Rs.31,00,000/- on 25-08-2017 and agreed to return, together with interest at the rate of 12% per annum?*

2. *Whether plaintiff further proves that in order to repayment of the said loan amount of Rs.31,00,000/- the defendant issued duly signed cheque bearing No.448405 drawn on Canara Bank, Vinobhanagar, Davanagere for encashment?*

3. *Whether plaintiff further proves that the cheuqe issued by the defendant is dishonored with the reason 'Account Closed'?*

4. *Whether plaintiff is entitled for recovery of suit claim from the defendant?*

5. *What order or decree?*

7. Having heard on plaintiff side and furnished written arguments.

8. My answers to the above Points is as under:

Point No.1	:	In the Partly Affirmative
Point No.2	:	In the Affirmative
Point No.3	:	In the Affirmative
Point No.4	:	In the Partly Affirmative
Point No.5	:	As per the final order for the following:

REASONS

9. **Point No.1 to 4**: These points are taken together for common discussion to avoid repetition of facts and appreciation of the evidence.

It is the specific case of the plaintiff is that, the husband of defendant by name E.S. Devarajappa very close family friend of plaintiff so also defendant. The husband of defendant expressed financial difficulties and requested to lend a sum of Rs.31,00,000/- as a short term loan and agreed to return it as and when plaintiff demands together with interest at the rate of 12% per annum. Further plaintiff has stated that the husband of the defendant is a Government Employee and he could not borrow such amount as such he requested to lend the money to his wife as such as per their requests agreed to give the said loan in view of their longstanding friendship. The plaintiff has submitted that on 25-08-2017 the defendant and her husband came to his residence at Holalkere Town and borrowed an amount of Rs.31,00,000/- and on the same day issued duly signed cheque by the defendant bearing No.448405 drawn on Canara Bank, Vinobanagara Branch, Davangere and assured the plaintiff that whenever the said cheque is so presented will be duly honoured without fail for any reasons. Further plaintiff has stated that the defendant has also given certified copy of the sale deed in respect of the land bearing Sy.No.30/4 situated at Gopanal Village, Channagiri Taluk, towards the security of the above said loan. Further plaintiff has stated that several times he has requested to defendant and her husband to repay the amount but both have agreed to return the amount within a short period. The plaintiff has beveling their words keep on waiting with an anticipation that he getting his money back. Such being the case he came to know that the husband of defendant was died on 20-07-2018 in Road Traffic Accident and who being a family friend he has attended cremation and also consoled the defendant. Further plaintiff has stated that unfortunate demise of husband of defendant the plaintiff quite some period not demanded the loan amount and thereafter plaintiff requested to defendant and her son several times and assured that they have filed a MVC Case No.856/2018 on the file of Prl. Civil Judge, Chitradurga and assured to return back the said loan amount. Further plaintiff has stated that inspite of repeated request and reminder, defendant did not oblige as such he has presented the cheque dated 29-12-2019 through his banker at Holalkere on 04-03-2020 and he was utter shock that the said cheque is returned on 06-03-2020 with an endorsement “Account Closed”. The cheque was dishonored as per the above said reason and he has requested to defendant and her son but they are trying to escape from their liability as such he has issued legal notice on 12-03-2020 and the said notice was issued in two correct addresses of defendant but the said legal notices are returned with an endorsement “Unclaimed” on 23-03-2020 and another notice returned with an endorsement “Addressee not known” on 20-03-2020. Further plaintiff has stated that the defendant declared her address in MVC No.856/2018 and in the same address he has issued a legal notice and it is deemed to be served, as such the defendant has failed to repay the loan amount and dishonor the cheque. Hence, defendant is liable to pay the suit claim and plaintiff has constrained to file this suit.

10. The learned counsel for plaintiff furnished written argument submitted that the plaintiff has established his case by adducing oral evidence as well as producing the documentary evidence and the defendant borrowed the loan and issued the

cheque towards discharge her legal liability and the said documents are not disproved by the defendant and presumption is available in favour of plaintiff as per Sec.118(a) of Negotiable Instrument Act, and further as per Sec.139 of Negotiable Instrument Act the presumption is available in favour of plaintiff and the said presumption are not rebutted by the defendant.

11. In order to substantiate the case of the plaintiff, he has examined as PW-1 reiterated the plaint averments in his examination-in-chief. The plaintiff has produced the notarised copy of the license regarding running Kirani Business in the name and style Gunderi Provision Store marked as Ex.P1. The plaintiff has produced the RTC extracts to show that having arecanut gardens and also to show that he is agriculturist and those RTC extracts are respectively marked as Ex.P2 to Ex.P9. The plaintiff has produced the customers record slip issued by the banker marked as Ex.P10. The cheque issued by the defendant which is marked as Ex.P11 and signature of the defendant is marked as Ex.P11(a). The pay-in-slip, memorandum issued by the Canara Bank which are respectively marked as Ex.P12 and Ex.P13, produce the sale deed in the name of defendant in respect of the property bearing Sy.No.30/4 which is marked as Ex.P14, produce the copy of the notice in favour of defendant which is marked as Ex.P15, the postal cover and copy of the notice in the said postal cover which are respectively marked as Ex.P16, Ex.P17, Ex.P16(a) and Ex.P17(a). The postal receipts which are marked as Ex.P18.

12. On perusal of the pleadings and oral and documentary evidence and also perusal of the written argument submitted by the learned counsel for plaintiff it appears that the plaintiff has filed the present suit for recovery of suit claim from the defendant based

upon the Ex.P11 as it is dishonored as per the reasons mentioned in Ex.P13. The Ex.P11 is dishonored with the reason "Account Closed". It is worth to note that what is the effect of closing the account after cheque is issued but, before it is presented for encashment, it amounts to returning the cheque as unpaid because the money standing to the credit of that account is nil, therefore closure of the account would be eventuality after the entire amount therein is withdrawn. Thus if a person choses to close his account in the bank after issuing the cheque, it amounts to an offence as there is insufficient funds in accordance with Negotiable Instrument Act. In the instant case though the cheque Ex.P11 was presented it is returned with an endorsement reason mentioned in Ex.P13 and it amounts to an dishonor. It is pertinent to note that the Ex.P11 is the signed cheque issued by the defendant on the date of borrowing the loan. The defendant has failed to repay the loan amount as such the plaintiff has presented the cheque and it is dishonored. The cheque means in accordance with Negotiable Instrument Act, a cheque is a bill of exchange it is an order on the drawee bank to pay the amount specified in it to the payee or the bearer until and unless the amount mentioned in the cheque is paid. Therefore in the instant case Ex.P11 is issued by the defendant and there is a element of consideration for issuing the cheque.

13. It is worth to note that the plaintiff has produced the documentary evidence as well as oral evidence to prove the element of consideration issuing the cheque by the defendant and defendant is remained absent and unchallenged the testimony of PW-1 and also not rebutted the presumption available in favour of plaintiff in accordance with Sec.118(a) and Sec.139 of Negotiable Instrument Act. It is also worth to note that, the burden to prove the consideration for the cheque lies on the defendant, if not rebutted,

the presumption is that cheque was issued for consideration. It is for the defendant to prove that the cheque was not issued towards a debt or liability. The defendant has not appeared before the court and not rebutted the presumption available in favour of plaintiff in accordance with the above said provisions under the Negotiable Instrument Act. The presumption is that cheque was issued for valid consideration U/Sec.118 can be raised only when the proceedings are initiated after complying with the statutory requirement of service of notice on the drawer. In the instant case also the plaintiff has issued a legal notice in two addresses as per Ex.P15 and the notices were returned with an endorsement unclaimed and moreover the plaintiff has stated that what the address given by the defendant in MVC No.856/2018 the same address has given by the plaintiff and issued the legal notice, as such it is deemed to be served to defendant.

14. On perusal of the oral evidence as well as documentary evidence it reveals that the defendant has borrowed the loan from the plaintiff and issued the Ex.P11 for discharge the liability and also for security purpose put up the sale deed as per Ex.P14. The defendant has not appeared before the court and not challenge the testimony of PW-1 as such inference can be drawn against the defendant as such according to Sec.114(g) of Indian Evidence Act the inference can be drawn as the defendant is issued Ex.P11 for discharge of legally recoverable debt. The plaintiff has established by adducing oral evidence as well as producing the documentary evidence that the defendant borrowed the loan from the plaintiff and also agreed to repay the same with an interest at 12% per annum. There is no evidence before the court regarding payment of interest as such the plaintiff is not entitle 12% interest as it is very exorbitant.

15. It is pertaining to note that plaintiff has averred that the defendant is liable to pay Rs.31,00,000/- and agreed to repay the same with interest but there is no evidence before the court regarding payment of interest, as such plaintiff has established for issuance of cheque by the defendant for discharge of legally recoverable debt and also plaintiff has established that defendant has issued the Ex.P11 which was dishonored as per the reasons mentioned in Ex.P13 and moreover the account has been closed it amounts to dishonor of cheque and plaintiff cannot debarred to suit claim against the defendant. The defendant has not challenged the documentary evidence, as such the defendant is liable to pay the suit claim in favour of plaintiff with accrued interest of 6% per annum from the date of dishonor of cheque till realization. Hence, for the above reasons Point No.1 and 4 answered in the Partly Affirmative and Point No.2 and 3 are answered in the Affirmative.

16. **Point No.5**:- In view of the above findings I proceed to pass the following:

O R D E R

The suit of the plaintiff is hereby decreed in part with cost.

It is further ordered that the plaintiff is entitle to recover the suit claim of Rs.31,00,000/- together with interest at the rate of 6% per annum from the date of dishonor of cheque till realisation.

It is further ordered that the defendant is held liable to repay the above said suit claim within two months and in default the plaintiff is entitle to recover the above said suit claim in accordance with law.

Draw decree accordingly.

(Dictated to the Stenographer directly on the computer, typed by him, corrected by me, then pronounced in the Open Court on this the 23rd December, 2020)

(Smt. Prema Vasantrao Pawar.)
Senior Civil Judge & JMFC.,
Holalkere.

A N N E X U R E S

1. **LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF:**

PW.1 : G.H. Veeranna Raju

2. **LIST OF DOCUMENTS MARKED FOR THE PLAINTIFF:-**

Ex.P1 : Trade License issued by Chief Officer, Pattana Panchayath, Holalkere
Ex.P2 to 9 : C/c of the RTC extracts
Ex.P10 : Customer's Record slip
Ex.P11 : Original Cheque issued by Defendant
Ex.P11(a) : Signature of defendant
Ex.P12 : Original Pay in slip of PW-1
Ex.P13 : Endorsement issued by the Canara Bank dt:06-03-2020
Ex.P14 : Original Sale deed dtd: 24-06-2011
Ex.P15 : Legal Notice dtd: 12-03-2020
Ex.P16 & 17: 02-Postal covers with acknowledgements
Ex.P16(a) & 17(a): 02-Legal Notices in the postal covers
Ex.P18 : 01-Postal receipt

3. **LIST OF WITNESSES EXAMINED FOR THE DEFENDANT:-**

-Nil-

4. **LIST OF DOCUMENTS MARKED FOR THE DEFENDANT:-**

-Nil-

(Smt. Prema Vasantrao Pawar.)
Senior Civil Judge & JMFC.,
Holalkere.