

IN THE COURT OF THE II ADDITIONAL JUNIOR CIVIL JUDGE::
KADAPA

Present:-Sri Shaik Reyaz.,
II Additional Junior Civil Judge, Kadapa
Thursday, this the 2nd day of February, 2023

Original Suit No.1016 of 2022

Between:

Jada Siva Sankaraiah, S/o J.Subbaiah, Hindu, aged 57 years, residing at
D.No.4/799, Nagarajupeta, Kadapa city, Y.S.R. District.

.... Plaintiff

Vs.

Kambampati Sreeramulu, S/o Lakshumaiah, Hindu, aged about 47
years, working as Gang Mazdur in R&B, Sub-Division, Kotireddy Circle,
Kadapa city.

....Defendant

This suit is coming on 30.01.2023 for final hearing before me in the
presence of **Sri T.Ramalingeswara Raju**, counsel for the plaintiff and
defendant remained exparte, this court delivered the following:-

J U D G M E N T

This is a suit filed by the plaintiff against the defendant for recovery of
an amount of Rs.4,81,326/- being the principal and interest basing on the
foot of two promissory notes dt.24.04.2019 & 26.10.2019 together with
interest and costs of the suit

2. The brief averment of the plaint are that:

The defendant borrowed a sum of Rs.30,000/- & Rs.2,50,000/- from
the plaintiff on 24.04.2019 & on 26.10.2019 for his family and legal
necessities and executed two promissory notes in his favour agreeing to
the repay the same with interest at 24% p.a. Thereafter, in spite of several
demands made by the plaintiff, the defendant made part payment of
Rs.1,000/- on 20.04.2022 towards the promissory note dated 24.04.2019
which is endorsed on the backside of the promissory note. Thereafter, the
defendant had not repaid the amount. The plaintiff also got issued a legal
notice on 11.07.2022, which was returned. Hence, he filed this suit.

3. Though summons were served to the defendant, he called absent
and there is no representation. Hence, the suit is ordered to be heard
exparte against the defendant on 29.11.2022.

4. The plaintiff to prove his case got examined himself as P.W.1 by
filing his chief examination affidavit and got marked Exs.A1 to A5 on his

behalf.

5. Heard the counsel for plaintiff. The defendant remained *ex parte*.

6. Perused the record.

7. Now the point for consideration is

Whether the plaintiff is entitled to recover the suit amount from the defendant as prayed for?

8. **POINT:** To prove his case, the plaintiff/PW.1/J.Siva Sankaraiah, filed his chief affidavit in lieu of his chief-examination and reiterated the facts mentioned in the plaint. As per the evidence of PW.1, the defendant borrowed an amount of Rs.30,000/- and Rs.2,50,000/- on 24.04.2019 and on 26.10.2019 agreeing to repay the same with interest at the rate of 24% p.a. and executed two promissory notes/Ex.A1 & Ex.A3 in his favour. Subsequently, on repeated demands made by the plaintiff the defendant made part payment of Rs.1,000/-/Ex.A2 and thereafter again as the defendant failed to make the payment he issued legal notice Ex.A4 which is returned under Ex.A5 returned cover. Hence, he is constrained to file this suit. Thus, a perusal of the evidence of PW.1 coupled with Exs.A1 to A5 proves the same.

9. To rebut the evidence adduced by the plaintiff, the defendant has not appeared before the court and contested the suit. There is also no representation on his behalf. As such, he had neither filed his written statement nor entered into the witness box to plead his case and hence he was set *ex parte*. Thus, it shall be presumed that the defendant admitted the case of the plaintiff. The same principle was laid down in a decision reported in ***Vidhyadhar vs Mankikrao and another* [AIR 1999 SC 1441]**, wherein their Lordships Justice S. Saghir Ahmad and D.P. Wadhwa held as follows:

“Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.”

Thus, in view of the above evidence, facts and circumstances of the case, this Court is of the view that the evidence of PW.1 proved the execution and passing of consideration under Ex.A1 & A3 promissory notes to the defendant, and as such he is entitled to recover the suit amount. Hence, the point is answered accordingly.

10. With regard to interest, the plaintiff had claimed 18% interest on the principal amount from the date of the suit till the date of realization of the amount. Sec.34 of the Civil Procedure Code, 1908 postulates that 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 per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit. Hence, as this suit is disposed of by ordering it to be head *ex parte* against the defendant, this court is of the view that 6% interest from the date of the suit till the date of realization is reasonable to be ordered on the principal amount adjudged.

11. In the result, the suit is decreed with costs, directing the defendant to pay a sum of Rs.4,81,326/- (Rupees Four lakhs eighty one thousand three hundred and Twenty six only) to the plaintiff together with subsequent interest @ 6% p.a., from the date of the suit till the date of realization on the principal amount of Rs.2,79,000/- (Rupees Two lakhs seventy nine thousand only).

Typed to my dictation by the stenographer, corrected and pronounced by me in the open court, this the 2nd day of February, 2023.

Sd/- Shaik Reyaz,
**II ADDITIONAL JUNIOR CIVIL JUDGE,
 KADAPA.**

APPENDIX OF EVIDENCE
WITNESS EXAMINED FOR

PLAINTIFF:-

P.W.1: J.Siva Sankaraiah

DEFENDANT:- Set-Exparte

EXHIBITS MARKED FOR P.W.1:-

Ex.A.1 : Original suit promissory note dated 24.04.2019 for Rs.30,000/-.

Ex.A.2: Part payment endorsement dt.20.04.2022 made by the defendant for Rs.1,000/- on the reverse side of the 1st promissory note dt.24.04.2019.

Ex.A.3: Original suit promissory note dated 26.10.2019 for Rs.2,50,000/-.

Ex.A.4: Office copy of the legal notice dated 11.07.2022 along with postal receipt. (Xerox marked subject to objection).

Ex.A.5: Unserved returned postal cover

EXHIBITS MARKED FOR DEFENDANT:- NIL

Sd/- Shaik Reyaz,
**II Addl. Junior Civil Judge,
Kadapa.**