KAHS410030592014

Presented on : 11-06-2014
Registered on : 11-06-2014
Decided on : 16-07-2026
Duration : 12 years, 1 months, 5 days

IN THE COURT OF PRINCIPAL CIVIL JUDGE AND J.M.F.C. AT ARSIKERE

:: PRESENT ::

SMT.VEENA KOLEKAR, ***B.A., LL.B.(Hons), LL.M.***
Prl. Civil Judge & J.M.F.C., Arsikere

DATED THIS 16TH DAY OF JULY 2026

ORIGINAL SUIT No.227/2014

Plaintiffs : Sri.H.N.Umesha
S/o Nanjundappa,
Aged about 43 years,

Dead by LR's

1(A) Smt.Shwetha S.M.
W/o Late H.N.Umesha,
Aged about 38 years,

1(B) Kum.Harshitha H.U.
D/o H.N.Umesha,
Aged about 14 years,

1(C) Master Mahesh
S/o Late H.N.Umesha,

Aged about 7 years,
Since (B) & (C) are minors
represented by Natural
Guardian Mother.
All are R/o: R/o: Sainatha Road,
Arsikere Town.

(By Sri.B.K.V., Advocate)

- Versus -

Defendants **:** Sri.Somashekar
S/o Thimmegowda,
Aged about 42 years,
R/o: Rangapura Village,
Kammaraghatta Post,
Gandasi Post, Arsikere Taluk.

Dead by LR's

D1(A) Smt.Shivamma
W/o Late Somashekar,
Aged about 52 years,
R/o: Rangapura Village,
Kammaraghatta Post,
Gandasi Post, Arsikere Taluk.

D1(B) Smt.Kavana W/o Pradeep,
D/o Late Somashekar,
Aged about 29 years,
R/o: Gangenahalli Village,
Baguru Hobli,
Channarayapattana Taluk.

D1(C) Smt.Nayana
W/o Yashwanth,
D/o Late Somashekar,
Aged about 27 years,

D1(A) & D1(C) are
R/o: Rangapura Village,
Kammaraghatta Post,
Gandasi Post, Arsikere Taluk.

(D-1 by Sri.A.G.D., Advocate &
D-1(a) to (c) Exparte)

:: JUDGMENT ::

This suit is filed by the plaintiffs for recovery of sum of Rs.92,500/- with current and future interest at the rate of 18% per annum from the date of suit, till the realization of the amount from the defendants.

2. The brief facts of the case of the plaintiffs are as under:

The plaintiff and the defendant are known to each other since many years. The defendant approached the plaintiff on 15.06.2013 and borrowed Rs.80,000/- from the plaintiff for domestic purpose and agreed to pay the same with interest at the rate of 18% per annum and also agreed to return the said amount whenever demanded. On the same day for having received the said amount, the defendant has executed on demand promissory note in favour of the plaintiff and consideration receipt in favour of the plaintiff in the presence of witnesses by name Mohan Kumar Y.B. S/o Basavaraju, Arsikere Town and Naveen A.P. S/o Puttaswamy and Biklamdar.

3. Further, inspite of repeated requests by the plaintiff, defendant has not repaid the money. As such, plaintiff got issued the legal notice on 21.04.2014 and the same is served on the defendant. But the defendant has not repaid the money and he is due to the plaintiff a sum of Rs.92,500/- including interest. Hence, the plaintiff has filed this suit.

4. After service of the suit summons, the defendant has appeared through his counsel and filed written statement.

5. The defendant has denied all the plaint averments and contended that about one year back one Basavaraju S/o Gangaiah resident of Doddakodihalli Village, Belur Taluk has borrowed a loan of Rs.10,000/- from the plaintiff. Thereafter, when the said Basavaraju did not repay the loan, the plaintiff went to the house of Basavaraju situated at Doddakodihalli Village. The defendant No.1 got married to one Shivamma who is the daughter of paternal uncle of Basavaraju. Then the defendant No.1 went to the house of his father-in-law situated in the same village, at that time, the plaintiff came to the house of Basavaraju and picked up a quarrel with respect to repayment of loan amount. At that time, the defendant No.1 asked the plaintiff about the reason for the said galata. The plaintiff replied that about 6

months back the said Basavaraju has borrowed loan of Rs.10,000/- from him, but has not repaid the same. In order to avoid the said galata, the defendant No.1 assured the plaintiff that he will make arrangements for repayment of loan taken from Basavaraju. Thereafter, the plaintiff asked the defendant for repayment of the loan borrowed by the Basavaraju as assured by the defendant. Then the defendant has paid Rs.30,000/- to the plaintiff in the presence of Basavaraju as repayment of the loan borrowed by Basavaraju.

6. After receiving the said amount, the plaintiff again demanded the money. Then about 3 months back, the plaintiff picked up a quarrel with the defendant near the shop beside the bakery on Haranahalli Main Road by stating that "You have to pay the remaining amount, otherwise, we won't let you go" and gave life threat to put signature on some documents. Due to the threat, the defendant put his signature on Pronote and Receipt, which are not the loan transaction by the defendant. Hence, the plaintiff by misusing the documents, has filed the present false suit. Accordingly, prayed to dismiss the suit.

7. Based on the pleadings and materials available on record, my predecessor in office then has framed the following issues:

:: ISSUES ::

1. Whether the plaintiff proves that, the defendant has borrowed the sum of Rs.80,000/- with agreed rate of interest @ 18% p.a. from the plaintiff by executing promissory note and consideration receipt in favour of plaintiff?

2. Whether the plaintiff proves that, he is entitled for recovery of suit claim amount of Rs.92,500/- along with current and future interest @ 18% p.a.?

3. What order or decree?

8. In order to prove the case, the plaintiff got examined himself as PW-1 and got marked 4 documents as per Ex.P1 to 4. In support of the plaintiff's case one Sri.Naveen A.P. who is the attesting witness for on demand promissory note got examined as PW-2. After recording the evidence of plaintiff, the plaintiff reported as dead and his legal heirs brought on record as plaintiff No.1(a) to (c). During the pendency of the suit, the defendant also reported as dead and his legal heirs brought on record as defendant No.1(a) to (c). Inspite of service of summons defendant No.1(a) to (c) remained absent, hence placed exparte.

9. Heard both side and perused the material on record.

10. My findings on the above issues are -

Issue No.1 : In the Affirmative,

Issue No.2 : Partly in the Affirmative,

Issue No.3 : As per final order for the following:

:: R E A S O N S ::

11. **Issue No.1** : The plaintiff has filed the present suit for recovery of sum of Rs.92,500/- with current and future interest at the rate of 18% per annum from the date of suit, till the realization of the amount from the defendant. It is the specific case of the plaintiff that on 15.06.2013 the defendant approached the plaintiff and borrowed Rs.80,000/- from the plaintiff for domestic purpose and agreed to pay the same with interest at the rate of 18% per annum and also agreed to return the said amount whenever demanded. On the same day for having received the said amount, the defendant has executed on demand promissory note in favour of the plaintiff and consideration receipt in favour of plaintiff in the presence of witnesses by name Mohan Kumar Y.B. S/o Basavaraju, Arsikere Town and Naveen A.P. S/o Puttaswamy and Biklamdar.

12. In order to prove his case, the plaintiff got examined himself as PW-1 and filed affidavit in lieu of his chief examination and reiterated the entire plaint averments and got marked documents as per Ex.P1 to 4. Ex.P1 is the Promissory Note, Ex.P2 is the Receipt, Ex.P3 is the Legal

Notice dated 21.04.2014 and Ex.P4 is the Acknowledgment. PW-1 identified the signatures of the defendant as per Ex.P1(a) and (b) and Ex.P2(a) and (b) and witnesses by name Mohan Kumar and Naveen were present and the said document was written by H.B.Paramesha who is the scribe. To corroborate the evidence of PW-1 the plaintiff examined PW-2 who is an attesting witness to Ex.P1 and 2. PW-2 deposed that he has attested as a witness on Ex.P1 and 2 dated 15.06.2013 which is a business transaction taken place between plaintiff and defendant and identified his signature as per Ex.P2(c) and Ex.P1 and 2 written by Biklamdar Paramesh.

13. In the cross-examination of PW-1, no material contradictions or admissions are elicited to disbelieve the loan transaction or the execution of Ex.P1 and 2.

14. Per contra, the defendant has taken up contention that when he visited the village of his wife, at that time, the plaintiff demanded the repayment of the loan amount to the Basavaraju who is the relative of his wife. In order to avoid the galata, the defendant has paid Rs.30,000/- to the plaintiff. Thereafter, the plaintiff again demanded the money to the defendant and gave a threat and got signature of the defendant on some documents.

15. During the pendency of the suit, the defendant died and his legal heirs representatives were brought on record.

Inspite of sufficient opportunities, the defendant No.1(a) to (c) have not adduced oral or documentary evidence in support of their contentions taken in the written statement. The specific contention taken by the defendant that he had repaid a sum of Rs.30,000/- is neither proved by adducing evidence and nor proved by furnishing cogent documentary evidence.

16. It is well settled principle of law that a fact pleaded but not proved cannot be accepted. Once the plaintiff has adduced cogent and documentary evidence proving the execution of Ex.P1 and 2, the burden shifts upon the defendant to rebut the same. The defendant having failed to enter the witness box and the legal representatives also not adduced any evidence, an adverse inference is drawn against the defendants. Ex.P1 and 2 are original documents and the execution of the same has been deposed by PW-1 and 2. The defendants have neither disputed the signatures on the documents nor taken any steps to establish that the documents are obtained by fraud. After considering all these facts and circumstances of the case, this Court is of the opinion that the plaintiff has established the fact of obtaining loan of Rs.80,000/- by the defendant on 15.06.2013 with agreed rate of interest @ 18% p.a. from the plaintiff by executing promissory note and consideration receipt in favour of the plaintiff. With

these observations, this Court has answered Issue No.1 in the ***"Affirmative"***.

17. **<u>Issue No.2</u> :** The plaintiff has specifically claimed the recovery of amount of Rs.92,500/- with interest at the rate of 18% per annum from the date of suit till its realization from the defendant. In view of findings given in Issue No.1, the plaintiff has proved that the defendant has borrowed loan of Rs.80,000/- on 15.06.2013 by executing Ex.P1 and 2. The execution of the promissory note having been proved, the contractual stipulation regarding payment of interest also binds the defendant. Under Section 34 of the CPC, the Court has discretion to award reasonable interest from the date of the suit till realization. Since the defendant retained the plaintiff's money without repayment, the plaintiff has suffered monetary loss. Award of interest is necessary to compensate the plaintiff. Therefore, it is proper if the interest at the rate of 12% p.a. is imposed on the principal amount of Rs.80,000/- from the date of suit till the date of decree and at the rate of 6% per annum from the date of decree till its realization as per Sec.34 of Code of Civil Procedure, 1908, the interest of the justice would be met. Accordingly, I hold this point ***"Partly in the Affirmative"***.

18. **<u>Issue No.3</u> :** For the reasons stated and discussion made above, this Court proceed to pass the following;

:: <u>ORDER</u> ::

The suit of the plaintiff is hereby partly decreed with costs.

The defendants being the legal representative of the deceased defendant are held liable to the pay Rs.92,500/- to the plaintiff along with interest at the rate of 12% per annum on principal amount of Rs.80,000/- from the date of suit till the date of decree and at the rate of 6% p.a. on the principal amount from the date of decree till its realization.

Draw decree accordingly.

(Dictated to the stenographer and typed by her in computer, corrected and signed by me and then order is pronounced in the open Court on the 16th day of July, 2026)

(SMT.VEENA KOLEKAR)
Prl. Civil Judge & J.M.F.C.,
Arsikere.

:: <u>ANNEXURE</u> ::

<u>A) Witness examined on behalf of the plaintiff:</u>

PW-1	-	Sri.H.N.Umesh
PW-2	-	Sri.Naveen A.P.

B) Documents marked on behalf of the plaintiff:

Ex.P1	-	Promissory Note
Ex.P2	-	Receipt
Ex.P3	-	Legal Notice
Ex.P4	-	Acknowledgment

C) Witness examined on behalf of defendant:

-NIL-

D) Documents marked on behalf of defendant:

-NIL-

Prl. Civil Judge & J.M.F.C.,
Arsikere.