

**IN THE COURT OF THE II ADDL. CIVIL JUDGE &
J.M.F.C., PANDAVAPURA**

DATED THIS THE DAY 30th day of October 2021

***Present : Smt. Yashashwini Ameen B.
M.A., LL.M.,
II Addl. Civil Judge & J.M.F.C.,
Pandavapura***

O.S.No.206/2021

PLAINTIFF: Dharmesha K s/o Krishnegowda,
aged 37 years, r/at Neelanahalli
village, Melukote hobli,
Pandavapura taluk, Mandya
district.

**(By Sri. SNM, Advocate)
-V/S-**

DEFENDANT: S.Pavithra w/o Raghu, aged 34 years,
r/at BGS Nagar, Opposite Reliance
petrol bunk, NM road, Kasaba hobli,
Pandavapura town & taluk, Mandya
district.

(Placed exparte)

Date of Institution of the suit	24.08.2021
Nature of the Suit	Money suit
Date of commencement of recording of Evidence	05.10.2021
Date on which the Judgment was pronounced	30.10.2021

Total Duration	Year/s	Month/s	Day/s
	00	02	06

(Smt. Yashashwini Ameen B.)
II Addl. CIVIL JUDGE & J.M.F.C.
Pandavapura.

JUDGMENT

This is a suit for recovery of sum of Rs.1,35,500/- together with future interest.

2. Brief facts of the plaintiff's case is:- On 20.07.2019 defendant has borrowed a loan of Rs.1,00,000/- from the plaintiff for the purpose of house hold expenses. Further she agreed to repay the same with an interest @ 1.5% p.m. On the same day, the defendant has executed an on demand pro-note along with consideration receipt in favour of the plaintiff in the presence of the witnesses. But on several demand of the plaintiff, defendant has not repaid the said loan amount. Even the plaintiff has issued legal notice dated 20.04.2021 through his

counsel calling upon the defendant to repay the amount borrowed by her, but the defendant has not replied the notice nor repaid the amount. Hence plaintiff has filed this suit for recovery of Rs.1,35,500/- and prayed to decree the suit.

3. After issuance of suit summons, defendant has not appeared before this court. Hence, she is placed *exparte*.

4. To prove the plaint averments the plaintiff examined himself as PW-1 and got exhibited 5 documents which are marked at Ex.P1 to Ex.P5. Defendant side evidence is taken as nil.

5. I have heard the argument canvassed by the learned counsel for plaintiff and perused the materials on record.

6. The following points would arise for my consideration:

1. Whether plaintiff proves that the defendant availed loan of Rs.1,00,000/- from the plaintiff on execution of on demand pro-note and receipts and failed to repay the same?

2. Whether plaintiff is entitled for suit claim?

3. What order or decree?

7. My answer to the above points is as under:-

Point No.1 – Affirmative

Point No.2 – partly affirmative

Point No.3 –As per final order for the following:-

REASONS

8. POINT No. 1:- On 20.07.2019 defendant has borrowed a loan of Rs.1,00,000/- from the plaintiff for the purpose of house hold expenses. Further he agreed to repay the same with an interest @ 1.5% p.m. On the same day, the defendant has executed an on demand pro-note along with consideration receipt in favour of the plaintiff in the presence of the witnesses. But on several demand of the plaintiff, defendant has not repaid the said loan amount. Even the plaintiff has issued legal notice dated 20.04.2021 through his counsel calling upon the defendant to repay the amount borrowed by her, but the defendant has not replied the notice nor repaid the amount. Hence plaintiff has filed this suit for recovery of

Rs.1,35,500/-and prayed to decree the suit.

9. Even though, suit summons was served but defendant has not appeared before the court to deny the plaint averments filed by the plaintiff.

10. To prove the plaint averments the plaintiff has examined himself as PW-1 and has filed affidavit his examination-in-chief, wherein he has reiterated the entire plaint averments. Further he has produced 5 documents as Ex.P1 to Ex.P5. The On Demand Pro-Note dated 20.07.2019 executed by the defendant for the sum of Rs.1,00,000/- in favour of the plaintiff, is marked as **Ex.P1**. Pw1 has identified the signature of the defendant and witnesses and scribe in Ex.P1 which are marked as Ex.P1(a) to Ex.P1(d).

11. Further PW-1 has produced the money receipt dated 20.07.2019 which is marked as **Ex.P2** also he identified the signature of the defendant and witnesses and scribe in Ex.P2 which are marked as Ex.P2(a) to Ex.P2(d). By perusing these documents it clearly shows that the

defendant has obtained the loan from the plaintiff and agreed to repay the said loan amount.

12. Further the plaintiff has produced legal notice dated 20.04.2021, postal receipt and postal acknowledgment which are marked as **Ex.P3 to Ex.P5**.

13. Even after the service of summons, defendant has not appeared before the court. Therefore, on going through the materials placed on the record and evidence of PW-1, documents Ex.P1 to Ex.P5, by comparing them with the plaint averments, I am not finding contradiction in them. If at all the defendant has not liable to pay the said amount. He would have not executed Ex.P1 and Ex.P2. Moreover he could have appeared before this court and denied the oral and documentary evidence of the plaintiff. The defendant has not chosen to do so. Therefore, there are absolutely no grounds to disbelieve the unchallenged evidence of PW-1. On the other hand, an adverse inference has to be drawn against the defendant for not denying the evidence of plaintiff.

14. It is a well established principles of law that money suit must be filed within period of 3 years from the date of loan acknowledgment of debt. Upon considering the fact such Ex.P1 and Ex.P2 it is fully established that the suit is within time. Hence, **I answer point no. 1 in the affirmative.**

15. Point No. 2:- This court has already come to the conclusion that the plaintiff proved that the defendant borrowed a loan of Rs.1,00,000/- by executing necessary documents and he failed to repay the same inspite of several demands. But, so far as the interest is concerned, the plaintiff has prayed to award the interest at 18% P.A. compounded monthly, from the date of suit till realization (i.e., interest pendente lite and future interest). There is no provision to award compound interest in CPC. The interest pendente lite and future interest at the rate of 18% P.A. seems to be exorbitant, more so, when the prior interest (i.e., interest till the filing of the suit) has been applied at 18% P.A. Considering these aspects, interest pendentelite and future interest @

6% p.m. is reasonable. Accordingly, this Point is answered **partly in the Affirmative.**

16. Point No.3:- For the foregoing reasons and answer to the above points, this court proceed to pass the following:-

ORDER

*The suit of the plaintiff is hereby
partly decreed with cost.*

*Plaintiff is entitled for a sum of
Rs.1,34,500/- with interest at the rate of
6% P.A. on principal amount from the date
of suit till its realization.*

Draw decree accordingly.

*(Dictated to Stenographer directly on computer and
corrected by me and then pronounced it in open court
this the 30th day of October 2021)*

**(Smt. Yashashwini Ameen B.)
II Addl. CIVIL JUDGE & J.M.F.C.
Pandavapura**

ANNEXURE1. Witness examined for the Plaintiff:-

PW-1 : Dharmesh

2. Documents marked for the Plaintiff:

Ex.P1 : On Demand Pro-Note

Ex.P1(a) : Defendant Signature

Ex.P1(b) & (c) : Witnesses Signature

Ex.P1(d) : Document writer Signature

Ex.P2 : Consideration Receipt

Ex.P2(a) : Defendant Signature

Ex.P2(b) & (c) : Witnesses Signature

Ex.P2(d) : Document writer Signature

3. Witnesses examined for Defendant:

Nil

4. Documents marked for the Defendant.

Nil

(Smt. Yashashwini Ameen B.)
II Addl. CIVIL JUDGE & J.M.F.C.
Pandavapura.

Judgment pronounced in the open court vide
separate Judgment

ORDER

*The suit of the plaintiff is hereby
partly decreed with cost.*

*Plaintiff is entitled for a sum of
Rs.1,34,500/- with interest at the rate of
6% P.A. on principal amount from the date
of suit till its realization.*

Draw decree accordingly.

**(Smt. Yashashwini Ameen B.)
II Addl. CIVIL JUDGE & J.M.F.C.
Pandavapura.**