

**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC.,**  
**KRISHNARAJANAGARA**

**PRESENT**

**SMT. GAYATRI. B.COM., L.L.M., (IPR)**

**C/C ADDL. CIVIL JUDGE & JMFC, KRISHNARAJANAGARA.**

**DATED 18<sup>TH</sup> DAY OF MARCH 2021**

**O.S. No. 40/2018**

**PLAINTIFF :** **Rajegowda S/o Late. Chotegowda,**  
**Aged about 58 years,**  
**R/at Kargahalli Koppalu Village,**  
**Hosa Agrahara Hobli,**  
**K.R.Nagar Taluk, Mysuru District.**

**[By: Sri. B.K.N., Advocate]**

**-V/s-**

**DEFENDANTS :** **Sridhara S/o Murthygowda,**  
**Aged about 50 years,**  
**R/at Hampapura Village,**  
**Hosa Agrahara Hobli,**  
**K.R.Nagar Taluk, Mysuru District.**

**[Ex-parte]**

Date of institution of the suit	30-01-2018
Nature of the suit	Money Suit
Date of the commencement of recording of the evidence	18-02-2021
Date on which the judgment was pronounced	18-03-2021
Total duration	<b>Years    Months    Days</b>
	03            01            18

(Gayatri)  
C/c Addl. Civil Judge & JMFC,  
K.R.Nagar.

## **J U D G M E N T**

Plaintiff has filed present suit for recovery of Rs.1,28,000/- with interest at the rate of 24% P.A. along with notice charges and for cost.

### **2. The brief facts of the plaintiff's case are as under:-**

Plaintiff submits, that himself and defendant are known to each other. Defendant on 02-02-2015 towards his legal necessities as such for repayment of hand loans incurred by him previously has obtained a hand loan of Rs. 75,000/- from plaintiff agreeing to repay said hand loan along with interest at the rate of 2% P/M, thereby executed an on demand promissory note along with consideration receipt on dated 02-05-2015.

**3.** Plaintiff further submits, that defendant in spite of several requests and demand made by plaintiff has not come forward to repay the said loan amount and interest there off. Plaintiff got issued notice to defendant through his counsel on 11-01-2018 calling upon defendant to repay the said loan amount. Defendant did not reply. Hence, he left with no other option has filed this suit against defendant for recovery of money.

**4.** Per contra, in pursuance to the suit, suit summons was issued to defendant. Later, stage due to non service of summons to defendant, plaintiff counsel has got issued summons to defendant through paper publication. Defendant was called out absent and was placed ex-parte.

5. Plaintiff has examined himself as PW-1 and another witness as PW-2. He has produced 3 documents and got them marked as Ex.P1 to P3. As defendant is ex-parte no defendant side evidence.

6. Arguments of learned counsel for plaintiff were taken as heard. As defendant is ex-parte, no defendant side argument.

7. On the basis of plaint averments, oral evidence and documentary evidence available on record, the following points arises for consideration:-

**1. Whether the plaintiff proves that the defendant on 02-02-2015 borrowed a sum of Rs.75,000/- from him and further agreed to repay the said loan amount with interest at the rate of 24% per annum and thereby executed an on demand pro-note along with consideration receipt?**

**2. Whether the plaintiff is entitled for recovery of said sum of Rs.75,000/- along with the interest at the rate of 24% P.A. till realization?**

**3. What order or decree?**

8. This court proceeds to answer the above points accordingly:

**Point No.1 : In the Affirmative**

**Point No.2 : Partly in the Affirmative**

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

**:: REASONS ::**

**9. POINT NO.1 :**

Plaintiff in order to discharge the burden casted upon him, has examined himself as PW-1. Filed affidavit in lieu of examination-in-chief, by reiterating all those averments made by him in his plaint. He has produced the original on demand pro-note which is marked as Ex.P1. He has identified signatures of witnesses, scribe and signature of defendant on Ex.P1. Upon the identification of signatures by PW-1 they were marked as Ex.P1(a) to P1(d). Ex.P2 is the office copy of legal notice, Ex.P3 is the postal receipt.

**10.** It is the allegation of the plaintiff, that defendant on 02-02-2015 approached him for a hand loan of Rs.75,000/- towards his legal necessities such as for repayment of hand loans. Defendant by agreeing to repay the said loan with an interest at the rate of 24% P.A, thereby executed an on demand promissory note along with the consideration receipt.

**11.** Plaintiff in order to prove the execution of on demand promissory note has examined another witness as PW-2. PW-2 in his affidavit has submitted, that alleged financial transaction between plaintiff and defendant was held in his presence. He has deposed about the two witnesses one Boranayaka and Krishnegowda signing the said document in his presence. He has identified the signatures of witnesses and defendant along

with the signature of scribe on Ex.P1, which are already marked as Ex.P1(a) to P1(d). PW-1 and 2 were not cross-examined by defendant, due to the act of defendant remaining ex-parte.

**12.** On demand promissory note being a Negotiable Instrument attracts the presumption as provided U/s 118 of the Negotiable Instrument Act, 1881. Wherein in the present suit, this presumption stands un-rebutted. Defendant in spite of having every knowledge as to the pendency of present suit before this court has not chosen to appear and contest the matter so as to rebut the evidence adduced by plaintiff in support of his case. Due to the act of defendant remaining ex-parte, the evidence adduced by plaintiff remained unchallenged and unrebutted. As such plaintiff has satisfactorily discharged the burden casted upon him to prove the fact of execution of on demand promissory note by defendant. Hence, without further discussion this court proceeds to answer this point accordingly.

**13. POINT NO.2:**

In view of the above discussions and the reasons mentioned therein it is clear that, there was a financial transaction between plaintiff and defendant. As it is the prayer of the plaintiff to recover Rs.1,28,000/- which includes interest at the rate of 22% P.A. for 3 years. He has further prayed for grand of interest at the rate of 24% till realization of principal amount. As per on demand pro-note is concerned the loan

amount is unsecured. The interest rate as fixed in the on demand pro-note is exorbitant. **As per the notification No.CMW/04/CML/2003 on 28.8.2003 of Karnataka Government**, the 16% per annum interest fixed to the unsecured loan amount. Here, the plaintiff is entitled for an interest at the rate of 16% p.a. from the date of on demand promissory note till the date of suit. Plaintiff is entitled for a pendent-lite interest at the rate of 6% interest from the date of suit till this order. Plaintiff is also entitled for interest at the rate of 6% P.A. from the date of this order till the lapse of appeal period.

**14.** Now, considering the limitation aspect the date of on demand promissory note is 02-02-2015 and the date of suit is 30-01-2018. In respect of the on demand promissory note plaintiff has issued notice to defendant. Here the suit is within limitation as per **Article 21 of the Limitation Act, 1963** the suit for recovery of money is to be filed within 3 years from the date of execution of said on demand promissory note. Hence, without further discussion this court finds it just and proper to pass an order in respect of an on demand promissory note and to hold that the plaintiff is entitled to recover the principal amount of Rs.75,000/- along with the interest at the rate of 6% per annum from the date of suit till this order and plaintiff is also entitled for interest at the rate of 6% P.A. from the date of

this order till the lapse of appeal period. Hence, this court proceed to answer this point accordingly.

**15. POINT NO.3:**

In view of the discussion and conclusions arrived at by this court, with regard to point No.1 and 2, the suit of the plaintiff deserves to be partly decreed. Hence, this court proceeds to pass the following:

**ORDER**

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

Further, defendant is hereby directed to pay plaintiff principal amount of Rs.75,000/- along with interest at the rate of 16% P.A. from the date of on demand promissory note till the date of suit.

Further defendant is hereby directed to pay interest at the rate of 6% P.A. from the date of suit till this order.

Further defendant is hereby directed to pay interest at the rate of 6% P.A. from the date of this order till lapse of appeal period.

Office to draw decree accordingly.

[Dictated to the Steno, directly on the computer. Corrected and pronounced by me in the Open Court on this the 18<sup>th</sup> Day of March 2021]

(Gayatri)  
C/c Addl. Civil Judge & JMFC,  
K.R.Nagar

**A N N E X U R E****1. List of witnesses examined for plaintiff:-**

PW.1 – Rajegowda  
PW.2 – K.V.Krishnegowda

**2. List of documents marked for plaintiff:-**

Ex.P1 – On demand pronote  
Ex.P2 – Legal Notice  
Ex.P3 – Postal receipt

**3. List of witnesses examined and documents marked for defendants:- Nil**

(Gayatri)  
C/c Addl. Civil Judge & JMFC,  
K.R.Nagar