

IN THE COURT OF THE CIVIL JUDGE AND JMFC
AT DANDELI

Dated this the 16th day of December 2017

Present: Thendrall.K. B.A.L, LL.M.
Civil Judge & JMFC Dandeli.

ORIGINAL SUIT No. 57 / 2016

Plaintiff : Sri. Sadanand Narayan Revenkar,
Age about-70 years, occ: Business,
J.N.Road, Dandeli, Taluk-Haliyal.

(By Sri. Somakumar.S, Advocate)

Vs.

Defendant : Pundlik S/o Mariappa Bajantri,
Aged about-63 years, Occ: Rtd A.S.I,
R/o Said Nagar, Dandeli, Taluk-Haliyal.

(Rajashekar.I.H.)

Date of Institution of the suit	11.03.2016
Nature of the suit	Recovery of money
Date of the commencement of recording of the evidence	04.12.2017
Date on which the Judgment was pronounced	16.12.2017

Total Duration	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
	01	09	05

(THENDRALL.K.)

Civil Judge & JMFC., Dandel

JUDGEMENT

This suit is filed by the plaintiff against the defendant for recovery of money of Rs. 3,22,680/-, i.e. Rs. 2,18,000/- the principal amount and Rs.1,04,680 the interest on the said amount and also future interest at @ 12% and costs of the suit.

2. The brief facts of the case of the plaintiff company are that, The plaintiff is a permanent resident of Dandeli doing Goldsmith business. The defendant is a retired Assistant Sub-Inspector of Police working in Dandeli. The defendant is well know to this plaintiff and are good friends. The defendant was in need of financial assistance to meet the urgent financial requirements of his 2 daughters marriage which was fixed on 24-04-2012 approached the plaintiff for financial assistance of Rs.2,18,000/-. In view of the

friendship plaintiff paid the defendant a sum of Rs.2,18,000/- by way of cash on 16-04-2012 as hand loan on returnable basis. The defendant had assured to repay the amount within 3 months and the defendant had also executed an agreement in this regard. The plaintiff in need of money requested the defendant to repay the amount, The defendant has sought for more time and he has issued a cheque bearing No. 421602 dated 12-03-2013 for Rs. 2,18,000/- drawn on State Bank of India, Dandeli Branch towards discharging his liability. It is further stated that the plaintiff presented the said cheque for realization to his banker State Bank of India, but the said cheque was returned dishonored with reasons “ Funds Insufficient” as per the banker’s memo dated 13-03-2013. This fact was brought to the notice of the defendant and the defendant went on postponing the repayment stating that he is in financial crises after his daughters marriage and required more time for repayment. The defendant went on postponing the repayment on one pretext or the other, the defendant is dragging on the repayment of the hand

loan amount on pretext or the other. The plaintiff has issued a legal notice on 23-01-2014 calling upon the defendant to pay the had loan amount within 15 days from the receipt of the notice. The defendant has received the said notice on but has not repaid the amount. The defendant is liable to pay the said amount. Hence, the plaintiff company has filed the suit.

3. After due service of summons to the defendant, the defendant has appeared before the court through his counsel and failed to file his written statement. Therefore, the written statement of the defendant was taken has not filed.

4. To prove the case of the plaintiff, the plaintiff himself is examined as PW1 and produced the documents Ex.P1 to Ex.P05. The defendant has not produced any evidences either oral or documentary. Heard the arguments of the learned counsels for both parties. Perused the materials available on record.

5. The following points that are arise for my consideration.

1. Whether the plaintiff is entitled for the suit claim?
2. If so, What order or decree?
6. My answers to the above said points are as follows;
Point No.1. : In the affirmative,
Point No.2. : As per final order for the following.

REASONS

7. **Point No.1:** The pleadings of the plaintiff are remained undisputed by the defendants\ . To prove the suit claim, the plaintiff himself is examined as PW1 by filing his affidavit by way of examination-in-chief reiterating the facts stated in the plaint. The plaintiff has also produced documents Ex.P1-e to Ex.P.05. Among them, Ex.P1 is the Hand Loan Loan Agreement, Ex.P.1 a to e to signature of the defendant. Ex.P.2 is the Cheque, Ex.P.2-a is the signature of defendant, Ex.P.3 is the Postal Acknowledgement, Ex.P4 is the Memo issued by the Bank, Ex.P.5 is the office copy of the Notice issued to the defendant, These evidences produced by the plaintiff are also remained unchallenged by the defendant.

8. On perusal of the contents of Ex.P1, it is clear that, the defendant has borrowed a sum of Rs.2,18,000/- from the plaintiff on 16.04.2012 agreeing to repay the same within 3 months. The contents of Ex.P02 reveals that as on 12.03.2013, the defendant was due to the plaintiff in sum of Rs.2,18,000/-. The contents of Ex.P.2 reveals that the defendant admitted his liability. Ex.P.1 reveals that the defendant has agreed to pay the amount of Rs.2,18,00-00. Therefore, the plaintiff has proved the suit claim from the defendant. The suit of the plaintiff is also within the period of limitation. The plaintiff has claimed Rs. 2,18,000/- as interest and future interest on the claim amount of @ 12 % from the defendant. The plaintiff has not produced any evidence with regard to the liability of the defendant to pay the interest and future interest as claimed in the suit. Therefore, under Section 34 of the Code of Civil Procedure, the plaintiff is entitled for interest @ 6% per annum on the adjudged amount from the date of suit till the

date of realization. Under the aforesaid circumstances, the plaintiff is entitled for a sum of Rs. 2,18,000/- together with the interest @ 6% per annum from the date of suit till the date of realization. Hence, I answer Point No.1 in the partly affirmative.

9. **Point No.2:** In the result, I proceed to pass the following;

ORDER

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

The defendant is hereby directed to pay sum of Rs. 2,18,000/- @ 6% per annum from the date of suit till the date of realization to the plaintiff.

Draw the decree accordingly.

(Dictated to the Typist-Copyist directly on computer, printout taken by him, corrected by me and then pronounced in the open court on this the 16th day of December, 2017)

(THENDRALL.K.)

Civil Judge & JMFC., Dandeli.

APPENDIX

List of witness examined on behalf of the plaintiff :

P.W.1 : Sadanand Narayan Revenkar

List of documents exhibited on behalf of the plaintiff :

Ex.P.1 : Hand loan Agreement,
Ex.P.1 a to e : Signature of Defendant
Ex.P.2 : Cheque
Ex.P.2-a : Signature of defendant
Ex.P.3 : Postal acknowledgment
Ex.P.4 : Bankers memo
Ex.P.5 : Copy of Legal Notice,

List of witness examined on behalf of the defendants:

- N I L -

List of documents exhibited on behalf of the defendants:

- N I L -

(THEENDRALL.K.)
Civil Judg & JMFC., Dandeli.

(Order pronounced in the open court vide Separate

Judgment)

ORDER

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

The defendant is hereby directed to pay sum of Rs. 2,18,000/- @ 6% per annum from the date of suit till the date of realization to the plaintiff.

Draw the decree accordingly.

Civil Judge & JMFC., Dandeli.

8. On perusal of the contents of Ex.P1, it is clear that, the defendant has borrowed a sum of Rs.2,18,000/- from the plaintiff on 16.04.2012.. agreeing to repay the same within 3 months together with interest @ 11.75% per annum in 60 monthly installments commencing from 12.10.2013, the 2nd defendant has stood as guarantor to the said loan. The contents of Ex.P11 reveals that as on 30.09.2014, the 1st defendant was due to the plaintiff bank in sum of Rs.3,11,300/-. The contents of Ex.P1 reveals that the 1st defendant admitted his liability. Since the liability of the 2nd defendant being the guarantor is coextensive with the 1st defendant. The suit of the plaintiff is also within the period of limitation. Therefore, the plaintiff is entitled for the suit claim as prayed. Hence, I answer Point No.1 in the Affirmative.

9. **Point No.2:** In the result, I proceed to pass the following;

ORDERS

The suit of the plaintiff is hereby decreed with costs.

The defendants are hereby directed to pay sum of Rs.3,11,300/- to the plaintiff together with interest at the rate of 11.75% per annum from the date of suit till the date of realization.

Draw the decree accordingly.

(Dictated to the Stenographer directly on computer, printout taken by him, corrected by me and then pronounced in the open court on this the 7th day of April, 2015)