**IN THE COURT OF SENIOR CIVIL JUDGE :: KAVALI.**

Friday, this the 24th day of February 2023

**<u>Present</u>:-** Smt.M.Sobha
Senior Civil Judge, Kavali.

**<u>O.S.No.93 of 2017</u>**

Thota Rajaratnam ... Plaintiff

Vs.

Parisipogu Babu Moses
Ananda Kumar ... Defendant

*This suit coming on 14.2.2023 before me for final hearing in the presence of Sri P.Suneel Kumar Singh, Advocate for the Plaintiff and of Sri G.Malyadri, Advocate for the defendant and upon hearing and having stood over for consideration till this day, this court delivered the following:*

**<u>J U D G M E N T</u>**

This is the suit filed by the plaintiff against the defendant for recovery of money basing on the suit promissory note and for costs.

2. **<u>The brief averments in the plaint filed by the plaintiff is as follows:</u>**

The defendant borrowed an amount of Rs.4,00,000/- from him on 1.4.2016 for his family necessities and executed a promissory note undertaking to repay the same with interest at 24% per annum either to the plaintiff or his order on demand at where he resides. Subsequently, the defendant got issued cheque to the plaintiff and the same was dishonoured due to insufficient funds. Then the plaintiff got issued a legal notice on 8.8.2017 and the same was received by the defendant. Recently the plaintiff learnt that the defendant is going to be retired from his service in the month of August 2017, hence the plaintiff issued legal notice on 19.8.2017 demanding him to pay the entire due with interest. The defendant received the notice, but neither gave reply nor paid the amount. The defendant is an employee and he has no application under the benefits of Act 4/38, 45/87 or 2/90, so the agreed rate of interest is claimed. Hence, the suit.

3. **The defendant also filed his written statement and the contents are as follows:**

The defendant denied the some of the averments made by the plaintiff in the plaint and contended that the plaintiff is a retired Teacher and he is wellknown to him and the plaintiff used to money lending business and also running chits business in Kavali town. The defendant was also one of the chit member and paid the instalment amounts. He borrowed an amount of Rs.1,70,000/- on 1.6.2016, by that time the plaintiff requested him to execute promissory note for a sum of Rs.4,00,000/- and then he issued promissory note and also issued one signed blank cheque by writing the amount in the column without mentioning the date. Later, the defendant unable to pay the interest, so the plaintiff got filled the date in the cheque and issued notice for getting wrongful gain. Subsequently the defendant issued a reply notice on 28.8.2017. The plaintiff also got issued another notice demanding the defendant to pay the pronote amount and on receiving the notice the defendant went to the house of plaintiff, but the plaintiff demanded him to pay the amount, so the disputes arose between him and the plaintiff. Taking advantage of pronote and cheques in the hands of plaintiff, he filed the present suit against him and also the defendant prays to deduct the part payment with interest and also prays to scale down the interest and accordingly pass the decree for the remaining due amount, otherwise the defendant will be put to irreparable loss and injury.

4. Basing on the above said pleadings, the following issues have been framed for trial:-

1. Whether the plaintiff is entitled for suit amount as prayed for?
2. To what relief?

5. During the course of trial, the plaintiff personally entered into the witness box and examined as PW1 and also got marked Exs.A1 to A3. The defendant failed to adduce any oral or documentary evidence.

6. Heard arguments.

7. **ISSUE No.1:**

***Whether the plaintiff is entitled for suit amount as prayed for?***

(a) To substantiate the case of the plaintiff, he personally entered into the witness box as PW1 and got marked Ex.A1 suit promissory note to show that the defendant borrowed an amount of Rs.4,00,000/- from him on 1.4.2016 agreeing to repay the same with interest at 24% per annum and subsequently failed to repay the pronote amount inspite of repeated demands made by the PW1. But, the defendant issued a cheque bearing No.412808 for Rs.1,70,000/- dt.10.07.2017 towards part payment of the pronote amount debt. Then he presented the cheque before the bank for honour but it was dishonoured on the ground of funds insufficient. Then he filed a complaint under section 138 of Negotiable Instruments Act in C.C.No.68/2018 on the file of Additional Judicial Magistrate of I Class Court, Kavali. Subsequently, the defendant settled the matter before the elders out of Court. PW1 also testified that during pendency of the said complaint, the defendant has been trying to alienate his properties and also trying to withdraw his retirement benefits secretly with a view to evade the debts to his creditors. So, he issued legal notice under Ex.A2 to the defendant demanding him to pay the amount. Then, the defendant failed to give any reply notice or comply the demands made by PW1. Ex.A3 is the postal acknowledgement.

(b) PW1 in the cross examination testified that the defendant borrowed an amount of Rs.4.00 lakhs on 1.4.2016 towards the studies of his son. He denied the suggestion that the defendant gave an amount of Rs.1,70,000/- towards full and final settlement of amount due under the promissory note and no necessity to repay the amount by the defendant. He also denied the suggestion that he is running a chit business and the defendant is one of the member in the chit business. Again the witness adds that the defendant gave a cheque for Rs.1,70,000/-. PW1 also admitted that he filed the complaint under Section 138 of Negotiable Instruments Act vide C.C.No.68/2018 and the said complaint was compromised and the defendant paid amount to him.

(c) The defendant though filed his written statement and resisted the case of the plaintiff, but he did not enter into the witness box and adduce any oral or documentary evidence in support of his case that he made part payment with interest to the plaintiff to deduct the same from the suit amount. The defendant failed to file any scrap of paper to show that the plaintiff is running a chit business and also doing money lending business and the defendant is also one of the member in the chit and he borrowed an amount of Rs.1,70,000/- only from the plaintiff on 1.4.2016. The entire version of defendant is not supported by any oral or documentary evidence. But the plaintiff in the cross examination categorically admitted that he received an amount of Rs.1,70,000/- from the defendant for the settlement of C.C.No.68/2018. PW1 also admitted that the defendant gave the cheque towards amount due under the promissory note, so as per the evidence of PW1, the defendant paid an amount of Rs.1,70,000/- to the plaintiff and that the plaintiff is not entitled for the total amount as prayed by him.

8. **<u>ISSUE No.2</u>**: ***To what relief?***

In view of findings in Issue No.1, this issue is also partly answered in favour of the plaintiff and against the defendant.

9. In the result, the suit is partly decreed with costs for a sum of Rs.5,34,933/- (Rupees Five lakhs thirty four thousand nine hundred and thirty three only) together with interest at 6% p.a, from the date of suit till the date of realization on principal amount of Rs.2,30,000/-.

Typed to my dictation, corrected and pronounced by me in the open Court, this the 24th day of February, 2023.

Sd/- Smt.M.Sobha.
**SENIOR CIVIL JUDGE**
**KAVALI**

<u>Appendix of evidence</u>
<u>Witnesses examined</u>

**<u>For plaintiff:</u>** **<u>For defendant:</u>**

PW1: T.Rajarathnam - None –

<u>Exhibits marked</u>

Ex.A1: Suit promissory note dt.1.4.2016. - Nil –
Ex.A2: Office copy of legal notice along with Postal receipt.
Ex.A3: Postal acknowledgement.

Sd/- Smt.M.Sobha.
**SENIOR CIVIL JUDGE**
**KAVALI**