



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO. 409 OF 2024 (MON)

BETWEEN:

LOKESH M.,
S/O MARMADIAH,
AGED ABOUT 62 YEARS,
R/A KUTTAVADI VILLAGE,
BILIKERE HOBLI,
HUNSUR TALUK,
MYSURU DISTRICT - 571 103.

...APPELLANT

(BY SRI Y.V.PRAKASH, ADVOCATE FOR
SRI Y.K.NARAYANA SHARMA, ADVOCATE)

AND:

BASAVARAJE URS,
S/O S M PUTTARAJE URS,
AGED ABOUT 63 YEARS,
R/A DEVAGALLI VILLAGE,
KARIMUDDANAHALLI POST,
BILIKERE HOBLI, HUNSUR TALUK,
MYSURU DISTRICT - 571 103.

...RESPONDENT

(BY SRI PRITHVI RAJ B.N., ADVOCATE)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 01.12.2023 PASSED IN RA NO. 12/2022 ON THE FILE OF PRINCIPAL SENIOR CIVIL JUDGE AND JMFC, HUNSUR, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 22.04.2022 PASSED IN OS NO.188/2018 ON THE FILE OF ADDITIONAL CIVIL JUDGE AND JMFC, HUNSUR.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 12.02.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:





CORAM: HON'BLE MR JUSTICE RAVI V HOSMANI

CAV JUDGMENT

Challenging judgment and decree dated 01.12.2023 passed by Principal Senior Civil Judge and JMFC, Hunsur, allowing RA no.12/2022 by setting aside judgment and decree dated 22.04.2022 passed by Additional Civil Judge and JMFC, Hunsur, in OS no.188/2018, this appeal is filed.

2. Though, matter was listed for admission, since records were received and both learned counsel expressed to argue for final disposal on proposed substantial questions of law, matter was heard affording opportunity.

3. Sri YV Prakash, learned counsel appearing for Sri YK Narayana Sharma, advocate for appellant submitted, appeal was by plaintiff in OS no.188/2018 filed seeking recovery of Rs.4,19,150/- along with monthly interest at rate of 1.50% from date of filing of suit till date of realization etc.

4. In plaint, it was stated, on 16.05.2016, defendant borrowed Rs.3,00,000/- from plaintiff for personal need agreeing to repay with monthly interest at 1.5% and executed a promissory note and receipt of amount, in presence of



witnesses. However, he failed to repay even after repeated demands and receipt of legal notice dated 11.06.2018 got issued by plaintiff, leading to filing of suit.

5. On appearance, defendant filed written statement denying plaint averments *in toto*. Specifically denying loan transaction, it was contended, plaintiff's wife Shailaja was running unauthorized chit fund without permission and for said purposes, obtained signed blank promissory note as 'security', when defendant subscribed to a chit for Rs.2,00,000/- in 2015. He claimed to have paid monthly installments of Rs.10,000/-, when dispute arose about accounts. And though he did not pay last two installments due to financial difficulty, he was ready to pay them and repeatedly asked for return of promissory note. Claiming to have lost it, plaintiff had misused it for filing false suit and prayed for its dismissal.

6. Based on pleadings, trial Court framed following:

ISSUES

- 1. Whether the plaintiff proves that the defendant for his legal necessity borrowed a sum of Rs.3,00,000/- by executing on demand promissory note along with consideration receipt on 16.05.2016 and has agreed to repay the loan amount with interest at 1.50% per annum?*



2. *Whether the plaintiff further proves that despite of repeated requests and demand the defendant failed to repay the loan amount?*
3. *Whether the defendant proves his contentions at para no.7 to 9 of his written statement?*
4. *Whether plaintiff is entitled for recovery of sum of Rs.4,19,150/- with future interest at rate of 1.50% per month from the defendant from the date of filing of suit till realization?*
5. *What order or decree?*

7. In trial, plaintiff examined himself and two others as PWs.1 to 3 and got marked Exhibits P1 to P6; while, defendant examined himself and another as DWs.1 and 2 and got marked Exhibits D1 to D3.

8. On consideration, trial Court answered issues no.1 and 2 in affirmative; issue no.3 in negative, issue no.4 partly in affirmative and issue no.5 by decreeing suit.

9. Aggrieved, defendant preferred RA no.12/2022 on various grounds, based on which, first appellate Court framed following:

POINTS:

1. *Whether the trial court is justified in answering issue No.1 and 2 in the affirmative, issue No.3 in the negative, issue No.4 in the partly affirmative by holding that the plaintiff has*



proved that the defendant for his legal necessity borrowed a sum of Rs.3.00.000/- by executing demand promissory, promissory note by consideration receipt on 16.05.2016 and agreed to pay the loan amount with interest 1.50% per month, and inspite of repeated requests and demand. the defendant has failed to pay the loan amount. Hence, the plaintiff is entitled for the recovery of Rs.4.19.150/- with future interest 6% per annum on an amount of Rs.3,00,000/-from the date of suit till the date of realization and the defendant has failed to prove his contention at para No.7 to 9 of the written statement?

2. Whether the judgment and decree of the, trial court is arbitrary. baseless, capricious, devoid of merits, erroneous, without being perverse on the sound principle of law and warrants for the interference by the instant court?

3. To what order or decree?

10. On consideration, it answered point no.1 in negative, point no.2 in affirmative and point no.3 by allowing appeal, setting aside judgment and decree passed by trial Court. Aggrieved, plaintiff was in appeal.

11. It was submitted, defendant admitted signature on on-demand promissory note and receipt (Exs.P1 & P2), but contended that signatures were taken on blank promissory note in connection with alleged chit transaction conducted by plaintiff's wife, which was bald and unsupported by evidence. On appreciation of oral and documentary evidence, trial Court



decreed suit on 24.04.2022 awarding Rs.4,19,150/- with 6% interest from date of suit. However, first appellate Court reversed decree, relying mainly on stray admission by PW.1 mentioning Rs.6,00,000/- as amount lent. It was submitted, admission of signature on Exs.P1 and P2 would attract presumption under Section 118(a) of Negotiable Instruments Act, 1881 ('**NI Act**', for short) and burden would shift on defendant. When no rebuttal evidence was led, first appellate Court erred in passing impugned judgment. In support of his contention, learned counsel relied on decisions in case of **Kapil Kumar v. Raj Kumar** reported in **(2022) 10 SCC 281**, **Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal** reported in **(1999) 3 SCC 35**.

12. For proposition that stray or inadvertent admission cannot override pleadings and documentary evidence, learned counsel referred to Sections 91 and 92 of Indian Evidence Act, 1872, and ratio laid down in **Chikkam Koreswara Rao v. Chikkam Subba Rao & Ors.** reported in **(1970) 1 SCC 558**, **Parameswari Bai v. Muthojirao Scindia** reported in **1980 SCC OnLine Kar 206** and **Puttanna Shetty v. Padma Shetty** reported in **2007 SCC OnLine Kar 53**.



13. Insofar as contradictions regarding time and place of execution of promissory note in depositions, it was submitted, PWs.1 to 3 consistently stated Rs.3,00,000/- was paid on 16.05.2016 in their presence. Therefore, minor variation in deposition of PW.3 about earlier visit to plaintiff's house would not materially affect execution of promissory note near Court premises. Likewise, in case of correction of place of execution of promissory note as 'Hunsur'. Failure to properly appreciate above resulted in miscarriage of justice.

14. In light of above contentions, learned counsel prayed for allowing appeal by answering following substantial questions of law in favour of plaintiff:

- 1) *Whether first appellate Court erred in not considering presumptions under Sections 28 and 118 of NI Act, when defendant admitted his signatures on Exs.P1 and P2.*
- 2) *Whether first appellate Court erred in ignoring admissions and misread evidence, while passing impugned judgment and decree?*
- 3) *Whether first appellate Court erred in relying upon stray admission, instead of examining evidence as a whole?*
- 4) *Whether first appellate Court was justified in reversing findings without assigning proper reasons?*



15. On other hand, Sri Prithvi Raj BN, learned counsel for defendant opposed appeal.

16. Heard learned counsel and perused impugned judgment and decree of both Courts.

17. This appeal is by plaintiff against divergent findings in a suit for recovery of money on basis of Ex.P1 - promissory note, wherein trial Court decreed suit, while first appellate Court reversed same and dismissed suit.

18. As noted above, defendant opposed suit by contending that Exs.P1 and P2 were not executed towards loan transaction as claimed, but as 'security' in connection with chit transaction run by plaintiff's wife.

19. As noted above, main ground of challenge is that defendant admitted his signature on Exs.P1 and P2, which would attract rebuttable presumption under Section 118 (a) of NI Act; that Ex.P1 was drawn for consideration and that while passing impugned judgment, on appreciation of evidence, trial Court had held plaintiff proved execution of promissory note and passing of consideration and defendant failed to produce



material, such as chit subscription register, payment receipts or independent evidence, to rebut presumption.

20. While passing impugned judgment and decree, first appellate Court noted discrepancy with regard to place of payment, PW.1 mentioning different amount as lent, inconsistency in pleadings and possibility of prior financial transactions.

21. A perusal of plaint reveals specific assertion that defendant executed promissory note and receipt (Exs.P1 and P2) on receipt of Rs.3,00,000/- from plaintiff and agreed to repay it with monthly interest at 1.5%, but failed to repay even on demand by plaintiff by issuing Ex.P3 - legal notice.

22. To establish same, plaintiff examined himself as PW.1 and re-iterated above in his examination-in-chief. But in cross-examination, he stated that on 16.05.2016, defendant came to his house at 11.00 a.m. and asked for loan, which was given to him on same day in presence of Venkategowda and Prakash. He also stated that on receipt of loan, defendant had executed Exs.P1 and P2 - promissory note and receipt written



by Thyagaraj of Hunsur. He specifically stated payment of Rs.6,00,000/- in currency notes of Rs.500/- denomination.

23. Though, said admission is sought to be explained as stray, there is sufficient cross-examination about context of said payment, wherein PW.1 states that said amount was arranged by sale of coconuts and plantain. Therefore, admission cannot be treated as stray.

24. In further cross-examination, PW.1 stated that Exs.P1 and P2 were written in Court premises and transaction also took place there itself. He pleads ignorance about purpose for which loan was taken by defendant. And in cross-examination about ink and handwriting on Exs.P1 and P2 being different also, he pleads ignorance. It is significant to note that cross-examination of PW.1 was done on two different dates and there was no re-examination to offer explanation about error in mentioning amount lent.

25. While, there can be no quarrel about presumption under Section 118 of NI Act being rebuttable by setting up cogent and probable defence as well as proposition that stray admissions would have to yield to documentary evidence, in



instant case, admission cannot be stated to be stray. Even on reading of deposition of PW.1 in entirety, material inconsistency insofar as amount lent is evident as also absence of proper explanation. Therefore, ratio of decisions relied upon, will not be attracted.

26. Under above circumstances, first appellate Court, which is final Court for appreciation of evidence has taken note of entire evidence on record and arrived at well reasoned conclusion. Said conclusion cannot be stated either to be without any basis or contrary to material on record. It cannot therefore be held to suffer from perversity as would give rise to substantial question of law.

In view of above, appeal is ***dismissed*** without being admitted.

Sd/-
(RAVI V HOSMANI)
JUDGE

AV,GRD
List No.: 1 SI No.: 25