HC-KAR

NC: 2026:KHC:63631
RSA No. 785 of 2020

CNR: KAHC010090972020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 785 OF 2020 (MON)

BETWEEN:

SRI. M. VENKATESHAPPA
S/O LATE MUNIYAPPA
AGED ABOUT 45 YEARS
RESIDING AT BALLERI VILLAGE,
TEKAL TALUK, MALUR TALUK
KOLAR DISTRICT-563 160.

...APPELLANT

(BY SRI. S VISWESWARAIAH, ADVOCATE)

AND:

SRI B.D. VENKATESH
S/O LATE B R DEVANATH
AGED ABOUT 44 YEARS
RESIDING AT BENDU NEW EXTENSION
NEAR DOOMLIGHT CIRCLE
KOLAR-563 101.

...RESPONDENT

(RESPONDENT-SERVED & UNREPRESENTED)

Digitally signed by VANDANA S
Location: High Court of Karnataka

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 18.11.2019 PASSED IN RA.NO. 114/2018 ON THE FILE OF THE I ADDITIONAL DISTRICT JUDGE, KOLAR, DISMISSING THE APPEAL AND MODIFYING THE JUDGMENT AND DECREE DATED 30.07.2018 PASSED IN OS.NO.285/2015 ON THE FILE OF THE SENIOR CIVIL JUDGE, MALUR.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

Appellant was the defendant in O.S. No. 285/2015 filed by the respondent-plaintiff against the appellant-defendant for recovery of a sum of Rs.5,92,900/- together with costs and future interest at 24% per annum from the date of the suit till realization. The said suit was having been contested by the appellant-defendant who *inter alia* contended that he was due only in a sum of Rs.3,00,000/- and as such the suit was liable to be dismissed. In addition thereto, the appellant-defendant also putforth a counter claim against the plaintiff for redemption of a mortgage deed dated 30.11.2012 and for other reliefs.

2. Based on the pleadings of the parties, the trial court framed the following issues and additional issues:

> *1. Whether the plaintiff proves that defendant has borrowed a loan of Rs.3,25,000/- at the rate of 25% p.a. (wrongly typed as 25% instead of 24%) as pleaded in the plaint?*

2. Whether plaintiff proves that defendant has executed a mortgage deed in favour of plaintiff relating to suit property as a security of the said loan as pleaded in the plaint?

3. Whether defendant proves that suit is not maintainable?

4. Whether the plaintiff is entitled the relief as sought for?

5. What order or decree?

Additional issues framed on 12.7.2018.

1. Whether the defendant proves that, he had paid interest to the plaintiff till March 2015 as alleged by him in his written statement at para No.9?

2. Whether the defendant is entitled for the relief of redemption of mortgage deed dated 30.11.2012 as prayed in counter claim?

3. Plaintiff examined as PW1, two witnesses as PWs.2 and 3 and got marked documents at Exs.P.1 to P.23. Defendant got examined as DW1 and examined one witness DW2. No documents are marked on their behalf.

4. After hearing the parties, the trial Court held as under:

"9. Issue No.1 and 2:-. Since both issues are interrelated to each other, both issues have taken together for discussion in order to avoid the repetition of facts.

10. It is the case of the plaintiff that the defendant had obtained a hand loan of Rs.3,25,000/- from him by mortgaging the suit schedule property as a security of the said amount and

he is also agreed that he repaid said amount along with interest @ the rate of 24% p.a. within 2 ½ years and will redeem the mortgage, but even after the lapse of 2 ½ years period, he had not repaid the said amount and redeem the mortgage deed executed by him. More burden lies upon the plaintiff to prove that he has lend hand loan of Rs.3,25,000/- and got executed the mortgage deed with respect to suit schedule property from the defendant. By way of cross examination of DW1 with respect to the above said fact, the plaintiff has proved his case. In the cross examination, DW1 has admitted that on 30.11.2012 he had obtained loan from the plaintiff but it is his defence that he had obtained only Rs.3,00,000/-, but the plaintiff had written Rs.3,25,000/- in Ex.P1 mortgage deed. He had never received Rs.3,25,000/- from the plaintiff. But in the said cross examination he has also admitted that he had executed a mortgage deed with respect to property in Sy.No.10 measuring 3 acre 30 guntas situated at Kadirenahalli village and he is also admitted that the said document was in the Kannada language and he read over the entire averments of Ex.P1 and he has also admitted that he knows the details about the payment of Rs.3,25,000/ by way of Ex.P1 Mortgage deed. Thereby it is clear that the defendant had received Rs.3,25,000 from the plaintiff and by admitting the receipt of the said amount he had also executed Ex.P1 mortgage deed in favour of the plaintiff with respect to the suit schedule property. DW1 has also admitted that DW2 has put his signature on Ex.P1 as a witness.

11. It is the defence of defendant that the plaintiff at the time of lending amount, has received 2 signed blank cheques and 2 signed stamp papers of Rs. 100/- each and it is his

defence that the plaintiff has created the mortgage deed by using one of the said bond paper. But Ex.P1 is the document which is written on stamp paper of Rs.4/-, it contents 2 pages along with another page which reveals that the plaintiff had paid Rs.1,680/- before the Sub-registrar for registration of the said document. Hence it is clear that the plaintiff has not created any mortgage deed by using the above said alleged stamp paper of Rs.100/-. Moreover the defendant has not taken any further steps against the plaintiff either by lodging any complaint before the jurisdictional police or by filling any complaint before the jurisdictional court for his fraudulent act. He even has not issued any legal notice in order to recover the said signed blank cheques and signed blank papers. More over he himself has admitted in his cross examination that, in order to obtained the hand loan, he had executed Ex.P1 mortgage deed in favour the plaintiff. DW1 has also admitted that he has put his signatures on Ex. P1 after reading and knowing the entire averments of Ex.P1. Hence, it is sufficient to believe the case of plaintiff with respect to lending of amount of Rs.3,25,000/- for repayment of the same along with interest at the rate of 24% p.a. on the basis of security of the suit schedule property. Hence I answered these issues 1 and 2 in the Affirmative.

12. Additional issue No.1:- It is the specific defence of defendant that till March 2015 he had paid interest to the plaintiff with respect to the amount borrowed by him on 30.11.2012. He had taken such a defence in para 9 of written statement. In the same paragraph is has also taken a defence that the plaintiff has not issued any receipt with respect to payment of interest and principle amount is concerned. The

defendant has not even furnished single documents to show that he has paid a single rupee of interest with respect the hand loan borrowed by him from the plaintiff. Hence this issue is answered in the Negative.

13. Additional issue No.2 and issue no. 4:- It is also one of the prayer of defendant in his written statement by way of counter claim that he is entitled for the relief of redemption of mortgage deed as he is ready to repay Rs.3,00,000/- principal amount to the plaintiff. It is true that the defendant had executed the registered mortgage deed in favour of the plaintiff with respect to suit schedule property by pledging the same on 30.11.2012 for the loan amount received by him from the plaintiff. As admitted by him in his cross examination and in his written statement it is clear that the defendant has not even either repaid principal amount or interest as agreed by him till today. The plaintiff in the present suit is seeking for direction to the defendant to pay sum of Rs.5,92,900 together with interest at the rate of Rs.24% p.a. from the date of suit till realization of entire claim. Even though the defendant has taken a defence that he has paid interest till March 2015, he has not furnished any iota of the documents to prove his defence. Hence it is clear that the defendant has not repaid any amount to the plaintiff. On the other hand the plaintiff successfully proved that the defendant has received Rs.3,25,000/- from him on 30.11.2012 by executing a registered mortgage deed as security with respect to suit schedule property. Thereby he is entitled for recovery of Rs.5,92,900/- as claimed by him in this suit.

14. Apart from the above said amount the plaintiff is also claiming for future interest @ the rate of 24% p.a. on the

above said amount from the date of suit till the realization of entire claim. On the basis of documents available on record and evidence of both parties it is clear that, the defendant has received Rs.3,25,000/- from the plaintiff by agreeing to repay the same within 2 ½ years along with interest @ the rate of 24% p.a., and he had not repaid the said amount till today. Hence till filing of the suit the plaintiff has calculated the interest at the rate of 24% p.a. On the amount lend to the defendant. If this court is considered the interest at the rate of 24% p.a on the amount of Rs.5,92,900/- from the date of suit till the realization of entire claim, it will cause injustice to the defendant. Moreover, it is also clear that, the plaintiff has no money lending license to lend such a huge amount with interest at the rate of 24% p.a. Hence, imposing interest at the rate of 24% p.a is too exorbitant.

15. Moreover, the plaintiff has already calculated the interest at the rate of 24% p.a. on Rs.3,25,000 and till filing of the present suit it has already been reached up to Rs.5,92,900/- and if this court will also imposed the same percentage of interest i.e., at the rate of 24% p.a. on the above said amount, the defendant will suffer more hardship for repayment of the same. Hence, imposing the interest at the rate of 6% p.a as imposed in nationalized banks from the date of suit till realization of entire amount will meet the ends of justice. Even though the defendant has executed a registered mortgage deed by agreeing to repay the loan amount along with interest @ 24% P.A. and even though this court has considered the said fact, it also considered the position of defendant with respect to his financial condition and the too exorbitant interest charged by the plaintiff on the said amount.

In order to avoid the future loss which would be caused to the plaintiff, this court has imposed 6% of interest p.a. for the above said amount and it is justifiable. Hence I answer issue No. 4 in partly Affirmative.

16. If the defendant will be repaid the entire amount which would be imposed by this court for repayment to the plaintiff, then only he will be entitled for redemption of mortgage deed dated 30.11.2012 as prayed by him in the counter claim. Since the defendant has failed to prove repayment of a single rupee to the plaintiff with respect to the alleged hand loan, he is not entitled for redemption of mortgage deed dated 30.11.2012. Hence additional issue no. 2 is answered in the Negative.

17. Issue No.3:- The defendant has taken a defence that the suit is not maintainable as such even though he was ready to repay the principle amount of 3,00,000 to the plaintiff, he had not received the same and filed this frivolous suit for unlawful gain from the defendant. Even though he has taken such a defence, he has failed to prove that he has repaid any amount or interest to the plaintiff till filing of the present suit or even after filing of this suit. Since the plaintiff has also proved this case by way of cogent documents and the admissions of DW1 also clearly disclosing that he had borrowed an amount of Rs.3,25,000/- by agreeing to repay the same with interest @ 24% p.a., the defendant has failed to prove that the present suit is not maintainable for the reasons stated in the his written statement. Hence this issue is answered in the Negative.

18. Issue No.5 :- For the foregoing reasons I proceed to pass following.

ORDER

The suit filed by the plaintiff is partly decreed with cost.

The plaintiff is entitled to claim Rs.5,92,900/- with interest @ 6% p.a. from the date of this suit till realization of entire amount.

The counter claim of defendant with respect to redemption of mortgage deed dated 30.11.2012 is hereby dismissed.

The defendant is directed to repay the above said amount as per the order within 60 days from the date of this order, failing which the plaintiff is at liberty to recover the same through due procedure of law.

Charge has been created over the suit schedule property till realization of entire claim as per order.

Draw decree accordingly."

5. As can be seen from the aforesaid judgment and decree of the trial Court, the suit of the plaintiff was decreed in part by directing the appellant-defendant to pay a sum of Rs.5,92,000/- together with interest at 6% per annum from the date of suit till realization. The counter claim of the appellant-defendant with respect to redemption of the mortgage deed dated 30.11.2012 was dismissed by the trial Court. Aggrieved by the judgment and decree of the trial Court rejecting the counter claim

and decreeing the suit of the respondent plaintiff, the appellant approached the first appellate Court in R.A. No. 114/2018 which was disposed of by the first appellate Court by dismissing the appeal filed by the appellant against rejection of his counter claim but allowing the cross appeal filed by the respondent-plaintiff thereby enhancing / increasing the rate of interest from 6% per annum to 12% per annum by holding as under:

> *8. Heard the arguments and secured Lower Court Records.*
>
> *9. The following points arise for consideration: -*
>
> *1. Whether the Trial Court has erred in coming to the conclusion that there was financial transaction between plaintiff & defendant?*
>
> *2. Whether the Trial Court has failed to appreciate the fact that the defendant has proved his contentions?*
>
> *3. Whether the cross-appeal filed by the appellant under Order XLI Rules 22 (1) & (2) r/w Section 96 CPC deserves to be allowed?*
>
> *4. Whether the Trial Court has erred in appreciating the oral & documentary evidence on record in proper perspective?*
>
> *5. Whether the impugned judgment & decree passed by the Trial Court is erroneous, capricious and calls for interference of this Court?*

6. To what order?

10. The answers to the above points are as under: -

Point Nos.1, 2 : Negative

Point Nos.3 - 5 : Partly Affirmative

Point No.6 : As per final order, for the following:-

R E A S O N S

<u>Point Nos.1 to 5</u>:-

11. The instant appeal is arising out of the impugned judgment & decree passed by the Trial Court in the suit instituted by the plaintiff for recovery of money by averring that the defendant knew him for many years and as such the defendant had approached him for financial assistance to meet his urgent legal necessities for which he had lent Rs.3,25,000/- to the defendant on 30.11.2012 for which he had executed registered document and towards repayment of the same the defendant had got issued two cheques which came to be dishonoured and as such the present suit.

Before adverting to the factual aspects of the case the evidence led before the Trial Court is recapitulated.

12. The plaintiff before the Trial Court had got examined himself as PW1 – Sri. B.D. Venkatesh reiterating the plaint averments. In the cross-examination PW1 had admitted that he was running TV showroom earlier and was into real estate business now and he was not into the money lending business; however, he helps the people who requests him to accommodate their urgent financial necessities. PW1 had specifically stated that he had not availed any licence for running money lending business. PW1 had denied that he had lent only Rs.3.00 lakh and the said amount was repaid with

interest @ 2% per mensum. PW1 had stated that no amount was repaid to him by the defendant. That apart, nothing much was elucidated from PW1.

13. PW2 – Sri. Nagaraj has deposed about execution of the mortgage deed as per Ex.P1 and also identified his signature on it as per Ex.P1 (b). In the cross-examination PW2 had admitted that he was working as Village Accountant and had attained superannuation in the year 2007. PW2 had stated that he knew the plaintiff for last 5-6 years and he was not his relative and he was present at the time of negotiating the loan amount; however in his presence no amount was paid. PW2 had further stated that he had attested his signature to Ex.P1 along with plaintiff, defendant & Varadarajachari.

14. PW3 – Sri. Rudrappa being the scribe of mortgage deed – Ex.P1 had deposed about execution of Ex.P1. In the cross-examination PW3 had stated that he was not present at the time of negotiations nor at the time of receiving the amount by the defendant. However, PW3 had stated that he knew the plaintiff for 7-8 years and also PW2 and also Ex.P1 was drafted by him in the presence of the parties and attesting witnesses.

15. On completion of the evidence of plaintiff, the defendant had got himself examined as DW1 – Sri. M. Venkateshappa reiterating the contentions which he had urged in his Written Statement. In the cross-examination DW1 had admitted about receiving the loan from the plaintiff on 30.11.2012; however he had stated that 6 months prior to the said date he had requested the plaintiff for loan and at that time plaintiff had insisted for interest @ 1% per mensum and as such they had discussed about loan transaction through Varadarajachari and at that time he had executed the mortgage deed pertaining to

land in Sy.No.10 of Kadirenahalli Village, Malur Taluk. DW1 had admitted about affixing his signature to the said document in the presence of its scribe and also stated about handing over the document i.e., cheque as security at the instance of the plaintiff. DW1 had further stated that he was paying Rs.6,000/- per month as interest to the plaintiff and he had paid the said interest in the house of plaintiff and also in his office till 2015. DW1 had further stated that at certain point of time he alone went to the house of plaintiff to pay the interest and on some other occasion he was accompanied by Varadarajachari. That apart, nothing much was elucidated from DW1.

16. DW2 – Sri. K.V. Varadarajaiah had deposed before the Trial Court that the plaintiff had only paid Rs.3.00 lakh but not Rs.3,25,000/- to the defendant and he had issued two blank cheques towards security and also affixed his signature to the blank stamp paper. In the cross-examination DW2 had stated that he was working as teacher at Chinmaya Vidyalaya School and left the job. That apart nothing much was elicited from DW2.

17. It is clear that the plaintiff & defendant had entered into loan transaction between themselves. The registered mortgage deed at Ex.P1 clearly indicates that the plaintiff had lent Rs.3,25,000/- to the defendant and though the defendant had denied receiving the said amount it is well settled that always presumption will be attached to the registered document. When the defendant admits his signature on the said document which is registered certain presumption will be attached to it and under the circumstances the defendant cannot be permitted to deny its contents by stating that he had only received Rs.3.00 lakh but not Rs.3,25,000/-. It is also noticed

from records that the defendant had executed registered mortgage deed as per Ex.P1 wherein it has been specifically mentioned that plaintiff was lending Rs.3,25,000/- to the defendant and defendant had agreed to repay the same along with interest @ 2% per mensum and the same should be repaid within 2½ years. The entire contents of the document clearly indicate about mortgage of the property. Besides, the sale deed – Ex.P10 also indicates about title of the defendant over the said property. Even for the sake of argument if it is presumed that the same was not valid mortgage deed then the defendant has to offer explanation that how the said document came into the custody of plaintiff from which it can safely be inferred about existence of financial transaction between the parties.

18. The lis of dispute is to determine whether the plaintiff had paid Rs.3,25,000/- or Rs.3.00 lakh as contended by the defendant. DWs 1 & 2 had both deposed that they had only received Rs.3.00 lakh and not Rs.3,25,000/- as contended by the plaintiff. Further, it is pertinent to note that PW2 being attesting witness to Ex.P1 had also deposed that he was not present at the time of negotiations. However, no questions were posed to him with respect to the said aspect. All that it was suggested to PW2 was that no such transaction had taken place for which he had denied the same. It has to be borne in mind that though the attesting witnesses and also the scribe of Ex.P1 had all specifically deposed that they had not witnessed the loan transaction; however in the wake of clear cut admission by the defendant/DW1 that he had repaid some amount to the plaintiff and also availing money from the plaintiff the same would establish the case of plaintiff. The

Court is fully aware of the fact that the plaintiff has to establish his case independently and he cannot stand upon the weakness of the defendant. At the same time, the defendant also cannot be permitted to blow hot & cold in one breath and take up divergent stand. No doubt, the defendant is permitted to take up inconsistent stand; however, the same should not be contrary and self-destructive. In the wake of presumption available in favour of the registered document i.e., Ex.P1 it is clear that the plaintiff had lent Rs.3,25,000/- and not Rs.3.00 lakh as contended by the defendant. Unless the defendant pleads & proves that the said registered document was fraudulent and created one the presumption which is attached to the registered document will not be rebutted. Besides, the defendant himself has admitted execution of the registered document and in that circumstances the onus will be upon him to explain why he had got the said document executed when he had only received sum of Rs.3,00,000/- and not Rs.3,25,000/- as mentioned in the said document.

19. The next aspect for consideration is levying of interest at the rate of 2% per mensum. The defendant/ appellant has filed cross-appeal contending that the rate of interest imposed by the Trial Court is meager and it should be enhanced to 24% p.a. The learned counsel for the respondent/plaintiff has argued that since the transaction is not commercial nature the rate of interest shall be 6% p.a. In this regard, the Court has appreciated the mortgage deed at Ex.P1 wherein nowhere it has been mentioned that for what purpose the said amount was borrowed. Under the circumstances, it would not be appropriate to hold that it was for some commercial purpose. It is well settled by catena of judgments that the rate of

interest that will levied for commercial transaction and that of other transaction will be different. If at all the defendant claims that the said transaction i.e., the loan was availed by the plaintiff for commercial transaction the rate of interest to be levied will be much higher than in any other transaction. Even nothing was elicited from DW1 with respect to the same.

20. Firstly, parties have agreed for imposing rate of interest @ 24% p.a. But the Court should be cautious about the said aspect so as to ascertain whether it is justifiable to impose such rate of interest. No doubt in the said document it has been narrated that the parties had agreed for imposing the interest at the rate of 24% p.a., the question that has to be answered is whether the Court can look into the said aspect of imposing the interest rate or whether the Court has to merely accept the same as narrated in the document. In order to better appreciate the said aspect the Court has looked into the provisions under The Karnataka Money Lenders' Act, 1961, hereinafter referred as 'the Act' wherein Section 11 clearly indicates that after expiry of six months from the date on which this Act comes into force, no Court shall pass a decree in favour of a money-lender in any suit to which this Act applies, filed by a money-lender, unless the Court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, and on the date such suit was filed the money-lender held a valid licence. Thus, it is necessary to appreciate the fact that whether the plaintiff can be termed as 'money-lender' as per the said Act. In order to better appreciate the same Section 2 (10) of The Act is appreciated which defines 'money-lender'. Further, Section 2 (9) of The Act defines 'loan.' When both the aspects are looked into and

appreciated the defendant has not taken up any pains in this regard to show that the plaintiff was not money-lender. The learned counsel for the respondent/plaintiff has vehemently argued that the said amount was lent towards commercial transaction and further he was licensed money lender. In the instant case, no such documents are produced and as already discussed there are no material to indicate that the money was lent towards commercial transaction. However, the Court cannot fill up the lacunas and blanks which have been left over by the plaintiff.

21. It is pertinent to note that during the course of cross-examination PW1 had admitted that he was running TV showroom and lastly he was into the real estate business but he was not money-lender. When the plaintiff/PW1 himself had admitted that he was not money-lender the question of imposing rate of interest @ 24% p.a., does not arise at all. In order to better appreciate the factual aspects and also the guidelines for imposing of interest the Court has relied upon the dictum laid down by The Hon'ble High Court of Karnataka in (2017) 5 Kar.L.J. 378 (Tahira Rehman v. Manipal Sowbhagya Nidhi Ltd.,) has held thus:

> *12. Adverting to the arguments advanced by the Learned Counsel for the parties, it would be beneficial to refer to the relevant provisions of the Act. Section 2(9), 2(10), 2(20) and Section 11 of the Act, which runs thus:*
>
> *"2. Definitions.- In this Act, unless the context otherwise requires—*
>
> *(9) "Loan" means an advance at interest whether of money or in kind, and includes any transaction which the*

Court finds in substance to amount to such an advance, but does not include, —

(a) a deposit of money or other property in a Government Post Office Bank or in a Karnataka Government Savings Bank or in any other bank or in a company or with a co-operative society;

(b) a loan to, or by, or a deposit with, any society or association registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960);

(c) a loan advanced by Government or by any local authority authorised by Government;

(d) a loan advanced by a co-operative society;

(e) an advance made to a subscriber to, or a depositor in, a Provident Fund from the amount standing to his credit in the fund in accordance with the rules of the fund;

(f) a loan to or by an insurance company as defined in the Insurance Act, 1938 (Central Act IV of 1938);

(g) a loan to or by a bank;

(h) an advance of not less than three thousand rupees made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (Central Act XXVI of 1881) other than on the basis of a promissory note;

(i) except for the purposes of sections 28 and 29,—

(i) a loan to a trader;

(ii) a loan to a money-lender who holds a valid licence; or

(iii) a loan by a landlord to his tenant for financing of crops or seasonal finance of not more than fifty rupees per acre of land held by the tenant;

(10) "Money Lender" means, —

(i) an individual; or

(ii) an undivided Hindu family; or

(iii) a company; or

(iv) an unincorporated body of individuals; who or which, —

(a) carries on the business of money-tending in the State; or

(b) has his or its principal place of such business in the State, but shall not include a bank [or any other financial institution which the State Government may, by notification specify in this behalf];

(20) "Trader" means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and includes—

a wholesale or retail merchant,

a commission agent,

a broker,

a manufacturer,

a contractor,

a factory owner,

but does not include an artisan or a person who sells his agricultural produce or cattle or buys agricultural produce or cattle for his use.

11. [xxxxxx] Suits by money lenders not holding licence.— (1) After the expiry of six months from the date on which this Act comes into force, no court shall

pass a decree in favour of a money lender in any suit to which this Act applies, filed by a money lender, unless the court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, [and on the date such suit was filed] the money lender held a valid licence.

[(2) xxxxxx

(3) xxxxxx

(4) xxxxxx]

(5) Nothing in this section shall affect.—

(a) suits in respect of loans advanced by a money-lender before the date on which this Act comes into force;

(b) the powers of an official receiver, an administrator or a Court under the provisions of the Mysore Insolvency Act, 1925, or other corresponding law in force in any area of the State, or of a liquidator under the Companies Act, 1956, to realise the property of a moneylender."

13. As per Clause (i) of sub-Section (9) of Section 2, except for the purpose of Section 28, a loan to a trader cannot be construed as a loan for the purpose of the Act. To analyze whether the plaintiff is a trader, it has to be examined with reference to the definition Clause of trader which includes a contractor. The loan was borrowed by defendant No. 1 who was a contractor and defendant No. 2 (both are partners of Regency Buildersdefendant No. 7). If the case is analyzed in this angle, certainly the provisions of the Act are not applicable to the facts of the present case. Yet another important aspect which keeps the plaintiff out of the purview of the Act is the Notification dated 9th

September, 1992 issued by the Government of Karnataka under Clause 4(b) of Section 2(10) of the Act. Section 2(10)(4)(b) contemplates, any other financial institutions other than a Bank which the State Government may by notification notify, would not come within the realm of the expression 'money lender'. Such notification being issued by the Government of Karnataka, the provisions of the Act are totally inapplicable to the facts of the case. In view of the same, the arguments of the Learned Counsel for defendant Nos. 2 and 4 do not inspire any credence as regards the point of jurisdiction is concerned.

15. It is axiomatic to refer to the Judgments relied upon by the appellant's Counsel. In the case of Smt Surasaibalini Debi (supra), the Hon'ble Apex Court has held that in the absence of pleadings, the defendant was not entitled to rely on the taint of illegality in the transaction to pursue the Court to reject the relief claimed by the plaintiff. It was held that where a contract or transaction ex facie is illegal there need be no pleading of the parties raising the issue of illegality and the Court is bound to take judicial notice of the nature of the contract or transaction and mould its relief accordingly. In the case of Kalojitalusappa Gangavathi (supra), the Hon'ble Apex Court was considering the case wherein the plaintiff had not obtained the license while advancing the money to the defendants on the transaction of mortgage and promissory note and wherein it was proved that the plaintiff was at the date of transactions carrying on business as a money lender.

It was held that the Court was bound to dismiss the suit for recovery of the amount in the course of his business as a money lender. The judgment of this Court in the case of Bawaenterprises (supra) also related to the case of a money lender vis-a-vis the embargo on the power of the Court to pass a decree. Similarly, the judgment of this Court in K. Lakshmipathy (supra) also relates to the money lender and the bar of passing decree in favour of money lender in any suit to which the Act applies. In the judgment of the Hon'ble High Court of Andhra Pradesh in Thota Venkata Rao's case (supra) a specific assertion was made in the written statement that the plaintiff was doing money lending business. In that context, it was held that whether there is a pleading or no pleading, in a suit relating to a loan under the Act, it is the duty of the Court to frame issues, whether the plaintiff has money lending business licence and whether he has been maintaining accounts for the same as required under the Act.

16. As discussed above, in all these judgments referred to above, the fulcrum of dispute revolves round the money lender engaged in the business of lending money and seeking for the relief of recovery of the amount in a suit. In such circumstances, where there is no dispute regarding the applicability of the provisions of the Act, the Courts have held that Section 11 of the Act is an embargo for the Courts to decree the suit. But the same is not the factual position in the instant case. As aforesaid, the provisions of the Act are not at all applicable to the present case. Thus, the said judgments

relied on by the Learned Counsel for defendant Nos. 2 and 4 are not applicable to the present case. In addition to this, the Judgment of the Gujarat High Court also comes to the assistance of the plaintiff. Hence, we answer the point No. 1 in the Affirmative.

17. As regards the rate of interest at 26.5% per annum awarded by the Trial Court, it is beneficial to refer to Section 3 and Section 5 of the Interest Act, 1978, whereby it is provided that any interest liable to be paid on any debt or damages by virtue of an obligation imposed by contract, the rate of interest payable under Section 3, shall not be applicable and the contractual rate of interest stipulated in the agreement prevails. Sections 3 and 5 of the Interest Act, 1978 reads thus:

"3. Power of court to allow interest.— (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,—

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making

the claim to the person liable that interest will be claimed, to the date of institution of the proceedings: Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) xxxxxx
(a) xxxxxx
(b) xxxxxx
(3) Nothing in this section,—
(a) shall apply in relation to—
(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or
5. Section 34 of the Code of Civil Procedure, 1908 to apply. - Nothing in this Act shall affect the provisions of Section 34 of the Code of Civil Procedure, 1908 (5 of 1908).
18. Section 34 of CPC., and the proviso thereof reads thus:
"34. Interest - (1) Where and insofar as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:
Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.
Explanation I - In this sub-Section, "nationalized bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.
Explanation II - For the purposes of this Section, a transaction is a commercial transaction, if it is

connected with the industry, trade or business of the party incurring the liability."

19. Ex. P1 - on demand promissory note bears the signature of the defendant Nos. 1 and 2. It was argued that the defendant Nos. 2 and 4 are pardanashin ladies and they do not have any knowledge or experience of worldly affairs, they blindly signed the papers, mostly blank as desired by the 1st defendant as they had implicit faith and confident in him and they had no reason to suspect his bona fide at that time as they were the partners of the 1st defendant. The said arguments cannot be countenanced primarily for the reason that the defendant Nos. 2 and 4 were the partners with the 1st defendant and they were engaged in the business. The loan was raised as a commercial loan to meet the financial requirements of the defendant No. 7 partnership firm. As such, the defendant Nos. 2 and 4 cannot be considered to have affixed their signature blindly on the blank papers. Ex. P20 - the deed of reconstitution of partnership deed dated 10.01.1992 further clarifies that the managing partner shall negotiate with the bank/s, financial institution or such other parties for the purpose of obtaining loans, overdrafts, cash-credits etc., and he shall execute the necessary loan papers and documents etc., and shall operate such account/facilities for and on behalf of the interest of the firm. The defendant No. 1 was the managing partner of the defendant No. 7 partnership firm and authorized to execute the necessary documents on behalf of the firm. Ex. P23 - the certified copy of the release and reconstitution of partnership firm of the defendant No. 7 executed between defendant No. 1, defendant No. 5, defendant No. 6 - who are continuing partners and the defendant No. 2 and defendant No. 4 - the retiring partners indicates, the retiring partners (defendant Nos. 2 and 4) have agreed to take upon the entire outstanding liabilities of plaintiff Company amounting to Rs. 68.06 lakhs as on 31.03.2001 along with all future interest. The retiring partners have agreed to clear the said liability on or before 30.09.2002, without fail and without seeking any extension of time and were required to make necessary arrangement to release the properties which was offered as security to the plaintiff Company, a part of which as now fallen to the share of continuing partners. Further, it was agreed that the retiring partners are entitled to sell or mortgage the properties detailed in Item Nos. 1 and 2 of Schedule 'B' on or before 30.09.2002 to discharge the liabilities of

plaintiff Company and/or Bank of Madura Limited (presently merged with ICICI Bank limited). These two documents clearly establishes that the defendant Nos. 2 and 4 had the knowledge of the liabilities of discharging the loan amount of Rs. 68.06 Lakhs as on 31.03.2001 with all future interest to the plaintiff Company. The Ex. P 1 - on demand promissory note stipulates that the defendants shall pay interest at the rate of 26.5% compounded with monthly rests on the loan amount of Rs. 50 lakhs, the purpose of loan was for the business. Indisputably, the defendants had agreed to pay interest at the rate of 26.5% per annum as the loan raised was for a commercial purpose. It is imperative that in case of bilateral agreements entered into between the parties agreeing to pay the specified rate of interest stipulated therein, such rate of interest shall apply the Learned Counsel for the defendant Nos. 2 and 4 argued that in view of Section 34 of CPC, the rate of interest has to be reduced. But as per the proviso, where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed 6% p.a., but shall not exceed the contractual rate of interest. The judgments relied upon by the Learned Counsel for defendants 2 and 4, lays down that award of interest, pendente lite and post decree, is discretionary with the Court, as it is essentially governed by Section 34 CPC dehors the contract between the parties. However, such discretion shall be exercised fairly and 27 R.A. No.114/2018 judiciously. Considering the totality of circumstances of the case particularly, contractual rate of interest agreed between the parties at 26.5% per annum, with monthly rests, arising out of a commercial transaction as explained in Explanation-II read with Proviso to Section 34 CPC coupled with Sections 3(3) and 5 of the Interest Act, we find that ends of justice would be met by awarding simple interest at 12% per annum from the date of filing of the suit till the realisation. The judgment and decree impugned is modified to the said extent. Point No. 2 is answered accordingly".

In the above said ruling the Hon'ble High Court of Karnataka has dealt with the right of the parties to levy the interest and also the extent to which it could be levied. Further the Hon'ble High Court has discussed

about the manner in which the said interest is to be levied. Apart from that, the Hon'ble High Court has also discussed about the provisions of Section 34 CPC which empowers the Court to impose interest in a suit for recovery of money. When the said ruling is appreciated with the judgment rendered by the Trial Court there is no explanation that why the rate of interest is levied at 6% p.a. It is well settled that the Court has to give explanation with respect to awarding of interest. In the instant case, as could be noticed there are no clear averments to show that the said amount was lent towards commercial transaction and further there are no materials to indicate that the plaintiff is a licensed money lender and the equity has to be balanced. In the instant case, the execution of the document is already proved and it is the cardinal principal of law that when the signature is admitted the party cannot feign his ignorance about its contents. Though the Court has accepted the other contention in the said document the levying of the interest is very high and as such the intervention of the Court is required and also in order to balance the equity the Court is of the opinion that the interest awarded by the Trial Court @ 6% p.a., is minimum and same requires to be enhanced to 12% p.a.

22. Considering all these aspects the impugned judgment & decree is to be modified to that extent only and as such point Nos.1, 2 need to be answered in the negative and point Nos.3 to 5 need to be answered partly in the affirmative and they are answered accordingly.

Point No.6: -

23. In the result, the Court would like to pass the following:-

O R D E R

1. The cross-appeal filed by the appellant under Order XLI Rules 22 (1) & (2) r/w Section 96 CPC is allowed in part.

2. The appeal is dismissed.

3. Consequently, the impugned judgment & decree dated 30.07.2018 passed by the learned Senior Civil Judge, Malur, in O.S. No.285/2015 is modified only to the extent of awarding rate of interest from 6% p.a., to 12% p.a., from the date of the suit till complete realization.

4. Considering the facts & circumstance of the case there is no order as to costs.

5. Draw decree accordingly.

6. Aggrieved by the impugned judgment and decree of the trial Court and first appellate Court, the appellant is before this Court by way of the present appeal which was admitted on 08.10.2026 to consider the following substantial questions of law:

i) Whether the Courts below are justified in decreeing the suit which is based on calculation of interest at 24% p.a. on Rs.3,25,000/- from the date of transaction till the

date of suit, when the appellant has proved that he received hand loan of Rs.3,00,000/- only and that he has paid interest till March 2015?

ii) Whether the Trial Court is justified in rejecting the counter claim of the appellant for redemption of mortgage in view of the fact that the Appellant is ready to repay the principal amount to the Respondent?

iii) Whether the Appellate Court is justified in allowing the cross objections filed by the Respondent and dismissing the appeal of the Appellant, though the Apellant has proved that he has received only Rs.3,00,000/- as against Rs.3,25,000/- and that he has paid interest till March 2015 to the Respondent ?

iv) Whether the Appellate court is justified in allowing the cross objections of the Respondent by modifying the rate of interest from 6% p.a. to 12% p..a. though the transaction is not commercial and that apart the Respondent has not proved that he is a money lender?

v) Whether the Appellate court is proper in relying upon the decision of this Hon'ble court reported in (2017) 5 KLJ 378 to hold that the respondent is entitled for interest at 12% p.a. though the ratio of the said case do not apply to the facts of the case on hand?

vi) Whether the Appellate Court is justified in awarding interest at 12% p.a. it is against Section 34 of CPC?

7. Heard learned counsel for the appellant and perused the material on record. The respondent having been served with notice of the appeal has chosen to remain unrepresented and has not contested the appeal.

8. Re. substantial questions of law No. 1 to 3:

A perusal of the material on record will indicate that both the Courts have correctly and properly considered and appreciated the entire material on record and have come to the conclusion that the appellant was liable to pay a sum of Rs.5,92,000/- to the respondent-plaintiff which had been established by legal and acceptable evidence

adduced by the respondent-plaintiff before the trial Court. In addition thereto, both the Courts have also come to the correct conclusion that the appellant's counter claim for redemption of mortgage was liable to be dismissed by correctly and properly appreciating the material on record. Upon reconsideration, re-appreciation and re-evaluation of the entire material on record, I am of the considered opinion that the appellants have not made out valid or sufficient grounds to interfere with the findings of fact recorded by both the Courts in relation to decreeing the suit of the plaintiff and rejection of the counter claim of the defendant. Accordingly substantial questions of law Nos. 1, 2 and 3 are accordingly answered against the appellant.

9. Re. substantial questions of law nos. 4, 5 and 6:

A perusal of the material on record, in particular the judgment and decree of the trial Court will clearly indicate that the trial Court has correctly and properly considered

and appreciated the material on record and has come to the correct conclusion that the appellant was liable to pay interest at 6% per annum from the date of the suit till realisation which was in conformity/consonance with the principles underlying Section 34 CPC. However while in the cross objections filed by the respondent-plaintiff, the first appellate Court has clearly committed an error in enhancing the interest from 6% per annum to 12% per annum which is contrary to the provisions contained in Section 34 CPC. In this context, the first appellate Court also committed an error in placing reliance upon the decision of this Court in the case of ***Tahira Rehman versus Manipal Soubhagya Nidhi Ltd.*** Reported in ***(2017) 5 Kar.L.J.*** without appreciating that the factual circumstances obtaining in the said case were completely different than the factual circumstances of the instant case and having come to the conclusion that the plaintiff was not a money lender and the standard rate of interest in relation to fixed deposits and since the transaction

between the parties was not a commercial transaction, there was no occasion/warrant for the first appellate Court to increase the rate of interest from 6% to 12% which is impermissible in law given the factual circumstances obtaining in the instant case.

10. Under these circumstances, I am of the considered opinion that the substantial questions of law Nos.4, 5 and 6 deserves to be answered in favour of the appellant by setting aside the judgment and decree of the first appellate Court and by restoring the judgment and decree of the trial Court by granting interest at 6% per annum instead of 12% per annum in favour of the respondent-plaintiff against the appellant-defendant no. 1.

11. In the result, I proceed to pass the following:

ORDER

(i) Appeal is hereby partly allowed.

(ii) The impugned judgment and decree of the trial Court and First Appellate Court rejecting the counter claim of the appellant defendant is hereby confirmed;

(iii) The impugned judgment and decree of the trial Court and First Appellate Court directing the appellant to pay a sum of Rs.5,92,000/- is confirmed.

(iv) The Judgment and Decree of the First Appellate Court directing the appellant to pay 12% per annum on Rs.5,92,900/- from the date of suit till payment is hereby set aside.

(v) The judgment and decree of the trial Court directing the appellant to pay interest at 6% per annum on Rs.5,92,900/- from the date of the suit till payment is also is hereby restored.

(vi) However since the appellant has already paid deposited a sum of Rs.4,90,750/- before this Court on 22.04.2022 which covers interest at 6% per annum up to that date, the appellant shall not be liable to pay any

interest on the decretal amount from the date of deposit till realization

(vii) The aforesaid amount of Rs.4,92,000/- shall be transmitted to the trial Court for disbursement in favour of the respondent plaintiff.

(viii) It is made clear that except the amount already deposited by the appellant-plaintiff which covers interest at 6% per annum up to the date of deposits which is now being directed to be transferred amount to the trial Court for disbursement in favour of the respondent, the appellant shall not be liable to pay any further amount to the respondent plaintiff.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BVV
List No.: 1 Sl No.: 14