

**IN THE COURT OF PRINICPAL SENIOR CIVIL
JUDGE AND A.C.J.M., PUTTUR, D.K.**

PRESENT: **Sri MANJUNATHA, B.A., LL.B.**
Principal Senior Civil Judge
and A.C.J.M., Puttur, D.K.

Dated: this the 25th day of August 2018

:: S.C.NO.1/2018 ::

PLAINTIFF - **M/s Praveen Capital Pvt. Ltd.,**
Sri Ganesh Complex,
Main Road, Darbe, Puttur, D.K.
A Company Registered under Indian
Companies Act, 1956, Represented
by its GPA Holder,
Mr. Prashanth Kumar S.R.
Aged about 31 years,
S/o. Sundara,
R/at. Revathi Nilaya, Samethadka,
Puttur Kasba Village and Post,
Puttur Taluk, D.K.

(By Sri M.I.B., Advocate)

V/s.

DEFENDANTS 1 **Mr. Mohammed Sharif,**
Aged about 36 years,
S/o. Ibrahium,
R/at. Reshma Manzil,
Mijaru Post,
Thodaru Village,
Moodbidre Taluk – 574225.

- DEFENDANTS**
- 2 **Mr. Ismail,**
Aged about 34 years,
S/o. K. Abdulla,
R/at. Shivagiri Nagara,
Munglidodi House,
Kashipatna Post and Village,
Moodbidre Taluk,
- 3 **Mr. Aboobakar Siddiq,**
Aged about 28 years,
S/o. Zakariya,
Mijaru Post,
Thodaru Village,
Moodbidre Taluk – 574225.

(D1 & 2 - exparte)
(D3 by Sri C.R.N., Advocate)

Date of institution of the Suit	-	01/01/2018
Nature of the Suit	-	Recovery of Money
Date of commencement of recording evidence	-	10/07/2018
Date on which the judgment was pronounced	-	25/08/2018

	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
Total duration	--	07	24

(MANJUNATHA)
Prl. Senior Civil Judge and
ACJM at Puttur Taluk, D.K.

:: JUDGEMENT ::

The plaintiff has filed this suit against the defendants No.1 to 3 for recovery of Rs.85,398/- with interest at the rate of 16% p.a., from the date of suit till realization.

2. **Brief facts:** Case of the plaintiff is that, plaintiff is a Company registered under the India Companies Act and lending money for the purpose of vehicle etc. The Defendants are the customers of plaintiff's Firm. The 1st defendant being principle borrower and 2nd and 3rd defendants being guarantors approached the plaintiff firm on 24-08-2011 and borrowed a loan sum of Rs.65,000/- from plaintiff Firm for the purpose of purchasing the vehicle and executed necessary loan documents like loan application, on Demand Promissory Note, receipts etc., and agreed to repay the same with interest at the rate of 16% per annum. He further stated that, after availing the loan, the defendants became irregular in making payment. In the meanwhile on 23-05-2014, and on 18-02-2017 1st defendant approached the plaintiff and sought some time to settle the entire loan liability and on the same day they executed an

Acknowledgment of debt in favour of plaintiff. But even after that also the defendants were failed to settle the loan amount to the Plaintiff Company. Hence, as on 13-12-2017 the defendant No.1 was due to the plaintiff to the tune of Rs.85,398/-. So, the defendants No.1 to 3 who are liable to pay the said loan amount with accrued interest to the plaintiff. Hence, the plaintiff constrained to file this suit for recovery of due amount of Rs.85,398/- with interest thereon at the rate of 16% p.a. and suit costs. Hence, the suit

3. In pursuance of Court notice, Respondents No.1 and 2 did not appear and they are placed ex-parte. The respondent No.3 appeared through his counsel but not filed any written statement.

4. In order to prove the case of the plaintiff, the G.P.A. holder of the plaintiff has been examined as PW.1 and got documents marked as Ex.P1 to Ex.P7.

5. Heard the learned counsel for plaintiff. Perused the records.

6. After perusal, the points arise for my consideration are:

- i. **Whether the plaintiff proves that on 24-08-2011 defendant No.1 being principal borrower and defendants No.2 and 3 being guarantor, have borrowed loan of Rs.65,000/- from the plaintiff and executed necessary loan documents?**
- ii. **Whether the plaintiff proves that, the alleged default committed by the defendants?**
- iii. **Whether plaintiff is entitled for relief as sought for?**
- iv. **What Order?**

7. For the above points my finding are as follows:-

Point No.1	::	In Affirmative
Point No.2	::	In Affirmative
Point No.3	::	In partly Affirmative
Point No.4	::	As per final order for the following:

: REASONS :

8. **Point No.1 and 3:-** As these points are interconnected, in order to avoid the repetition of facts, points No.1 to 3 taken up together for discussion.

9. It is the case of plaintiff that, the defendants are the customers of the Plaintiff Company. The defendant No.1 being principal borrower and defendant No.2 and 3 are guarantors have availed a loan of Rs.65,000/- on 24-08-2011 from the plaintiff Firm for the purpose of purchasing a vehicle. The 1st defendant had executed the loan application and gave receipt for receiving the loan amount. The defendants also have executed an On Demand Promissory Note, undertaking to repay the loan amount with interest at 16% per annum. The defendants were irregular the making the payment of the loan amounts. As on 13-12-2017 the defendants were due to the plaintiff to a tune of Rs.85,398/-. The defendants are jointly and severally liable to pay the loan amount to the Plaintiff Company. The PW.1 being GPA holder of the plaintiff deposed regarding the loan truncation as well as default committed the defendants. Ex.P1 is notarized copy of General Power of Attorney, Ex.P2 is loan application, Ex.P3 is on Demand Promissory Note, Ex.P4 is receipt, Ex.P5 and Ex.P6 are Acknowledgement of debt, Ex.P7 Loan ledger extract, produced on behalf of the plaintiff.

10. The documentary evidence as well as the oral evidence of the plaintiff goes to show that, the defendant No.1 borrowed the suit loan and suit documents were duly executed by the defendants No.1 to 3 in favour of plaintiff Company. On perusal of Ex.P5 and 6 acknowledgment of Debt dated 23-05-2014 and 18-02-2017 clearly reveals that, the defendant No.1 admitted loan liability and executed said A.O.D.s and Ex.P7 is Loan ledger extract produced by the plaintiff goes to show that, the defendants as on 13th day of December 2017 were due to the plaintiff to a tune of Rs.85,398/-. The oral and documentary evidence available on record clearly reveals that, the defendant No.1 borrowed the suit loan and defendants No.2 and 3 stood as guarantors for the said loan. Default committed by the defendants in repayment of the suit loan is established by the plaintiff. So far as rate of interest is concerned the plaintiff prays to award interest at the rate of 16% per annum from the date of suit till the date of realization. The rate of interest as claimed by the plaintiff is exorbitant and oppose to public policy. Awarding interest at the rate of 12% per annum from the date of suit till the date of realization would be reasonable. Therefore, for all

these reasons this Court answered **Points No.1 and 2 in the Affirmative and Point No.3 is partly in the affirmative.**

11. **Point No.4** :- In the result, I proceed to pass the following;

: ORDER :

Suit of the plaintiff is hereby decreed in part with costs.

The plaintiff is entitled to recover sum of Rs.85,398/- with interest thereon at the rate of 12% p.a., from the date of filing of the suit till its realization, recoverable from the defendants No.1 to 3 who are jointly and severally liable.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, typed by him, corrected by me and then pronounced in the open Court today the 25th day of August 2018)

(MANJUNATHA)

Prl. Senior Civil Judge and
ACJM at Puttur Taluk, D.K.

:: ANNEXURE ::**Witnesses examined for the plaintiff:**

PW.1 : Prashanth Kumar S.R.

Documents exhibited for the plaintiff:

Ex.P1 : Notarized Copy of G.P.A.
Ex.P2 : Loan Application
Ex.P3 : Demand Promissory Note
Ex.P3(a)(b)(c) : Signature of the defendants
Ex.P4 : Receipt
Ex.P4(a) : Signature of 1st defendant
Ex.P5 : Acknowledgment of debt
Ex.P6 : Acknowledgment of debt
Ex.P7 : Loan Ledger Extract

Witnesses examined for the defendant:

- Nil -

Documents exhibited for the defendant:

- Nil -

(MANJUNATHA)

Prl. Senior Civil Judge and
ACJM at Puttur Taluk, D.K.