

**IN THE COURT OF THE JUDGE, PRL. SMALL CAUSES AND
SENIOR CIVIL JUDGE, MYSURU.**

PRESENT:

**Sri. N. Subramanya, B.Com, LL.B.
Judge, Prl. Court of Small Causes, Mysuru,**

DATED THIS THE 10th DAY OF JUNE 2019

S.C.No. 1/2018

BETWEEEN

PLAINTIFF

**M. Shivaswamy S/o Mahadevappa, 52
years, R/at No. 1907, "Shankara" Sardar
Vallabai Patelnagara, Devaraja Mohalla,
Mysuru
(Represented by Sri.CSY., Advocate)
AND**

DEFENDANT/S

**1. The Manager, Vaishak Shares Ltd., No.
282, 1st floor, Ramavilasa Road, Near
Jaganmohana Palace, Mysuru-
Represented by its Manager Sri Prasad
(Exparte)**

Date of institution of the suit	22.12.2017		
Nature of the suit (suit on pronote, suit for declaration and possession suit for injunction, etc.,)	SUIT FOR RECOVERY OF MONEY		
Date of the commencement of recording of the evidence	13.12.2018		
Date on which judgement was pronounced	10.6.2019		
Total Duration	Years 01	Months 05	Days 18

(N. Subramanya)
Judge, Prl. Court of Small Causes,
Mysuru.

J U D G M E N T

This is a suit filed by the plaintiff against the defendant for recovery of Rs. 89,641/- along with interest and for cost.

2. The brief averments of the plaint are as under: -

That the plaintiff has purchased the share from the defendant's company and defendant has issued cheque bearing No. 007576 dated 25.12.2014 for a sum of Rs. 56,586/- drawn on Allahabad Bank, Vanivilas Road, Mysuru in favour of the plaintiff. Accordingly, the plaintiff presented the cheque through his banker Syndicate Bank, Central Office, Mysuru for encashment, but since there was no sufficient money in the account of the defendant, the bank had issued an endorsement stating "Funds Insufficient" and plaintiff got issued legal notice to the defendant on 13.7.2015, but defendant failed to pay the said amount. Hence, on these grounds the plaintiff has prayed to decree the suit.

3. In spite of service of suit summons, the defendant has failed to appear before the court and hence, he has been placed *ex parte*.

5. Considering the averments of the plaint, the following points that arise for my consideration.

1. Whether the plaintiff proves that the defendant has to make payment to the tune of Rs. 56,586/- towards cheque amount?

2. Whether the Plaintiff is entitled for the relief as sought?

3. What Order or Decree?

6. I have heard the arguments of the counsel for plaintiff.

7. The plaintiff in support of his contention has led his evidence as PW- 1 and got marked the documentary evidence, which are marked at Ex.P- 1 to 6. The learned counsel for the plaintiff has filed written arguments.

8. My answer to the above Points are as follows: -

Point No.1: - In the Affirmative.

Point No.2: - In the Affirmative

Point No.3: - As per final Order for the following:

REASONS

9. **Point No.1 and 2:-** It is the specific case of the plaintiff that plaintiff has purchased the share from the defendant's company and defendant has issued cheque bearing No. 007576 dated 25.12.2014 for a sum of Rs. 56,586/- drawn on Allahabad Bank, Vanivilas Road, Mysuru in favour of the plaintiff. Accordingly, the plaintiff presented the cheque through his banker Syndicate Bank, Central Office, Mysuru for encashment, but since there was no sufficient money in the account of the defendant, the bank had issued an endorsement stating "Funds Insufficient" and plaintiff got issued legal notice to the defendant on 13.7.2015, but defendant failed to pay the said amount.

10. The plaintiff in order to substantiate his claim has led his evidence as PW- 1 and has reiterated the averments of the plaint in his evidence. Ex.P- 1 is the cheque issued by the defendant in favour of plaintiff, which bears the signature of the defendant. Ex.P- 2 is the endorsement issued by the bank authorities and the said endorsement reveals that the cheque was issued by the defendant and the same has been dishonoured for insufficiency of funds. Ex.P- 3 is the legal notice issued by the plaintiff to the defendant and Ex.P- 4 is the postal receipt, Ex.P- 5 is the postal acknowledgement and Ex.P- 6 is the medical bills.

11. As already stated above inspite of service of summons the defendant has failed to appear and contest the suit. The evidence of Pw.1 on oath remains unchallenged. Under such circumstances, whatever has been stated by PW- 1 on oath has to be believed and taken into consideration. On going through the oral and documentary evidence available on record, the plaintiff has clearly established that the defendant has issued cheque in favour of the plaintiff to the tune of Rs. 56,586/- towards the share amount to the plaintiff. The plaintiff has established that there was a transaction between himself and the defendant and in that aspect the defendant had issued the cheque and the said cheque has been dishonoured. Records reveal that even despite receipt of suit summons the defendant has failed to appear before the court and hence, he has been placed exparte. The evidence of Pw.1 corroborates with the documentary evidence. The entire oral and documentary evidence remained unchallenged and not rebutted. In such circumstances there is no impediment to pass a decree in favour of the plaintiff as prayed in the plaint. The plaintiff has proved to the satisfaction of the court that the

defendant had borrowed a sum of Rs. 89,641/- and has failed to repay the said amount. The plaintiff is entitled for interest at the rate of 8% per annum from the date of suit till realization. Hence, I answer **Points No.1 and 2 in the 'Affirmative'**.

12. **Point No. 3:** In view of my answer points No. 1 and 2 in the affirmative and for the foregoing reasons, I proceed to pass the following:-

ORDER

Accordingly, the suit of the plaintiff is hereby decreed with cost.

The plaintiff is entitled for recovery of sum of Rs. 89,641/- from the defendant along with interest at the rate of 8% per annum from the date of suit till realisation.

The defendant has to pay the decretal amount along with interest within two months.

Draw Decree accordingly.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the Open Court on 10th day of June 2019).

(N. Subramanya)
Judge, Prl. Court of Small Causes,
Mysuru.

:ANNEXURE :**List of witnesses examined on behalf of the Plaintiffs:**

P.W.1 M SHIVASWAMY

List of documents marked on behalf of the Plaintiffs:

Ex.P.1 CHEQUE
Ex.P- 2 BANK ENDORSEMENT
Ex.P- 3 LEGAL NOTICE
Ex.P- 4 POSTAL RECEIPTS
Ex.P- 5 POSTAL ACKNOWLEDGEMENT
Ex.P- 6 MEDICAL BILLS

List of witnesses examined on behalf of the Defendants:

NIL

List of documents marked on behalf of the Defendants:

NIL

Judge, Prl. Court of Small Causes,
Mysuru.