

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1ST DAY OF AUGUST 2011

BEFORE

THE HON'BLE MR. JUSTICE AJIT J GUNJAL

R.S.A.NO.1476 OF 2009

BETWEEN

K.G.PADMANABHA REDDY
S/O GOVINDA REDDY
AGED ABOUT 43 YEARS
AGRICULTURIST
R/O KURUMARADIKERE VILLAGE
CHITRADURGA TALUK
PIN - 577 501.

...APPELLANT

(BY. SRI.B.S.HADIMANI, ADV.)

AND

S.TIPPESWAMY
S/O SHANKARAPPA
AGED ABOUT 41 YEARS
AGRICULTURIST
R/O KURUMARADIKERE VILLAGE
CHITRADURGA TALUK
PIN - 577 501.

...RESPONDENT

THIS RSA FILED UNDER SECTION-100 OF CPC AGAINST THE JUDGMENT & DECREE DATED:16.06.2009 PASSED IN R.A.NO.21/2007 ON THE FILE OF THE I ADDL. CIVIL JUDGE (SR.DN) CHITRADURGA DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED: 06.01.2007 PASSED IN O.S.NO.31/2006 ON THE FILE OF THE ADDL.CIVIL JUDGE (JR. DN.) & JMFC, CHITRADURGA.

THIS RSA COMING ON FOR ADMISSION THIS DAY
THE COURT MADE THE FOLLOWING:

J U D G M E N T

Both the Courts below have found that the defendant-appellant has borrowed certain sums of money and has executed a suit pronote. The case made out by the plaintiff is that defendant on 12.7.2003 availed a loan of ₹.20,000/- to meet his family necessities. He also executed on demand promissory note in favour of the plaintiff agreeing to repay the same together with interest at the rate of 2% p.m. Since, the defendant did not repay the amount the present suit is filed.

2. The plaintiff has issued a legal notice on 12.1.2006 calling upon the defendant to pay the amount. But however, defendant declined to receive the said notice. Hence, the present suit is filed.

3. In response to the summons, the defendant enters appearance files written statement *inter alia* contending that he has not executed the suit document



at all inasmuch as he would sign as Padmanabha and not K.G.Padmanabha. According to the defendant there was no transaction and the suit documents are concocted. He has not received any legal notice.

4. Suffice it to note the Trial Court having regard to the evidence on record both oral and documentary was of the view that the plaintiff has proved the execution of the suit document by the defendant. Hence, decreed the suit, the same is confirmed in appeal.

5. Mr.B.S.Hadimani, learned counsel appearing for the defendant submits that having regard to the anomaly in the signature, both the Courts below were not justified in decreeing the suit.

6. Apparently, the Courts below have raised a presumption under Section 118 of the NI Act, 1881. In the said provision until the executant has proved to the contrary there shall be a presumption of consideration, as to date, as to time of acceptance, as to time of



transfer, as to order of endorsements, as to stamps and holder in due course.

7. Indeed, the only contention sought to be raised by the defendant is that he signs as Padmanabha and not as K.G.Padmanabha, this fact is not accepted by the Courts below. The finding recorded is on appreciation of the evidence and is required to be termed as question of fact. To my mind, no substantial question of law arises for consideration in this appeal.

Accordingly, appeal stands **dismissed**.

Sd/-
JUDGE

SS