

Smt.Vathsala vs Sri.Rathnaraj Padival on 25 January, 2016

IN THE COURT OF THE XXX ADDL.CITY CIVIL JUDGE,
BANGALORE CITY

DATED THIS THE 25th DAY OF JANUARY 2016

- : PRESENT: -

SRI.M.G.KUDAVAKKALIGER, B,Com., LL.M.,
XXX Addl.City Civil Judge,
Bangalore.

O.S.NO.5812/2003

PLAINTIFF : Smt.Vathsala,
W/o K.Mahaveer,
No.499, 8th Main,
2nd Phase, J.P.Nagar,
Bengaluru-560 078.

(By Pleader
Sri. K.Chandranath Ariga,
Adv.)

/VS/

DEFENDANT: Sri.Rathnaraj Padival,
S/o Bhujabala Hegde,
C/o Venkatesh, No.978,
II Main road, K.N.Extension,
Opp.Chadrodhaya English
Medium School,
Yeshwanthapura,
Bengaluru-560 022.
(By Pleader Sri.S.S. Adv.)

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O.S.No.5812/2003

DATE OF INSTITUTION

14-08-2003

NATURE OF THE SUIT (Suit on
Pronote, Suit for declaration and
Possession, Suit for injunction, etc.)

Suit for money
recovery

DATE OF THE COMMENCEMENT OF RECORDING OF THE EVIDENCE	11-9-2015			
DATE ON WHICH THE JUDGEMENT WAS PRONOUNCED	25-01-2016			
TOTAL DURATION	:	YEAR/S	MONTH/S	DAY/S
		12	4	11

(M.G.KUDAVAKKALIGER) ,
XXX ADDL.CITY CIVIL JUDGE,
BANGALORE.

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O.S.No.5812/2003

JUDGEMENT

1. Plaintiff has filed this suit for recovery of Rs.2,03,000/- from defendant together with interest at the rate of 15% p.a. from the date of suit till realization of the entire suit claim with costs.
2. The following are the brief and relevant facts leading to the plaintiff's case:

That the plaintiff and defendant are the relatives. The defendant is the son in law of plaintiff's sister. The plaintiff, defendant and another person by name M.V.Narayana Swamy S/o K.Venkateshappa started a business in restaurant at Chikkaballapur. All the three partners entered into an agreement to run the business, which was reduced into writing on 18-12-1989. After some time, the difference cropped up in running of the business. The plaintiff demanded the defendant to return the amount invested by her in the business. The defendant agreed to return the amount to the plaintiff in discharge of her liability. The defendant executed a settlement letter, dtd.18-6-2001. In respect of this liability, defendant has issued a cheque for Rs.1,40,000/- bearing No.075020 in favour of plaintiff drawn on State Bank of Mysore Chikkaballapur branch. The plaintiff caused a registered notice dtd.28-10-2001 to the defendant calling upon the defendant to return the amount. Said notice was duly served upon the defendant. The defendant got issued an untenable reply denying the agreement and the total denial of the entire transaction. Defendant has not paid the entire amount in spite of repeated requests. Now, the defendant is due a sum of Rs.1,40,000/- with interest at the rate of 15% p.a., totally a sum of Rs.2,03,000/-. Plaintiff has also filed private complaint against the defendant (accused) under

Sec.138 of N.I.Act. The said complaint is registered in C.C.No.35657/2001 before the Metropolitan Magistrate at Bengaluru. Hence, plaintiff has filed this suit for recovery of Rs.2,03,000/-.

3. As contemplated under law, suit summons came to be issued to the defendant. Pursuant to the suit summons issued defendant has appeared through his counsel and filed his written statement contending inter-alia that suit is misconceived, bereft of merits and liable to be dismissed in limine with costs. The defendant has contended that suit filed by the plaintiff is false, unjust. This defendant has admitted the contents of the averments made in plaint para-2. However, denied the contents of the plaint para-3 as false. There is no settlement deed as alleged by the plaintiff and if any such document is existed, it is created or invented recently by the plaintiff for the purpose of this suit. This defendant has denied the contents of the plaint para-4 that defendant has received a cheque in question as false and denied the same. This defendant has deposed that legal notice issued by the plaintiff is suitably replied denying the very claim of the plaintiff. The averments made in para-7 with regard to the criminal case are admitted and defendant is acquitted on the ground of benefit of doubt. This defendant further contended that there is no cause of action to institute the suit. Hence, the suit does not survive. Hence, same is liable to be dismissed. Plaintiff has not come up with clean hands. The plaintiff's claim is in respect of the cheque for Rs.1,40,000/- in respect of the partnership between the plaintiff, defendant and another Narayana Swamy, who is not made as necessary party to this suit. On this ground also, the suit is liable to be dismissed. The defendant further contended that the payments due and payable to the plaintiff have been fully recovered by the plaintiff's husband from the accounts of the Partnership firm by way of cheques for Rs.53,750/- and 26,250/- and paid to the plaintiff herself by way of cash. It is further contended that the husband of the plaintiff was looking after the cash counter of the Hotel business. When the defendant went out for procuring provisions, vegetables, etc. and other items to the hotel, the husband of the plaintiff had stealthily laid his hands to the defendant's cheque in question and got the said cheque filled with fanciful figure to make a wrongful gain and claimed against this defendant. Therefore, the claim made by the plaintiff is false and defendant is not liable to pay the same. Hence, prayed to dismiss the suit with costs.

4. Defendant further contended that plaintiff has admitted in the cross-examination in C.C.No.35657/2001 that she has paid total amount of Rs.80,000/- by way of two D.Ds. each for Rs.40,000/- to this defendant. Therefore, the different claim made by the plaintiff in the suit that she has paid Rs.1,40,000/- to the defendant cannot be believed at all. The plaintiff has made use of the blank cheque belonging to this defendant. The plaintiff has admitted the difference between the writings in the cheque and the signatures therein viz. ink and handwriting. The plaintiff has admitted the correction carried out in the cheque regarding the year 1999 to 2000. This defendant has also contended that if the husband of the plaintiff had not withdrawn any amount from the account of the partnership business, why the plaintiff has not made her husband as an important material/necessary witness in criminal case and why she did not examined him. It goes to show that plaintiff's husband has withdrawn the money. The plaintiff had full knowledge about the consequences that the truth could have come out. Hence, she has deliberately not examined her husband. The defendant further contended that Partnership has suffered loss, this fact is also admitted by the plaintiff. Therefore, Partnership is not dissolved. The plaintiff is not entitled to

make any claim from the defendant and plaintiff is also equally liable to loss and profits of the business. On this ground also, there is no necessity for this defendant to issue any cheque to the plaintiff. Defendant has contended that plaintiff is the close relative of the defendant, on humanitarian consideration, this defendant has cleared the payment to the plaintiff. The plaintiff has not come up with clean hands. Hence, plaintiff is not entitled to make any claim against this defendant. If the suit is decreed, the defendant will be put to irreparable loss and hardship and prejudice which cannot be compensated by any other means. Hence, prays to dismiss the suit with costs.

5. From the above pleadings of both the parties, the following issues have been framed by my Learned Predecessor in office for disposal of the case:

1. Whether the plaintiff proves that defendant has executed a settlement letter dtd.18-6-2001 with regard to discharge of his liability and issued a cheque for Rs.1,40,000/- in favour of plaintiff?

2. Whether defendant proves that payments due and payable to plaintiff have been fully recovered by the plaintiff's husband from the amount of partnership firm by way of cheque for Rs.53,750/- and Rs.26,250/- paid to plaintiff herself by cash?

3. Whether the plaintiff's suit is bad for mis-joinder of necessary parties?

4. Whether plaintiff proves liability of defendant to pay suit claim?

5. What order or decree?

6. In order to substantiate the case made out by the plaintiff, the plaintiff has entered in to the witness box and filed her affidavit evidence under Order 18 Rule 4 of C.P.C. as per P.W.1 and got marked as many as 7 documents as per Ex.P.1 to P.7. In order to rebut the case of the plaintiff, the defendant has entered into the witness box and filed his affidavit evidence as per D.W.1 and got marked as many as 7 documents as per Ex.D.1 to D.7. Case posted for arguments.

7. I have heard the arguments on both sides. Perused the materials placed on record.

8. On the basis of the evidence both oral and documentary and other materials., I record my findings to the above issues as follows:

Issue No.1: In the affirmative.

Issue No.2: In the negative.

Issue No.3: In the negative.

Issue No.4: In the affirmative.

Issue No.5: As per the final order for the following:

REASONS

9. ISSUE NOS.1 TO 4: As these issues No.1 to 4 are interlinked, discussion on one issue has its direct bearing on the discussion on another issue. In view to avoid repetition of discussion and facts of evidence, I am going to consider all these issues jointly.

10. The brief facts of the plaintiffs' case are that the plaintiff and defendant are the relatives. The defendant is the son in law of plaintiff's sister. The plaintiff, defendant and another person by name M.V.Narayana Swamy S/o K.Venkateshappa started a business in restaurant at Chikkaballapur. All the three partners entered into an agreement to run the business, which was reduced into writing on 18-12-1989. After some time, the difference cropped up in running of the business. The plaintiff demanded the defendant to return the amount invested by her in the business. The defendant agreed to return the amount to the plaintiff in discharge of her liability. The defendant executed a settlement letter, dtd.18-6-2001. In respect of this liability, defendant has issued a cheque for Rs.1,40,000/-

bearing No.075020 in favour of plaintiff drawn on State Bank of Mysore Chikkaballapur branch. The plaintiff caused a registered notice dtd.28-10-2001 to the defendant calling upon the defendant to return the amount. Said notice was duly served upon the defendant. The defendant got issued an untenable reply denying the agreement and the total denial of the entire transaction. Defendant has not paid the entire amount in spite of repeated requests. Now, the defendant is due a sum of Rs.1,40,000/- with interest at the rate of 15% p.a., totally a sum of Rs.2,03,000/-. Plaintiff has also filed private complaint against the defendant (accused) under Sec.138 of N.I.Act. The said complaint is registered in C.C.No.35657/2001 before the Metropolitan Magistrate at Bengaluru. Hence, plaintiff has filed this suit for recovery of Rs.2,03,000/-. As contemplated under law, suit summons came to be issued to the defendant and defendant appeared through his counsel and filed his written statement contending inter-alia that suit is misconceived, bereft of merits and liable to be dismissed in limine with costs. The defendant has contended that suit filed by the plaintiff is false, unjust. This defendant has admitted the contents of the averments made in plaint para-2. However, denied the contents of the plaint para-3 as false. There is no settlement deed as alleged by the plaintiff and if any such document is existed, it is created or invented recently by the plaintiff for the purpose of this suit. This defendant has denied the contents of the plaint para-4 that defendant has received a cheque in question is false and denied the same. This defendant has contended that legal notice issued by the plaintiff is suitably replied denying the very claim of the plaintiff. The averments made in para-7 with regard to the criminal case are admitted and defendant is acquitted on the ground of benefit of doubt. This defendant further contended that there is no cause of action to institute the suit, hence, the suit does not survive, same is liable to be dismissed. Plaintiff has not come up with clean hands.

11. The defendant further contended that plaintiff has claimed in respect of the cheque for Rs.1,40,000/- in respect of the partnership between the plaintiff, defendant and another Narayana Swamy, who is not made as necessary party to this suit. On this ground also, the suit is liable to be dismissed. The defendant further contended that the payments due and payable to the plaintiff have been fully recovered by the plaintiff's husband from the accounts of the Partnership firm by way of cheques for Rs.53,750/- and 26,250/- and paid to the plaintiff by way of cash. It is further contended that the husband of the plaintiff was looking after the cash counter of the Hotel business, when the defendant went out for procuring provisions, vegetables, etc. and other items to the hotel, the husband of the plaintiff had stealthily laid his hands and stolen the defendant's cheque in question and got the said cheque filled with fanciful figure to make a wrongful gain and claimed against this defendant. Therefore, the claim made by the plaintiff is false and defendant is not liable to pay the same. Defendant further contended that plaintiff has admitted in the cross- examination in C.C.No.35657/2001 that she has paid total amount of Rs.80,000/- by way of two D.Ds. each for Rs.40,000/- to this defendant. Therefore, the different claim made by the plaintiff in the suit that she has paid Rs.1,40,000/- to the defendant cannot be believed at all. The plaintiff has made use of the blank cheque belonging to this defendant. The plaintiff has admitted the difference between the writings in the cheque and the signatures therein viz. ink and handwriting. The plaintiff has admitted the correction carried out in the cheque regarding the year 1999 to 2000. This defendant has also contended that if the husband of the plaintiff had not withdrawn any amount from the account of the partnership business, why the plaintiff has not made her husband as an important material/necessary witness in criminal case and why she did not examined him. It goes to show that plaintiff's husband has withdrawn the money. The plaintiff had full knowledge about the consequences that the truth could have come out. Hence, she has deliberately not examined her husband. The defendant further contended that Partnership has suffered loss, this fact is also admitted by the plaintiff. Therefore, Partnership is not dissolved. The plaintiff is not entitled to make any claim from the defendant and plaintiff is also equally liable to loss and profits of the business. On this ground also, hence, there is no necessity for this defendant to issue any cheque to the plaintiff. Defendant has contended that plaintiff is the close relative of the defendant, on humanitarian consideration, this defendant has cleared the payment to the plaintiff. The plaintiff has not come up with clean hands. Hence, plaintiff is not entitled to make any claim against this defendant. Hence, prays to dismiss the suit with costs.

12. The plaintiff has entered into the witness box and filed his affidavit evidence as per P.W.1 and got marked as many as 6 documents as per Ex.P.1 to P.6. P.W.1 reiterated the averments made in the plaint and deposed in support of her case. In order to rebut the case of the plaintiff, defendant has entered into witness box and filed his affidavit evidence and got marked as many as 7 documents as per Ex.D1 to D7, closed his side.

13. At this juncture, it is to be noted some admitted facts. It is admitted that plaintiff is the relative of the defendant. The defendant is the son-in-law of the plaintiff's sister. The plaintiff, defendant and another person by name N.V.Narayanaswamy have started business in restaurant at Chikkaballapura in the name and style 'New Amanthrana Hotel' and entered into a Partnership deed, which was reduced into writing on 18-12-1999. As per the recitals of the Partnership Deed , the estimated cost of said business is Rs.9,50,000/-, each partner have contributed Rs.1,50,000/- each

and remaining Rs.5 lakhs is to be borrowed from the KSFC. The defendant No.1 is the managing partner and all the loan papers have to be prepared in the name of the managing partner and he has to arrange for the surety. All the three partners have to share the profits and loss equally and by giving notice every partner is at liberty to retire on his will by giving written prior notice of three months advance notice. Copy of the said Partnership deed has been produced by the plaintiff, whereas defendant no.1 has produced the original Partnership deed which has been marked as Ex.D1.

14. It is the case of the plaintiff that as the differences cropped up in running of the business, the plaintiff demanded the defendant to return the amount invested by her in the business, the defendant agreed to return the amount in discharge of his liability and defendant has executed settlement letter on 18-6- 2001 and issued a cheque bearing 075020 for Rs.1,40,000/- drawn on State Bank of Mysore, Chikkaballapur Branch, in favour of the plaintiff, but the said cheque when presented to the bank, it has been bounced back. Thereafter, the plaintiff has issued registered legal notice on 28-10-2001 to the defendant calling upon the defendant to return the amount of Rs.1,40,000/-. Thereafter, this plaintiff has filed criminal complaint against the defendant which was registered in C.C.No.35657/2001 before the 16th C.M.M.Court, Bengaluru which was ended in acquittal vide judgment dtd.3-10-2003. Thereafter, this plaintiff has preferred a criminal appeal 1726/2003 before the Hon'ble High Court, which came to be rejected on 21-8-2009. Now, the plaintiff claims that the defendant is liable to return the amount invested by the plaintiff with interest. The defendant has denied all the averments made in the plaint, however admitted the contents of plaint para-2 with regard to the relationship and establishment of hotel business under partnership and execution of the Partnership deed and running of the hotel business under Partnership deed and he himself produced the original Partnership deed and marked as per Ex.D1 and has taken various contentions that there is no cause of action to institute the suit, non-joinder of necessary parties as the plaintiff has not made Sri.Narayanaswamy another partner in the suit and denied the issuance of cheque to the plaintiff and defendant has also introduced a new ground that he has made all the payments payable to the plaintiff and all the dues have been recovered by the husband of the plaintiff from the account of the Partnership firm. Hence, prayed to dismiss the suit.

15. In order to substantiate her case, the plaintiff has produced cheque No.075020 dtd.18-10-2001 for Rs.1,40,000/- signed by the defendant which was bounced back when presented for encashment through Vysya Bank, Chikkaballapura branch with an endorsement insufficient funds. But the defendant has taken contention in his written statement that husband of the plaintiff was looking after the cash counter of the hotel business and when the defendant went out for procuring provisions, vegetables and other items to the hotel, the husband of the plaintiff had stealthily laid his hand to the defendant's cheque in question and got the said cheque filled with fanciful figure to make the wrongful gain and made wrongful claim against the defendant. Hence the claim made by the plaintiff is false and defendant is not liable to pay the cheque amount and prayed to dismiss the suit with costs. If at all the defence taken by the defendant about the stealing of the signed blank cheque by the husband of the plaintiff he ought to have lodged the complaint against the husband of the plaintiff for having stolen the alleged cheque. The filing of complaint Filing complaint against the thief who has stolen the cheque is the natural course of action of an ordinary prudent man. But, in the instant case, the defendant has not filed any complaint against the husband of the plaintiff

and he has not given any explanation as to why he has not given complaint against the husband of the plaintiff for having stolen the signed blank cheque. Therefore, the defence taken up by the defendant is not sustainable under the eye of law, because the plaintiff has discharged her burden by producing the cheque signed by the defendant and bank endorsement with regard to insufficiency of funds in the account of the defendant. Now, the onus shifts to the defendant to prove his case about the stealing of signed cheque by the husband of the plaintiff and its misutilization by the plaintiff in this case for wrongful gain. It is the bounden duty of the defendant to prove that he has discharged all his liabilities with regard to the release of the plaintiff from the liability of the partnership as made in the case of release of the another partner by name M.V.Narayanaswamy, S/o K.Venkateshappa as per Ex.D4 & D5. But, he has not made any efforts in discharging his burden by filing any criminal case against the husband of the plaintiff for stealing the signed blank cheque from the hotel and not produced any receipt for having paid the amount to the plaintiff in releasing her from the Partnership by paying some money as paid in the case of releasing M.V.Narayanaswamy to prove his case. Hence, except the self serving statement, defendant has not produced any material documents to show that he has repaid the amount to the plaintiff with respect to the release of the plaintiff from the Partnership. Therefore, this Court is of the opinion that defendant has utterly failed to prove in discharging his onus in disproving the case of the plaintiff.

16. In his written statement, the defendant has taken contentions that the plaintiff has not examined her husband as a witness before this Court as well as before the Criminal Court as a material witness. Hence, prays to draw necessary inference against him with regard to the husband of the plaintiff withdrawing the money from the Partnership business. But, at this juncture, it is to be noted that nothing prevented to the defendant to call the husband of the defendant as his witness and examined before this Court to prove his case. He has also not arrayed the husband of the plaintiff as his witness and not examined before the Court. Defendant has taken contention that he has paid the amount payable to the plaintiff from the account of the partnership by way of cheque to the husband of the plaintiff for Rs.53,750/- and Rs.26,250/-. To prove the said fact, defendant has produced his passbook in A/c No.4118757 as per Ex.D2 and relevant entries have been marked as per Ex.D.2(a), ExD.2(b) and Ex.D.2(c). Ex.D.2(a) shows the entry of Rs.1,750/- against cheque No.642 on 5-9-2000, Ex.D.2(b) shows the entry of Rs.48,000/- on 6-2-2000 against cheque No.644, Ex.D.2(c) shows the entry of Rs.4005/- against cheque No.649. The pass book discloses no name of the husband of the plaintiff with regard to these entries. It is the usual practice of the bank which is adopted in its usual course of business in making entries in the passbook that, if bearer cheque has been issued on a particular name while effecting the entry, name of the bearer is going to enter in the passbook. If the self cheque is issued in drawing the money, no name of the account holder is going to be entered in the passbook, only the cheque numbers are going to be mentioned. Ex.D2 does not depict any name of the party, it only depicts cheque numbers and amount withdrawn. Moreover, the total amount mentioned by the defendant in his written statement works out to be Rs.90,000/- (53,750/- + 26,250), but the amount marked as per Ex.D2(a to c) works out less than that i.e. 1,750/- + 48,000/- + 4,000/- = 53,750/- only. Therefore, the defence taken by the defendant falls to the ground and it is the defendant who has to explain for what purpose the cheques have been given and encashed. The counterfoil of cheque No.950642, depicts that it has been given to one K. Mahaveer. There is an endorsement on the backside of the counterfoil 'House

rent for the 5-8-2000'. Hence, this cheque number 950642 has been issued to pay the rent for 5-8-2000. Cheque No.950644 discloses the name of the husband of the plaintiff, but no explanation has been given. So also, cheque No. 950651 discloses the amount, but name appears to be written afterwards. Absolutely there is no explanation on the side of the defendant for the payment of these cheques. Definitely there were books of accounts kept by the defendant pertaining to the business. There ought to have been mentioned the purpose for which the cheques have been given. But, in the instant case, the defendant has not made any efforts to prove the same. Therefore, the defence taken by the defendant falls to the ground. Moreover, in this case, the plaintiff is the partner, to release her from the Partnership firm, any amount settled between them is to be given to the plaintiff directly. But, to show the same, defendant has not produced any material documents except his self serving statement. If at all, husband of the plaintiff has received money, that will not disentitle the plaintiff to receive her claim. Defendant is at liberty to recover whatever may be the money which alleged to have been paid to the husband of the plaintiff.

17. In his written statement, defendant has taken contention about the admissions given in criminal case that she has paid only Rs.80,000/- by way of two D.Ds. of Rs.40,000/- each. If that is the case, under Ex.D1, which is the admitted document by the plaintiff and defendant, there is a clause which discloses the share capital to be invested by all the three partners is Rs.1,50,000/-. He has not made any allegations that the plaintiff has not paid Rs.1,50,000/- as her part of the share capital. Therefore, at this juncture that allegation is not sustainable. The defendant has also made allegation that at the date column there is a correction carried out by striking off 19 and writing of 2001 as his defence. But, in the natural course of business, cheque leaves remains unused are to be used by striking the printed year by writing the correct date. Hence, such natural course of action cannot be doubted as mutilation of cheque. In this case defendant has admitted his signature and made various allegations with regard to stealing and using the said cheque for the wrongful gain, etc. he cannot disown the contents of the cheque. Moreover, the defendant has executed his acknowledgement of debt on Rs.10/- bond paper by purchasing bond paper on his own name on 18-6-2001 from one stamp vendor Sri.V.G.Raju, Yeshwanthpur, Bengaluru, admitting the issuance of cheque numbers 075020 for Rs.1,40,000/- on his account number CA-9/288 of State Bank of Mysore, Chikkaballapur which is marked as per Ex.P.5. Defendant has made an allegation that Ex.P.5 is concocted and created for the purpose of this suit. But, defendant has not made any efforts in disproving the Ex.P.5. Defendant has produced receipt as per Ex.D3 and a document with regard to the release of the partner Sri.M.V.Narayanaswamy from the firm with regard to the discharging of his liability to pay the amount to the another partner. But, defendant has not produced any single paper to prove the payment of money to the plaintiff in releasing her from the Partnership firm.

18. Defendant has argued that the criminal case No.35657/2001 pertaining to the cheque before the criminal court was ended in acquittal and criminal appeal No.1726/2003 has been rejected. Hence, plaintiff is not entitled for any money. But, it has been argued by the plaintiff that degrees of proof in criminal case and in civil case are at variance and acquittal judgment passed by the criminal court does not disentitle plaintiff to file civil case for recovery of money. In criminal case, the degree of proof is at higher pedestral. Prosecution or complaint has to prove its case beyond reasonable doubt, whereas in civil case, plaintiff has to prove his case with all preponderance of probabilities. The counsel for plaintiff has also argued that the acquittal judgment of criminal case marked as per

Ex.D7 has no evidentiary value in the civil litigation, except for the limited purpose of showing that there was a trial resulting in acquittal or conviction as the case may be. The findings of the criminal court are inadmissible. Hence, a judgment in criminal case is admissible for the limited purpose. Relying only on or on basis thereof a civil proceeding cannot be determined, but that would not mean that it is admissible for any purpose for whatsoever. In order to substantiate his case he has relied on the rulings reported in the case of 1Seth Ramdayal Jat Vs. Laxmi Prasad, where in it is held as under:

"(A) Evidence Act (1 of 1872), Ss.43, 78-

Judgment of criminal Court - Not admissible in civil suit - Admission made by a party in previous criminal proceedings- Is however admissible in subsequent civil proceedings.

1 AIR 2009 Supreme Court 2463 Save and except for Sec.43 of the Indian Evidence Act which refers to Sections 40,41 and 42 thereof, a judgment of a criminal Court shall not be admissible in a civil suit. What, however, would be admissible is the admissions made by a party in a previous proceedings."

19. Therefore, the defendant cannot take shelter of the acquittal judgment to disown his liability to pay the amount. In the instant case, defendant tried to take various defences, but ultimately failed to substantiate the same. At one breadth the defendant has contended that he has cleared off the entire amount payable to the plaintiff in question and no single document has been produced. At another breadth defendant himself produced Ex.D.4 receipt executed by the another partner M.V.Narayanaswamy for having received the amount of Rs.75,000/- in discharge of M.V. Narayana Swamy from the partnership and also got marked Ex.D5 Release Deed of another partner. It clearly discloses that defendant has not repaid any money to the plaintiff in releasing her from the Partnership firm. Hence, in view of my above discussions and the reasons stated therein, I answer Issue No.1 in the affirmative and Issue No. 2 in the negative.

20. ISSUE NO.3: On the basis of the rival contentions taken up by the defendant my predecessor has framed this issue, but it is to be noted at this juncture that the question before this Court is not either dissolution of Partnership firm or releasing of the partners from the Partnership. The very defendant himself has admitted about the releasing of partners from the Partnership firm and returning of the money. It is the case of recovery of money arose on account of dishonouring of the cheque issued by the defendant to the plaintiff. Therefore, the question of making M.Narayanaswamy as a necessary party would not arise at all. Hence, the suit filed by the plaintiff is not bad for non- joinder of necessary parties. Hence, I answer issue No.3 in the negative.

21. In the instant case, the plaintiff has claimed 15% interest from the date of suit till the realization of the suit claim. However, there is no agreement between the parties to claim the interest at 15% p.a. It appears to be higher side. Under the Interest Act, the party is entitled to interest at the 'current rate of interest' which expression is defined in Clause(b) of Sec.2 of the Interest Act, as meaning, the highest of the maximum rates at which interest may be paid on different classes of deposits by different classes of schedule banks in accordance with the direction given or issued to

the banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949. If claim of the plaintiff is allowed with interest at the rate of 12% p.a. that would meet the ends of justice. Therefore, this Court is of the opinion that plaintiff is entitled for future interest at the rate of 12% p.a. from the date of suit till realization of the suit claim calculated on principal amount of Rs.1,40,000/-.

22. ISSUE NOs.4 & 5: In view of my above discussions and the reasons stated therein and my answer to above issues, this Court is of the opinion that the case of the plaintiff is more probable than the case of the defendant, with all preponderance of probabilities the plaintiff has proved the liability of the defendant to pay the suit claim. Hence, I answer issue No.4 in the affirmative and proceed to pass the following:

ORDER The suit of the plaintiff is hereby decreed with costs.

Plaintiff is entitled to recover
Rs.1,40,000/- (Rupees One Lakh Forty
Thousand only) with interest at the rate of

12% p.a. from the date of suit till realization.

The defendant is hereby directed to pay the decretal amount within two months from the date of this judgment & decree.

Draw decree accordingly.

(Dictated to the Judgment Writer, transcribed thereof, corrected, signed and then pronounced by me in the open Court on this THE 25th DAY OF JANUARY 2016).

(M.G.KUDAVAKKALIGER), XXX ADDL.CITY CIVIL JUDGE, BENGALURU.

ANNEXURE WITNESSES EXAMINED FOR THE PLAINTIFF/S:

P.W.1 :Vatsala.

WITNESSES EXAMINED FOR THE DEFENDANTS/S:

D.W.1 : Rathnaraj padiwal.

DOCUMENTS MARKED FOR THE PLAINTIFF/S:

Ex.P.1 : Cheque.
Ex.P.2 : Endorsement of bank.
Ex.P.3 : cheque & endorsement.
Ex.P.4 : Copy of legal notice.

Ex.P.5 : Endorsement on stamp paper.
Ex.P.6/7 : Reply.

DOCUMENTS MARKED FOR THE DEFENDANTS/S:

Ex.D.1 : Partnership Deed.
Ex.D.2 : Bank pass book.
Ex.D.3 : Cheque Book.
Ex.D.4 : Receipt.
Ex.D.5 : Partnership give-up deed.
Ex.D.6 : Copy of judgment.
Ex.D.7 : Copy of judgment in Crl.A.1726/2003.

(M.G.KUDAVAKKALIGER),
XXX ADDL.CITY CIVIL JUDGE,
BENGALURU.