



S.A.No.1041 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2024

CORAM

THE HON'BLE MR. JUSTICE **G.ARUL MURUGAN**

S.A.No.1041 of 2012
and MP.No.1 of 2012

Gunasekaran

... Appellant

Vs.

Jothi

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 09.03.2012 made in AS.No.65 of 2008 on the file of Sub-ordinate Judge, Ariyalur, reversing the judgment and decree dated 10.07.2008 made in OS.No.512 of 2004 on the file of District Munsif Court, Jeyankondam.

For Appellant : Mr. R.Narayanan

For Respondent : Mr.P.Satishkumar for
Mr.P.Dineshkumar

JUDGMENT



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The defendant in the suit is the appellant before this Court on appeal. The second appeal is filed challenging the judgment and decree dated 09.03.2012 made in AS.No.65 of 2008 on the file of Sub-ordinate Judge, Ariyalur, reversing the judgment and decree dated 10.07.2008 in OS.No.512 of 2004 on the file of District Munsif Court, Jeyankondam.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

3. According to the plaintiff, on 01.10.2001, the defendant borrowed a sum of Rs.30,000/- as a loan, agreeing to repay along with interest at 12% per annum and executed the promissory note in Ex.A.1. Even after repeated demands, the loan amount was not repaid. The plaintiff issued the legal notice on 06.05.2002 for which there was no reply, therefore, the plaintiff has come up with the suit for recovery of money.

4. The defendant resisted the suit by filing the written statement contending that no consideration passed through Ex.A.1 and that the defendant had borrowed money from the plaintiff's father Sundaraj



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Mudaliar who is a money lender. In respect to that debt, pursuant to the decree obtained in OS.No.192 of 2000, in the E.P.No.124 of 2001, an order of attachment of defendant's salary was obtained by him and in respect of the settlement of the debt, the defendant along with one Kaliyaperumal went to plaintiff's father's Advocate office at Jayankondam. After negotiation, the defendant accepted to pay Rs.15,000/- for which the blank promissory note was signed and handed over to the plaintiff's father. Later the loan in the execution proceedings was settled, and his advocate also sent the letter to the Indian Bank intimating the settlement of the account. Since after receiving the legal notice, the defendant met the plaintiff's father in person, and as he informed that the promissory note will be returned after settling the amount, he did not send any reply. As such there is no amount due payable by the defendant and sought for dismissal of the suit.

5. During trial, the plaintiff examined herself as PW.1 and Ex.A.1 to Ex.A.3 were marked. On the side of the defendant, DW.1 to DW.4 were examined and Ex.B.1 to Ex.B.5 were marked.



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6. After analysing the evidence, the Trial court, by judgment and decree dated 10.07.2008, dismissed the suit. The Trial court found that the Advocate sent a letter in Ex.B.1 informing that the dues in respect of the E.P.No.124 of 2001 was settled and as such, the promissory note issued in respect of settlement of that amount was closed and thereby the defendant had rebutted the presumption. Whereas, the plaintiff did not prove that the consideration was passed through the promissory note. Aggrieved, the plaintiff filed appeal in AS.No.65 of 2008 on the file of Subordinate Judge, Ariyalur.

7. The Lower Appellate Court after reappraising the evidence allowed the appeal and decreed the suit. Aggrieved, the defendant is before this court on appeal.

8. This Court, by order dated 19.11.2012, admitted the second appeal and framed the following substantial questions of law.

“a) Whether the learned Subordinate Judge has failed to see that once the defendant shows by evidence that the suit promissory note was not supported by



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consideration in the manner stated in the promissory note or plaint the evidential burden shifts to the plaintiff and the legal burden of the plaintiff is revived and the presumption under section 118 of the Negotiable Instruments Act disappears as held in 21 MLJ?

b) Whether on the basis of the evidence of Ex.B.1 the letter given by the Advocate Suresh Kumar, examined as DW.4, on behalf of the plaintiff's father that the suit promissory note in blank was given to the plaintiff's father towards full settlement of E.P.No.124 of 2001 in OS.No.192 of 2000?"

9. The learned counsel appearing for the appellant argued that the defendant had not borrowed any loan from the plaintiff and in fact, only in respect of the dues pending to the plaintiff's father, for which execution proceeding in E.P.No.124 of 2001 was pending, for which a blank promissory note was issued. Therefore Ex.A.1 is not supported by consideration.

10. The learned counsel further argued that the attesor, who was



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examined as DW.2, supported the case of the defendant and they also examined the counsel of the plaintiff's father as DW.4, who issued the letter marked as Ex.B.1 which was sent to the bank, stating that since the loan dues had been settled, the attachment from the salary of the defendant need not be continued.

11. The learned counsel further contended that since the defendant examined DW.2 and DW.4, filed the document in Ex.B.1 and rebutted the presumption, the burden shifted on to the plaintiff, but the plaintiff miserably failed to prove that Ex.A.1 was supported by consideration.

12. The learned counsel further contended that when the trial court has rightly dismissed the suit, the lower appellate court had erroneously allowed the appeal, shifting the burden on the defendant which is perverse, and sought for allowing of this second appeal.

13. Per contra, the learned counsel appearing for the respondent argued that since the defendant admitted the signature, the execution of the promissory note in Ex.A.1 stands proved and once the execution is



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proved, the onus is on the defendant to rebut the presumption by bringing in probable material, but the defendant failed to rebut the presumption.

14. The learned counsel further contended that the evidence of DW.3 makes it clear that the defendant had received the sum of Rs.30,000/- towards the loan and had executed the promissory note. As such, the Lower Appellate Court had arrived at the finding of fact which is based on evidence and no interference is required, and sought for dismissal of the second appeal.

15. Heard the learned counsel on both sides and perused the material available on record.

16. The suit for recovery of money is filed based on the promissory note dated 01.10.2001 in Ex.A.1, executed for a sum of Rs.30,000/-. It is the case of the plaintiff that the defendant had borrowed the money agreeing to repay the same with interest at 12% per annum and after receiving the amount, the defendant executed the promissory note. When the plaintiff issued the legal notice dated 06.05.2002 in Ex.A.2, the



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defendant did not choose to reply.

17. The defendant admitted the execution of the promissory note, but however only contends that the plaintiff's father, being the money lender, advanced the loan to the defendant and in respect of which the suit in OS.No.192 of 2000 was filed and also E.P.No.124 of 2001 was filed for execution of the decree, in which the plaintiff's father obtained order for attachment of the defendant's salary. Only in respect of settlement, the defendant, along with DW.2, went to the Advocate's office at Jeyankondam, where negotiation was made and settlement arrived at for Rs.15,000/-. The blank promissory note was signed and handed over by the defendant only for that purpose. This has been misused by the plaintiff and she has filed the present suit when no consideration has been passed.

18. When the defendant has admitted the execution of the promissory note, the execution stands proved. Once the execution is proved, as per Section 118 of the Negotiable Instruments Act, a presumption arises in favour of the plaintiff that the promissory note has



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been issued on that date and in discharge of legal liability. The burden shifts on to the defendant to rebut the presumption by bringing in evidence, of course, on the preponderance of probability to show that no consideration has been passed through the promissory note. When the execution is admitted or proved, the defendant is bound to bring in evidence to rebut the presumption, even though need not be by any direct evidence, atleast some probable defence by bringing some materials to create a reasonable doubt that the promissory note has not been executed for any legal liability.

19. In the instant case, DW.3, who is the scribe, has categorically deposed that the sum of Rs.30,000/- was paid by the plaintiff to the defendant as a loan and to receive the loan, the defendant signed the promissory note in the presence of the witness, thereby the passing of consideration has been clearly established and proved by the plaintiff. Even though DW.2, the attesor, gave evidence supporting the defendant, he has admitted that he has to repay loan to the plaintiff and also there is a dispute pending against them. Only since DW.2, supported the case of the defendant, it cannot be taken sufficient for rebutting the presumption.



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Further, the evidence of DW.4, or DW.1 does not support the case of the defendant as the accounts were settled in respect of dues executed by the defendant to the plaintiff's father. From the document in Ex.B.1 nothing can be ascertained as it is in no way connected with the loan amount covered under the promissory note in Ex.A.1.

20. It could be seen that when the legal notice has been issued by the plaintiff, the defendant has not chosen to send any reply, particularly when the defendant claims that the promissory note was only handed over to the plaintiff's father for settlement of the account in execution proceedings, and that it has been misused by the plaintiff. Further, the defendant has also issued the legal notice in Ex.B.2 on 07.06.2003 to the plaintiff, where the defendant has not stated that only in respect of the settlement of the account to the plaintiff's father this Ex.A.1 was issued. Only after the suit was filed, as an after thought, the defendant took the stand that in respect of the dues, the settlement was arrived at for a sum of Rs.15,000/- and the blank promissory note was handed over to the plaintiff's father, which does not in any way support the case of the defendant. When the execution of the promissory note is proved, the



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defendant has not brought in any probable material to rebut the presumption, whereas the plaintiff from the document in Ex.A.1 and issuance of the legal notice in Ex.A.2 which went uncontroverted and by catergorical evidence of DW.3 has proved that consideration has been passed on to the defendant.

21. The Lower Appellate Court, rightly by taking note of the materials available on record, has arrived at the findings of fact which are not perverse.

22. In view of the finding, the substantial questions of law are answered in favour of the respondent and against the appellant. Therefore, the second appeal stands dismissed. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Neutral Citation : Yes / No



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To

- 1.The Sub-ordinate Judge, Ariyalur.
- 2.The District Munsif Court, Jeyankondam

G.ARUL MURUGAN.,J.

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