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S.A.No. 413 of 2020

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**JUDGMENT RESERVED ON : 23 / 09 / 2024**

**JUDGMENT PRONOUNCED ON : 18 / 10 / 2024**

**CORAM:**

**THE HONOURABLE MR. JUSTICE R. SAKTHIVEL**

**S.A.NO.413 OF 2020**

**AND**

**CMP NO.8523 OF 2020**

K. Selvaraj

...Appellant/Appellant/Defendant

*Versus*

V.Thangavelu

... Respondent/Respondent/Plaintiff

**PRAYER:** Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated February 17, 2020 made in A.S.No.25 of 2016 on the file of the Additional District Judge, Namakkal District confirming the Judgment and Decree dated November 4, 2015 made in O.S.No.40 of 2011 on the file of Subordinate Court, Namakkal District.

For Appellant : Mr.R.Saseetharan

For Respondent : Mr.S.Saravana Kumar  
for M/s.I.Abrar Md Abdullah



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## **JUDGMENT**

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This Second Appeal has been filed praying to set aside the Judgment and Decree dated February 17, 2020, made in A.S.No.25 of 2016 on the file of the 'Additional District Judge, Namakkal District' (henceforth 'First Appellate Court'), whereby the Judgment and Decree dated November 4, 2015 made in O.S.No.40 of 2011 on the file of 'Subordinate Court, Namakkal District' (henceforth 'Trial Court') was confirmed.

2. The defendant who was unsuccessful before the Trial Court as well as the First Appellate Court has preferred this Second Appeal. For the sake of convenience, hereinafter, the parties herein will be denoted as per their array in the Original Suit.

### **Plaintiff's Case**

3. The case of the plaintiff is that on August 11, 2008 the defendant borrowed a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) from the plaintiff for urgent family and business expenses by executing a Promissory Note. The defendant agreed to repay the loan



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amount together with interest at the rate of 12% per annum to the plaintiff.

Despite repeated demands, the defendant did not repay the principal amount and the interest to the plaintiff. Hence, the plaintiff filed the Suit for recovery of money with interest at the rate of 12% per annum.

### **Defendant's Case**

4. The defendant filed Written Statement wherein it has been averred that he never borrowed the said loan amount of Rs.1,50,000/- from the plaintiff as alleged in the Plaint. The alleged Promissory Note is a forged one. Both the plaintiff and the defendant were teachers well acquainted with each other. The plaintiff and the defendant were also partners in S.S. Finance and Umaiyal Finance. One Mr.Ashokan was working as Manager in S.S.Finance. In S.S.Finance, the defendant was allotted a chit amount in the year of 1996, for which, he executed two blank Promissory Notes, one having S.S.Finance firm's name thereon while the other being a general one, and also affixed his thumb impression thereon, as per the rules and practices of the finance. However, the said S.S.Finance was dissolved before completion of the monthly chit. When S.S.Finance was dissolved, the plaintiff took the said general blank promissory note without the company's name printed on it, stating that the plaintiff



joined S.S.Finance only on the insistence of the defendant, and assured that he would return the pro-note after collecting the amounts the debtors owed him. With no other choice, the defendant reluctantly agreed. The plaintiff, by using the said Promissory Note in a forged manner, filed the Suit for recovery of money against the defendant without giving any notice to the defendant. Starting in the year 2000, the defendant began using a signature different from the one found in Ex-A.1. Accordingly, he prayed to dismiss the suit.

### **Trial Court and First Appellate Court**

5. At trial, on the side of the plaintiff, the plaintiff was examined as P.W.1, and Ex-A.1 to Ex-A.3 were marked. On the side of the defendant, the defendant was examined as D.W.1, one Mathiyazhagan and one Natarajan were examined as D.W.2 and D.W.3 respectively, and Ex-B.1 was marked. Pay Acquittance Register relating to the years 1996 - 1997 was marked as Ex-X.1 and Pay Acquittance Register pertaining to the time period from April 2008 to December 2008 was marked as Ex-X.2.

6. After full trial, the Trial Court decreed the Suit by holding that the defendant admitted the signature in Ex-A.1 - Promissory Note and



hence, the onus is upon the defendant to prove his defence, but the defendant failed to do so. Feeling aggrieved with the Judgment and Decree of the Trial Court, the defendant preferred an appeal before the First Appellate Court. The First Appellate Court after hearing both sides, concurred with the aforesaid finding of the Trial Court and dismissed the appeal confirming the Judgment and Decree of the Trial Court.

### **Substantial Questions of Law**

7. Feeling aggrieved with the concurrent findings of the First Appellate Court as well as the Trial Court, the defendant filed this Second Appeal and the same was admitted on August 17, 2020 on the following substantial question of law:-

*"Whether the Courts below are right in decreeing the suit without considering the effect of Ex.X1 and Ex.X2 and the evidence of DW2 and DW3, which are part of the records."*

### **Arguments**

8. Mr.R.Saseetharan, learned Counsel for the appellant / defendant would argue that the plaintiff and the defendant were working as Government Teachers, residing in the same locality and well acquainted with each other. Further, the plaintiff and the defendant along with a few



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others were engaged in money lending business in the name and style of 'S.S.Finance', a Partnership firm, which among other things conducted unregistered chit funds as per its own rules and practices. If no one bids for a monthly chit, as per the rules and practices, a recipient was to be selected through draw of lots.

8.1. In such a draw of lots, the defendant won the chit in the year 1996 and received the corresponding chit amount. As per the rules and practices, the defendant handed over to the Managing Partner, two signed blank Promissory Notes, among which one alone had the name of 'S.S.Finance' printed on it and another was a general one. Later, when S.S.Finance was dissolved before the completion of that chit, the plaintiff obtained the said general blank Promissory Note with no name printed thereon (Ex-A.1) from the Managing Partner and later forged it to file the Suit. The defendant never borrowed a sum of Rs.1,50,000/- from the plaintiff and there was no necessity to do so. Despite denial of the execution of Ex-A.1 - Promissory Note, the plaintiff did not prove the passing of consideration. Both the Trial Court and the First Appellate Court miserably failed to appreciate the evidence available on record in the right perspective, especially Ex-X.1 and Ex-X.2. Accordingly, he prayed to allow the above Second Appeal.



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9. Per contra, *Mr.S.Saravana Kumar*, learned Counsel for the respondent / plaintiff would argue that the defendant admitted the signature found in Ex-A.1 - Promissory Note as his and hence, Ex-A.1 attracts the presumption under Section 118 of the Negotiable Instruments Act, 1881. The defendant failed to rebut the said presumption. Further, the defendant threatened the scribe & witness of Ex-A.1 preventing him from deposing before the Court. The Trial Court as well as the First Appellate Court after considering the entire facts and circumstances as well as the evidence available on record rightly concluded that the defendant borrowed a sum of Rs.1,50,000/- from the plaintiff. Accordingly, the Suit was decreed in favour of the plaintiff. There is no warrant to interfere with the concurrent findings. Accordingly, he prayed to dismiss the Second Appeal.

### **Discussion**

10. This Court has considered both sides' submissions and perused the records in light of the Substantial Question of Law.

11. The plaintiff and the defendant were both working as



Government Teachers and were well acquainted with each other. While they were in service, both were running a money lending business in the name of 'S.S.Finance'. P.W.1 in his evidence has admitted that he was a Partner therein.

12. The plaintiff's case is that the defendant borrowed a sum of Rs.1,50,000/- from him by executing Ex-A.1 - Promissory Note. The defendant's case is that he never borrowed the said amount and never executed Ex-A.1 - Promissory Note in favour of the plaintiff. The defence taken by the defendant is that the plaintiff forged the Promissory Note which the defendant had originally given to the Managing Partner of S.S.Finance for the purpose of chit transaction as stated in the Written Statement. Further defence is that, since the year 2000, the defendant has been using a different signature from the one found in Ex-A.1- Promissory Note; that Ex-X.1 and Ex-X.2 would vouch for the same; that the signature contained in Ex-A.1 is that followed by the defendant before the year 2000 and hence, Ex-A.1 was made before the year 2000 and not in the year 2008 at the time of allegedly borrowing money from the plaintiff. In short, the defendant's further defence is that if the defendant had really executed Ex-A.1 in 2008, the Promissory Note would have borne the signature found in Ex-X.2; however, the signature in Ex-A.1 matches the one in Ex-



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13. Since the defendant has admitted his signature in Ex-A.1 - Promissory Note, the plaintiff has discharged the initial burden on him and the onus shifted onto the defendant to prove his defence. The defendant attempts to prove his defence through Ex-X.1 and Ex-X.2. Ex-X.1 is the Pay Acquittance Register pertaining to the years 1996 - 1997. Ex-X.2 is the Pay Acquittance Register pertaining to the time period from April 2008 to December 2008. Ex-X.1 was marked through D.W.2 - Mathiyazhagan who is a teacher at the Union Middle School while Ex-X.2 was marked through Natrajan, who is the Head Master of Kadapalli Union Middle School.

14. This Court has perused Ex-X.1 and Ex-X.2 and compared the signatures found therein with the one found in Ex-A.1 by juxtaposing them. The signature found in Ex-A.1 – Promissory Note matches with the signature found in Ex-X.1 and appears to have been made contemporaneously. It does not match the signature found in Ex-X.2. Ex-X.2, when coupled with Ex-X.1, would suggest that the defendant has changed his earlier signature found in Ex-A.1 sometime before April 2008.



15. Further, the defendant produced Ex-B.1 - Minute Book of his money lending business, pertaining to the years 1994 to 1995. Ex-B.1 contains defendant's signature on multiple pages. Those signatures match and appears to be contemporaneous with the one found in Ex-A.1- Promissory Note. To be noted, the plaintiff, who admits that he is also a partner at S.S.Finance, would have had several opportunities to have observed the signatures of the defendant found in Ex-B.1.

16. The aforesaid facts makes the defendant's defence that Ex-A.1 was made before the year 2000 and not in the year 2008 and that the plaintiff has forged the Promissory Note given to S.S.Finance for the purpose of chit transaction, a probable one. Thus, the defendant has *prima facie* established his defence and hence the onus now shifts onto the plaintiff to prove the execution of Ex-A.1 - Promissory Note and pursuant passing of consideration.

17. In Ex-A.1 - Promissory Note, one Kaaliannan has signed as scribe cum witness. Despite the denial of execution of Ex-A.1 as well as the passing of consideration by the defendant, the plaintiff has not examined the said scribe cum witness. The reason attributed by the plaintiff's side for the same is not satisfactory. The plaintiff's side has



stated that the defendant threatened the scribe cum witness of Ex-A.1 which is why, he refused to come forward to depose before the Court. The contention of the plaintiff deserves to be rejected for the reason that the plaintiff could have summoned the scribe cum attestor through Court. If the summons were not obeyed the plaintiff could have taken coercive steps against the said scribe cum witness through Court. The plaintiff has miserably failed to take any such steps. Further, there is not even an iota of evidence on record to suggest, let alone prove the passing of consideration.

18. Moreover, the plaintiff as P.W.1 in his cross-examination has deposed that he lent money as hand loan without interest. However, the same is contrary to the recitals of Ex-A.1 - Promissory Note as well as the Suit Plaint. Further, he has deposed that only he and the defendant were present when the alleged hand loan transaction took place; and that he does not know in which school the defendant was working at the time of the alleged hand loan transaction. Notably, even in his chief evidence, the plaintiff has not deposed about the presence of the said scribe cum witness or anyone else during the alleged hand loan transaction. The inconsistent stand taken by the plaintiff, undermines and creates suspicion in the plaintiff's case. For ready reference, relevant extract from the cross-examination of P.W.1 is hereunder:



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“நான் ஆசிரியராக இருந்து ஓய்வு பெற்றுவிட்டேன். நான் பணி ஓய்வு பெற்ற பிறகு எந்த தொழிலும் செய்யவில்லை. நான் 2006 வருடம் ஓய்வு பெற்றேன். நான் 95ம் வருடம் நகராட்சி உயர்நிலைப்பள்ளி கோட்டை நாமக்கல்லில் பணியில் இருந்தேன். பிரதிவாதி என்னிடம் கைமாற்றாக பணம் வாங்கினார். அதை திரும்ப செலுத்தாததால் நான் வழக்கு தாக்கல் செய்துள்ளேன். பணம் வாங்கி 3 மாதத்தில் தருவதாக கூறினார். ஆனால் தரவில்லை. நான் இதுவரைக்கும் கடன் கொடுத்ததும் இல்லை. வாங்கியதும் இல்லை. பிரதிவாதிக்கு கைமாற்றாக தான் பணம் கொடுத்தேன். வட்டியில்லாமல் நான் கைமாற்றாக கொடுத்தேன். குறிப்பிட்ட நாட்களுக்குள் கொடுத்துவிட்டால் வட்டி கிடையாது. அதற்குபிறகு கொடுத்தால் வட்டி உண்டு. பிரதிவாதி 3 மாதத்திற்குள் பணத்தை தந்திருந்தால் கடனுக்கு வட்டி கேட்டு இருக்க மாட்டேன். நான் கடன் கொடுக்கும்போது வட்டி பற்றி பேசிக்கொண்டோமா என்றால் கெடு தேதிக்கு பிறகு 1. 2 மாதங்கள் தவறினால் வட்டி வசூலிக்கப்படும் என்று பேசப்பட்டது. கைமாற்று கடன் வாங்கும்போது கடனுறுதி சீட்டு கொடுத்தார். அதிலேயும் நான் தற்போது சொன்ன வாசகம் தான் உள்ளது. நான் மேற்சொன்ன வாசகங்கள் வா.சா.ஆ.1ல் காணப்படவில்லை. வா.சா.ஆ.1ஐ காளியண்ணன் தான் எழுதினார். பணம் வாங்கும்போது பணத்தை தராவிட்டால் நீதிமன்றத்தில் வழக்கு தாக்கல் செய்வேன் என்று நான் சொல்லவில்லை. நான் பணியில் இருக்கும்போது 95ம் வருடம் நிதிநிறுவனத்தில் பங்குதாரராக இருந்தேனா என்றால் அந்த வருடம் இருக்கவில்லை. ஆனால் 20 வருடங்களாக



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நிதிநிறுவனத்தில் இருந்தேன். எஸ்.எஸ்.நிதிநிறுவனத்தின்  
பங்குதாரராக இருந்தேன். . . . .

. . . . .

கடன் கொடுக்கும்போது நாங்கள் இருவர் மட்டும்தான்  
இருந்தோம். பிரதிவாதி என்னிடம் கேட்கும்போது  
ரூ.1,50,000 தான் கேட்டார். நான் கொடுத்ததும்  
ரூ.1,50,000/-தான். நான் கடன்கொடுத்ததாக சொல்லும்  
தேதியில் எந்த பள்ளியில் பணியில் பிரதிவாதி  
இருந்தார் என்று தெரியாது. வா.சா.ஆ.1ல் எழுதியவரே  
தான் சாட்சியாக கையெழுத்து போட்டுள்ளார்.  
எஸ்.எஸ்.நிதிநிறுவனத்தை குறித்து நடவடிக்கை  
தெரியுமா என்றால் எனக்கு முழுவதும் தெரியாது. அந்த  
நிதிநிறுவனத்தின் நடவடிக்கைகளை பிரதிவாதியே  
கவனித்து வந்தார்.

நீதிமன்ற கேள்வி : எஸ்.எஸ்.நிதிநிறுவனத்தில்  
பிரதிவாதி பங்குதாரரா இருந்தாரா

பதில் : எஸ்.எஸ்.நிதிநிறுவனத்தின் முழு நிர்வாகமும்  
பிரதிவாதியிடம்தான் இருந்தது. நானும் பிரதிவாதியும்  
எத்தனை நிதிநிறுவனங்களில் பங்குதாரராக இருந்தோம்  
என்றால் எஸ்.எஸ்.நிதிநிறுவனத்தில் மட்டும் தான்  
பங்குதாரராக இருந்தோம். நான் பங்குதாரராக இருந்த  
நிதிநிறுவனத்தின் பெயர் எஸ்.எஸ்.2 அல்லது எஸ்.எயா  
என்று கேட்டால் சரியாக நியாபகமில்லை. என்னிடம்  
காட்டப்படும் புத்தகம் எஸ்.எஸ்.2 நிறுவனத்தின் மினிபுக்  
என்றால் சரிதான். அதில் உள்ள பக்கம் 6 பி.வா.சா.ஆ-1  
ஆகும். அதில் 7வது பங்குதாரராக 6ம் பக்கத்தில்  
காட்டப்பட்டுள்ள பெயர் என் பெயர் தான். அதில் 1வது  
பங்குதாரராக காட்டப்பட்டிருக்கும் நபர் பிரதிவாதி  
என்றால் சரிதான், . . .”



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19. Hence, this Court is of the view that the plaintiff has not proved the execution of Ex-A.1 and pursuant passing of consideration. The defendant's admission that the signature in Ex-A.1 is his has to be seen along with his defence. When neither the execution of the Promissory Note nor the passing of consideration has been proved, given the defence taken by the defendant, the mere fact that the defendant admitted his signature in Ex-A.1 is not sufficient to invoke the presumption under Section 118 of the Negotiable Instruments Act, 1881.

20. In view of the foregoing discussion, this Court is of the view that the Trial Court as well as the First Appellate Court failed to consider the relationship between the plaintiff and the defendant, other facts and circumstances of the case as well as the evidence available on record in the right perspective. The substantial question of law is answered accordingly in favour of the appellant / defendant and against the respondent/plaintiff.

**Result:**

21. In the result, this Second Appeal is allowed. The Judgment and Decree dated February 17, 2020 made in A.S.No.25 of 2016



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on the file of the learned Additional District Judge, Namakkal District as well as the Judgment and Decree dated November 4, 2015 made in O.S.No.40 of 2011 on the file of learned Subordinate Judge, Namakkal District, are hereby set aside. The Suit in O.S.No.40 of 2011 on the file of learned Subordinate Judge, Namakkal District, is hereby dismissed. The amount, if any, deposited by the appellant pursuant to the interim Order passed by this Court in CMP No.8523 of 2020 dated August 17, 2020 shall be refunded to the appellant. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

**18 / 10 / 2024**

Index : Yes  
Internet : Yes  
Neutral Citation : Yes  
Speaking Order  
MSM/TK

To

1.The Additional District Judge  
Namakkal District.



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2.The Subordinate Judge  
Namakkal District.



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**R. SAKTHIVEL, J.**

MSM/TK

**Pre-Delivery Judgment made in**  
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**18 / 10 / 2024**