



A.S(MD)No.126 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.07.2024

Pronounced on: 08.11.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

**A.S(MD)No.126 of 2024
and
C.M.P(MD)No.6651 of 2024**

R.Singaravadivelan

...Appellant/Defendant

Vs.

Durai Senthil

... Respondent/Plaintiff

Prayer:- Appeal Suit is filed under Section 96 of C.P.C r/w Order 41(1) & (2) of C.P.C as against the judgment and decree of the III Additional District Judge, Thanjavur @ Pattukottai in O.S.No.42 of 2018, dated 28.04.2023.

For Appellant : Mr.R.Venkatesh
For Respondent : Mr.K.Mahendran



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J U D G M E N T

(Judgment of the Court was delivered by P.VADAMALAI, J.)

This Appeal Suit is directed against the judgment and decree passed in O.S.No.42 of 2018 on the file of the learned III Additional District Judge, Thanjavur at Pattukottai.

2. The appellant is the defendant in O.S.No.42 of 2018 on the file of the III Additional District Court, Thanjavur at Pattukkottai. The respondent is the plaintiff in that suit.

3. The respondent/plaintiff filed the suit in O.S.No.42 of 2018 for recovery of money based on Ex.A.1- Promissory Note, dated 06.05.2015 against the appellant/defendant. The appellant/defendant contested the suit. The suit was decreed in toto by the trial Court.

4. For the sake of convenience, the parties are referred to as per their rank before the trial Court.



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5. The brief facts are as below:

(a) The case of the plaintiff is straightforward, wherein he alleged that the defendant was engaged in the business of film distribution, that on 06.05.2015, he had borrowed Rs.55,00,000/- (Rupees Fifty Five Lakhs Only) from him for his business purposes under Ex.A.1 - Promissory Note, dated 06.05.2015. He made repeated demands for the repayment of the sum and the defendant evaded repayment. Eventually, the plaintiff issued Ex.A.2 - Suit Notice, dated 05.12.2017, which was received by the father of the defendant. As the amounts were not forthcoming, he laid the suit for recovery of the said sum with interest.

(b) The case of the defendant is that there is no privity of contract between him and the plaintiff, that on 06.05.2015, he borrowed a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only), not from the plaintiff, but from one Thirunavukkarasu, who, according to him, was his (defendant's) friend and left with him a blank signed stamp paper. It appears that there were some transactions between the plaintiff and Thirunavukkarasu and the plaintiff is alleged to have barged into the house of Thirunavukkarasu and removed many documents from the latter's house and it appears he had also



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got the signed blank stamp paper left by the defendant with Thirunavukkarasu and clandestinely filled the same and has laid the suit for recovery of money. Indeed, few weeks after the defendant borrowed money, to be precise, on 17.06.2015, he tendered Rs.10,00,000/- (Rupees Ten Lakhs Only) to Thirunavukkarasu and on his instruction, he had deposited the said sum into the account of a certain Senthil.

6. The trial Court framed the following issues upon the pleadings of both parties:

"(1) Whether the defendant had borrowed a loan of Rs.55,00,000/- from the plaintiff on 06.05.2015 and executed the suit pronote as stated by plaintiff is true?

(2) Whether the averments stated in the written statement by the defendant is true?

(3) Whether the suit promissory note is created by the plaintiff through one Thirunavukkarasu as stated by the defendant is true?

(4) Whether the plaintiff is having cause of action to the suit?



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*(5) Whether the plaintiff is entitled
the reliefs as prayed for?*

*(6) To what other reliefs, the plaintiff
is entitled to?"*

7. The dispute went to trial and during trial, the plaintiff examined himself as P.W.1 and also examined the second attesting witness as P.W.2. On his side, the defendant entered into the witness box and examined himself as D.W.1. While the plaintiff produced Ex.A.1 to Ex.A.6, the defendant had produced Ex.B.1, dated 11.03.2023, a bank statement of the defendant. It may have to be stated that the defendant, during cross examination of P.W.2, confronted to the First Information Report indicating the involvement of P.W.2 in some criminal cases and they came to be marked as Ex.A.5 and Ex.A.6. In fitness of things, Ex.A.5 and Ex.A.6 should have been marked on the side of the defendant.

8. On appreciation of evidence and the submissions made on behalf of the parties, the trial Court chose to decree the suit. Its line of reasoning are:

*(a) that the defendant had admitted
his signature;*



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(b) that the defendant did not reply to suit notice;

(c) that the defendant did not examine Thirunavukkarasu; and

(d) that the defendant did not prefer any police complaint which is ordinary course would have been the natural human conduct."

9. The judgment and decree of trial Court is under challenge in this Appeal Suit.

10. The points for consideration in this appeal are:

(1) Whether Ex.A.1 is genuine? And

(2) Whether the non-examination of Thirunavukkarasu by the defendant is fatal to his defence.

11. Opening the arguments for the appellant/defendant, the learned counsel submitted:

(a) The defendant has only admitted his signature in Ex.A.1, which is prepared on Rs.100/- stamp paper, but, not the contents thereof. The burden is therefore on the plaintiff to establish that the document was duly filled up



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at the relevant time when the defendant affixed his signature in the said document.

(b) The position of the signature of the defendant in Ex.A.1 lends strong suspicion vis-à-vis the factum of Ex.A.1, being genuine. The said signature is positioned on the vacant space to the right of the signatures of the attesting witnesses and to be more specific, it is positioned below the signature of the 1st attesting witness:

(c) P.W.2 testifies that the plaintiff has paid Rs.55,00,000/- (Rupees Fifty Five Lakhs Only) in Rs.500/- and they were bundled in 110 bundles. The plaintiff says that this amount is reflected in his income tax returns more than once in his cross examination. However, he did not produce his income tax returns before the Court.

(d) Inasmuch as it is apparent that the plaintiff tries to build a case in dealing with black money and unaccounted money, he is not entitled to seek recovery of the sum, which he alleged to have advanced to the defendant even if his case were to be trusted.

(e) Both the plaintiff and P.W.2 were not only friends but also accomplice in the criminal cases. Indeed, P.W.2 admits his involvement in



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several criminal cases. Ex.A.5 and Ex.A.6, the copies of the First Information Report in a couple of cases, show the bonding between the plaintiff and P.W.2 in criminality.

12. In support of his arguments, the learned counsel for the appellant/defendant has relied on the following decisions of this Court and of the Hon'ble Supreme Court:

(1) AIR 1999 Supreme Court 1008 in the case of Bharat Barrel and Drum Manufacturing Company /vs/ Amin Chand Payrelal, wherein it is held as follows:

"Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would dis-entitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either



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direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as existence of negative evidence is neither possible nor contemplated and even if led is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption the defendant has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist. We find ourselves in the close proximity of the view expressed by the Full Benches of the Rajasthan High Court and Andhra Pradesh High Court in this regard.

(2) Judgment of this Court in A.S.No.188 of 2010, dated 11.07.2017 in the case of “Narayana Sathiya Siva Senathipathi /vs/



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Natarajan), wherein it is held in paragraph No.16 as follows:

“16. Of course, under Section 118 of the Negotiable Instrument Act, a statutory presumption, is created with reference to passing of consideration once the execution of the Negotiable Instrument admitted. In the case on hand, the specific plea of the defendant is that the promissory note was obtained by the plaintiff, when he joined as a employee in the business run by the sister of the plaintiff in the year 1999 towards security. At best it can be concluded that the signature is admitted, but not the execution of the promissory note as such. There is a difference between the admission of signature and admission of execution of the document. However, Section 20 of the Negotiable Instrument Act, empowers the holder of the Promissory Note to fill up such inchoate instrument and sue upon it. Presumption under Section 118 of Negotiable Instrument Act, would arise in such case also”.

(3) Judgment of this Court in S.A.No.338 of 2017, dated

10.01.2022 in the case of (“A.Govindan (died) and Ors. /vs/

K.S.Jayanthakumar), wherein it is held as follows:

“It would thus be clear that when the suit is based on pronote, and promissory note is proved to have been executed, Section 118(a) raises the presumption, until the contrary is proved, that the promissory note was made for consideration. That initial presumption raised under Section 118(a) becomes unavailable when the plaintiff himself



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pleads in the plaint considerations. If he pleads that the promissory note is supported by a consideration as recited in the negotiable instrument and the evidence adduced in support thereof, the burden is on the defendant to disprove that the promissory note is not supported by consideration or different consideration other than one recited in the promissory note did pass, if that consideration is not valid in law nor enforceable in law, the court would consider whether the suit pronote is supported by valid consideration or legally enforceable consideration. Take for instance, a pronote executed for a time barred debt. It is still a valid consideration. The falsity of the plea of the plaintiff also would be a factor to be considered by the Court. The burden of proof is of academic interest when the evidence was adduced by the parties. The court is required to examine the evidence and consider whether the suit as pleaded in the plaint has been established and the suit requires to be decreed or dismissed.

11. In the instant case, both parties have let in evidence. If a party fails to discharge the burden put on him, must eventually fail. The further evidence let in by both the parties were determined the case in favour of the defendant. The defendant has let in convincing rebuttal evidence to establish the preponderance of probability in his favour. Once such rebuttal is discharged, the presumption under Section 118 of the Negotiable Instruments Act, 1881, does not come to the aid of the plaintiff's case. As such, the burden of proof lost all its importance and the issue had become more academic.



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(4) **Judgment of this Court in A.S.No.285 of 2015, dated 21.07.2022** in the case of (“**B.Mahadevan /vs/ K.Velmurugan**”), wherein it is held in paragraph No.13 as follows:

13. It would be appropriate to refer to the observations of Apex Court in 2004 (12) SCC 83 [G.Pankaja Lakshmi Amma Vs. Mathai Mathew] which mandates courts shall not extend it's helping hand to a party engaged in illegal transactions.

.... According to the 1st respondent, all these amounts are paid in cash. If these are unaccounted transactions then they are illegal transactions. No Court can come to the aid of the party in an illegal transactions. It is settled in law that in such cases loss must be allowed lie where it falls. In this case as there are unaccounted transactions, the Court could not have lent it's hands and passed a decree.

In the present case on hand transaction involved is heavy amount of Rs.20 lakhs. Though PW.1, in his cross examination said the money transaction is reflected in his income tax returns and he is ready to produce relevant income tax returns before Court to prove legality of transactions, for the reason best known to him, he failed to produce income tax returns before the Court to prove legality of transaction. Therefore, Court has to draw adverse inference against respondent/plaintiff and presume that the suit transaction was not reflected in his income tax returns and hence even assuming respondent paid any amount to appellant on 09.09.2006, it could only be



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*treated as illegal, unaccounted transaction.
Hence, the respondent is not entitled to a
decree from Court of law.*

13. Per contra, the learned counsel for the respondent/plaintiff has vehemently contended that the defendant has admitted his signature found in Ex.A.1 - pro-note. It is a settled proposition of law that if a person admitted his signature in a pro-note, he would have accepted the contents. The defendant is working in the ship and also doing business in the film industry, in such circumstances, there is no possibility of putting signature in a stamp paper without any contents. Moreover, the plaintiff has proved the Ex.A.1 and also the contents thereof, by examining P.W.2.. P.W.2 has deposed in his evidence about accompanying the defendant to the office of the plaintiff for getting loan and he also deposed that he saw the money transaction and also the handing over of money to the defendant. So, the plaintiff has proved Ex.A.1 as a genuine one. The defendant has not let in any rebuttal evidence. The alleged Thirunavukkarasu is an important person to establish the defence, but the defendant has not examined him on his side. This is also very fatal to the defendant's case. Mere non production of income tax return, the transaction of money could not be taken as illegal



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transaction. Such defence has not been pleaded by the defendant in his written statement. So, the judgment of the trial Court need not be set aside. The appeal may be dismissed. In support of his argument the learned counsel for the respondent/plaintiff has relied on the following decisions:

(1) Judgment of this Court in S.A.No.1286 of 1990, dated 07.11.2001 in the case of (T.N.Boopathy /v/ T.A.Sattu), wherein it is held in paragraph No.10 as follows:

“10. The defendant could prove the failure of consideration. Under such a situation if the defendant discharges the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff, who would be obliged to prove it as a matter of fact. In the instant case the defendant has thoroughly failed to discharge the initial onus of proof by showing the non-existence of the consideration. The plaintiff must be given the benefit of presumption under S. 118(1) of the Negotiable Instruments Act in his favour. The mere denial of passing of the consideration apparently cannot constitute a valid defence. In the instant case, it is not the defence put forth by the appellant that though he executed the document, it was not supported by consideration, but it was also bare denial of his signature and Ex.A.1 promissory note was a forged one. From the evidence of P.W.2 and comparison of the disputed signature as stated above, it has to be found that the signature found in Ex.A1



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document was that of the appellant/defendant. It has to be pointed out that the appellant was unable to show that Ex.A.1 promissory note was not supported by consideration. The court is of the view that it is a fit case where the presumption under S. 118 of the Negotiable Instruments Act that when once the signature of the appellant is proved, the presumption that the promissory note was supported by consideration, has to be drawn. There is nothing to interfere in the judgment of the lower appellate Court and the second appeal is liable to be dismissed.”

(2) Judgment of the Hon’ble Supreme Court in Civil Appeal

No.5854 of 2022, dated 14.10.2022 in the case of (“Kapil Kumar /v/ Raj Kumar”), wherein it is held in paragraph No.6 as follows:

“6.....The signature of the defendant on the pronote has been established and proved by the plaintiff by examining handwriting expert - PW.2. No contrary evidence has been led by the defendant to disprove his signature on the pronote. Even the execution of pronote has been established by the plaintiff by examining the deed writer – PW3. Now so far as the consideration mentioned in the pronote is concerned there may be some minor contradictions in the depositions of PW1 and PW3. However at the same time if the deposition of PW3 as a whole is considered, in the cross examination it has come out that when the deed writer asked the defendant that he has received the



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consideration, he has admitted the same.

6.1 In view of the above facts and circumstances of the case emerging from the evidence on record, non-examination of the witness to the pronote cannot be held against the plaintiff. At this stage, it is required to be noted that as per provisions of Section 118 of the NI Act there is a presumption of consideration in the negotiable instrument [Section 118(a)]. It is true that such presumption may be rebutted. However, no rebuttal evidence is led by the defendant. Under the circumstances also the High Court has erred in allowing the second appeal and quashing and setting aside the decree passed by the learned Trial Court confirmed by the learned First Appellate Court.

(3) Judgment of this Court in S.A.No.1054 of 2012, dated 05.02.2024 in the case of (“Paramasivam /v/ Marimuthu”), wherein it is held in paragraph Nos.16, 17, 18, 19 and 21 as follows:

“16. The defendant has received the notice and acknowledged the same on 10.07.2008 in Ex.A.3. Even in the legal notice it is stated that the defendant has executed Ex.A.1 promissory note in favour of the plaintiff and through Ex.A.2, legal notice, defendant was called upon to repay the amount borrowed from the plaintiff. In spite of receipt of Ex.A.2 legal notice, the defendant did not chose to reply. Even though it is contended by the learned counsel for the appellant that only three days time was given



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in the legal notice and that the defendant had no sufficient time to reply, the fact remains that after the legal notice is acknowledged through Ex.A.3 on 10.07.2008, the suit has been filed on 29.10.2008 that is after the period of 3 ½ months and though the defendant have sufficient time, the defendant without any reason did not chose to reply to the notice Ex.A.2.

17. In this case, the defendant himself admitted his signature in Ex.A.1 the promissory note and therefore the execution of the Ex.A.1 promissory note stands proved.

18. In a suit filed for recovery of money based on the promissory note, once the plaintiff established the execution of the promissory note, presumption under section 118 of N.I. Act, arises.....

19. Once the presumption arises, the onus is cast on the defendant to rebut the presumption by producing a probable defence to prove that the instrument is not supported by consideration.

21. The learned counsel for the appellant relied on the judgment in Bharat Barrel & Drum Manufacturing Company /vs/ Amin Chand Payrelal reported in (1993) 3 SCC 35 and argued that the Court should not rely on the technicalities in rejecting the defence of the defendants. In the judgment relied on by the appellant, it has been held that 'initial burden lies on defendant to prove non-existence of consideration by bringing on record such facts and circumstances existence of consideration or non-existence so probable that a prudent man would act upon the plea that it did not exist". Holding so, the Hon'ble Supreme Court held that the faith of the business community dealing in mercantile



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and trade cannot be permitted to be shaken by resort to technicalities of law and procedural wrangles as appears to have been done in the instance case.”

14. Heard the arguments of both sides and perused the material records of the case.

15. Point No.1

The plaintiff has produced Ex.A.1 - Pro-note to support the advancement of loan to the defendant. The defendant has also admitted the signature found in Ex.A.1. But, the defendant made defense that he put his signature in an unfilled stamp and it was given to one Thirunavukkarasu from whom he borrowed Rs.10 lakhs and he had not borrowed any money from the plaintiff. The plaintiff as P.W.1 has deposed about the execution of pro-note by the defendant on obtaining loan from him. One of the attestors to Ex.A.1 has been examined as P.W.2. P.W.2 has categorically deposed in his chief examination that the defendant borrowed a loan of Rs.55 lakhs from the plaintiff and executed Ex.A.1 - Pro-note. P.W.2 in his chief examination has deposed as follows:



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“எதிர்வாதியானவர் வாதியிடம் இருந்து தொகை எதுவும் பெற்றுள்ள விபரம் எனக்கு தெரியுமா என்று கேட்டால் தெரியும். 2015-ம் ஆண்டு வெது மாதம் பணம் பெற்ற விபரம் எனக்கு தெரியும். நான் மதுக்கூர் பெரமையா கோலிலில் நின்று இருந்தேன். அப்பொழுது சிங்காரவடிவேலன் காரில் வடக்கு திசையில் இருந்து மதுக்கூர் டவுன் டோக்கி வந்து கொண்டிருந்தார். அந்த காரை சிங்காரவடிவேலன் தான் ஓட்டி வந்தார். அரவத்தூரை சேர்ந்த சரவணன் என்பவர் அந்த காரில் இருந்தார். என்னை அப்பொழுது சிங்காரவடிவேல் என்பவர் துரை.செந்தில் என்பவரை அவருடைய ஆபீஸில் போய் பார்க்கலாம் என்று கூப்பிட்டார்.....நான் அந்த அலுவலகத்திற்கு போகும்போது காலை சுமார் 11.00 மணிக்கு மேல் இருக்கும்.....துரை செந்திலிடம் பணம் கேட்டு இருந்ததாகவும் போய் வாங்கிவரவேண்டும் என்று சொல்லி என்னை அழைத்து சென்றார்.....சிங்காரவடிவேலன் தன் கையில் வைத்திருந்த பேப்பரை துரைசெந்தில் என்பவரிடம் கொடுத்தார். அதை வாங்கி துரை செந்தில் படித்தார். படித்துவிட்டு கையெழுத்து போடும்படி சொன்னார். பார்க்கும்பொழுது அவர் ஸ்டாம்பு போப்பரில் கையெழுத்து போட்டார். கையெழுத்து போட்டபிறகு சாட்சி போடச்சொன்னார்கள். முதல் நபராக அரவத்தூர் சரவணன் சாட்சி கையெழுத்து போட்டார்.....



அதன்பின்பு நான் கையெழுத்து போட்டேன்.
அதாவது சிங்காரவேலன் கையெழுத்திற்கு கீழ்
நான் கையெழுத்து போட்டேன்...
அதன்பின்பு துரை செந்தில் பணம் கொடுத்தார்.
அதை வாங்கி ரூ.500 கட்டுகளாக இருந்ததை
சிங்காரவடிவேலன் வாங்கி கொண்டார். ரூ.55
லட்சம் என்று சொன்னார்கள். ரூ.500க்கான
கட்டுக்களை வாங்கி எண்ணி
வைத்துக்கொண்டார். 110 கட்டுகள் உள்ளது என்று
சொன்னார். சிங்காரவடிவேலன் கையெழுத்து
போட்டதை நான் பார்த்தேனா என்று கேட்டால்
எங்கள் முன்னாடிதான் அவர் கையெழுத்து
போட்டார். அரவத்தூர் சரவணன் கையெழுத்து
போட்டதையும் நான் சாட்சி கையொப்பம்
போட்டதையும் சிங்காரவடிவேலன் பார்த்தார்.”

On perusal of evidence of P.W.2, he categorically affirmed the above evidence in his cross examination. He deposed in his cross examination as follows:-

“06.05.201 –ம் தேதியில் அவர் என்னை
காரில் அழைத்து சென்றார். என்னை
கூப்பிடும்பொழுது காரில் அரவத்தூர்
சரவணன் இருந்தார். சிங்காரவடிவேலன் துரை
செந்திலிடம் இருந்து பணத்தை வாங்கியதை நான்
நேரடியாக பார்க்கவில்லை என்றால் பார்த்தேன்.
...சிங்காரவடிவேலன் கையெழுத்து போட்டதையும்



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அரவத்தூர் சரவணன் கையெழுத்து
போட்டதையும் நான் பார்த்தேன். எனக்கு
முன்னாடிதான் போட்டார்கள். அரவத்தூர்
சரவணன் அவர் கொண்டு வந்த பேனா
மூலமாகவும் நான் என்னுடைய பேனா மூலமாகவும்
சிங்காரவடிவேலன் என்பவர் அவருடைய
பேனாவிலும் கையெழுத்துக்கள் போடப்பட்டது....”

The above evidence of P.W.2 clearly proved that Ex.A.1 was executed by the defendant on receipt of the suit loan amount. The defendant admitted his signature found in Ex.A.1. When the signature of the defendant on the pro-note is proved with oral and documentary evidence, the presumption under Section 118 of the Negotiable Instruments Act clearly arises until the contrary is proved.

16. Section 118 of the Negotiable Instruments Act reads as follows:

“Section 118 : Presumptions as to negotiable instruments of consideration-

Until the contrary is proved, the following presumptions shall be made:-

(a) of consideration – that every negotiable instrument was made or drawn for consideration, and that every such instrument,



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when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.

(b) as to date – that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance – that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer – that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements – that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps – that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course – that the holder of a negotiable instrument is a holder in due course; Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving the holder is a holder in due course lies upon him.”



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In this case, the defendant contended that he signed in a blank pro-note. When the signature in the pro-note is admitted therein and when the signatory states that he executed the pro-note in blank, it is an inchoate pro-note, i.e. the plaintiff therein is authorised the creditor to fill-up the pro-note.

17. This Court had an occasion to deal with a similar issue, in the decision reported in **2002 (4) LW 360 (Ramasami Moopar Vs. Ramaswami Moopanar)**, wherein it has been held that when the signature in the pro-note is admitted and the signatory states that he executed the pro-note in blank, it is inchoate pro-note and held that the pronote is proved in the absence of any rebuttal evidence by the defendant, based on the decision of the Hon'ble Supreme Court, which is held in paragraph No.7 reads as follows:

"7. The Supreme Court in Mohideenkutty Hajee Vs. Pappu Manjooran (1996 (8) SCC 586), following a number of earlier pronouncements, held that when a suit is based on a promissory note and the promissory note is proved to have been executed, Section 118(a) raises a presumption, until the contrary is proved, that the promissory note was made for



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consideration. In the case of Kundan Lal Vs. Custodian Evacuee Property (AIR 1961 SC 1316), the Supreme Court has held that the presumption under Section - 118 Negotiable Instruments Act is one of law and a Court shall presume, inter alia, that the Negotiable Instrument was made or endorsed for consideration. Therefore, the said Judgment of the learned Single Judge is not in conformity with the Judgment of the Supreme Court. Under Section-118 of the Negotiable Instruments Act, there is a valid presumption with respect to consideration also. Inasmuch as the learned Single Judge has held that there is no presumption for consideration, it is not a good law."

18. The Hon'ble Supreme Court has again reiterated the decision in its judgment in Civil Appeal No.5854 of 2022, relied on by the respondent/plaintiff and held in paragraph Nos.6.1 and 7 that

"6.1. At this stage it is required to be noted that as per the provision of Section 118 of the NI Act there is a presumption of consideration in the negotiable instrument [Section 118(a)]. It is true that such presumption may be rebutted. However, no rebuttal evidence is led by the defendant. Under the circumstances also the High Court has erred in allowing the second appeal and quashing and setting aside the decree passed by the learned Trial Court confirmed by the learned First Appellate Court..



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7.*The judgment and decree passed by the learned Trial Court decreeing the suit confirmed by the learned First Appellate Court is hereby restored. The present appeal is accordingly allowed. No costs.*”

19. Hence, when the plaintiff has filed the suit based on the pro-note and the pro-note also proved to have been executed, Section 118(a) raises a presumption, until the contrary is proved that the pro-note was made for consideration. In this case, the defendant has not let in any rebuttal evidence. Except the defendant, no witness was examined on his side. Moreover, even the defendant had not taken any steps to get an expert opinion regarding the period when the contents were written in the Ex.A.1 – pro-note, when he claimed that he signed in a blank stamp paper. The defendant has not chosen to examine any other witness while P.W.2 deposed that he saw the execution of pro-note by the defendant by putting his signature and also receipt of money and that he saw the attestor signing. The defendant has also not examined any other witness to disprove the accompany of P.W.2 and one Saravanan with the defendant. At least, he might have examined the alleged Saravanan, but he failed to do so. Even prior to the suit, on 05.12.2017 the plaintiff issued the legal notice - Ex.A.2



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mentioning the loan transaction. The said notice was received by the father of the defendant, as per the stand of the defendant. The suit was laid on 03.04.2018. By this time, definitely, the defendant might have knowledge of the legal notice, however, the defendant has not sent any reply, which also strengthens the presumption against the defendant.

20. Coming to the non-filing of the Income Tax Returns by the plaintiff, the defendant contends that since the advancing of the loan is not reflected in the income tax return, it could be termed as illegal money and the same could not be recovered through Court of law. The defendant has not taken such a specific plea in the written statement. Therefore, on the unpleaded averments, the trial Court ought not to have given a finding, holding that no Income Tax Return was filed by the plaintiff, though he claimed that he was an Income Tax Assessee.

21. In a reference in Criminal Appeal No.795 of 2018 (**Prakash Madhukarrao Desai vs Dattatrya Sheshrao Desai**), which was made before the Division Bench of Bombay High Court Nagpur bench, the Division Bench



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held as follows:

"The question referred to the Division Bench for being answered reads as under :-

"Whether in case the transaction, is not reflected in the Books of account and/or the Income Tax Returns of the holder of the cheque in due course and thus is in violation to the provisions of Section 269-SS of the Income Tax Act, 1961 whether such a transaction, can be held to be "a legally enforceable debt" and can be permitted to be enforced, by institution of proceedings under Section 138 of the Negotiable Instruments Act ?"

7. With a view to answer the aforesaid question, we may note the relevant statutory provisions that having bearing on the question to be answered :-

Section 118, 138 and 139 of the Act of 1881 reads as under :-.....

Section 269-SS of the Income Tax Act of 1961 reads as under :-

"Mode of taking or accepting certain loans, deposits and specified sum.

269-SS. – No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], if, –

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining



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unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause

(a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,

-
- (a) the Government;*
 - (b) any banking company, post office savings bank or co-operative bank;*
 - (c) any corporation established by a Central, State or Provincial Act;*
 - (d) any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);*
 - (e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:*

Provided further that the provisions of this Section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act:

[Provided also that the provisions of this section shall have effect, as if for the words “twenty thousand rupees”, the words “two lakh rupees” had been substituted in the case of any



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deposit or loan where, –

(a) such deposit is accepted by a primary agricultural credit society or a primary co-operative agricultural and rural development bank from its member; or

(b) such loan is taken from a primary agricultural credit society or a primary co-operative agricultural and rural development bank by its member.]

Explanation. – For the purposes of this section, –

(i) “banking company” means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

[(ii) “co-operative bank”, “primary agricultural credit society” and “primary co-operative agricultural and rural development bank” shall have the meanings respectively assigned to them in the Explanation to sub-section (4) of section 80P;]

(iii) “loan or deposit” means loan or deposit of money;

(iv) “specified sum” means any sum of money receivable, whether an advance or otherwise, in relative to transfer of an immovable property, whether or not the transfer takes place.]”

In Mohammed Iqbal & Others vs. Mohammed Zahoor [ILR 2007 Karnataka 3614] it has been held that Section 269-SS does not declare all transactions of loan by cash in excess of Rs.20,000/- as invalid, illegal or null and void. Referring to the decision in Assistant Director of Inspection Investigation (supra), it was observed that the object behind introducing the said



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provision was to curb and unearth black money. Referring to the provisions of Section 271-D and Section 273-B of the Act of 1961, it was observed that even though contravention of Section 269-SS resulted in a stiff penalty being imposed on the person taking the loan or deposit, the rigor of Section 271D was whittled down by Section 273B on the proof of bona fides. Hence such transactions could not be declared to be illegal, void and unenforceable. Similar view has been taken by the learned Single Judge of the Himachal Pradesh High Court in Criminal Appeal No.295 of 2017 (Surinder Singh Versus State of H. P. & Another) decided on 03.11.2017.

18. In view of the aforesaid discussion, it is held that a transaction not reflected in the books of accounts and/or Income Tax returns of the holder of the cheque in due course can be permitted to be enforced by instituting proceedings under Section 138 of the Act of 1881 in view of the presumption under Section 139 of the Act of 1881 that such cheque was issued by the drawer for the discharge of any debt or other liability, execution of the cheque being admitted. Violation of Sections 269-SS and/or Section 271-AAD of the Act of 1961 would not render the transaction unenforceable under Section 138 of the Act of 1881. The decisions in Krishna P. Morajkar; Bipin Mathurdas Thakkar and Pushpa Sanchalal Kothari (supra) lay down the correct position and are thus affirmed. The decision in Sanjay Mishra (supra) with utmost respect stands overruled."

From the above answer to the reference, it is clear that a money transaction not reflected in the Income Tax Returns can be permitted to be enforced by



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instituting proceedings in view of the presumption U/s.139 of the Negotiable Instruments Act. The defendant has not rebutted the presumption. Violation of Sections 269-SS and/or Section 271-AAD of the Income Tax Act of 1961 would not render the transaction unenforceable under Section 138 of the Act of 1881. The plaintiff is answerable for such violation if the concerned authorities initiate a proceeding. The defendant cannot take advantage of such violation and cannot claim that the non-reflection of the loan cannot be recovered by instituting suit. Moreover, in the citation **AIR 1999 SC 1008 “Bharat Barrel & Drum Manufacturing Company vs. Amin Chand”** relied on by the appellant/defendant, it is held that the faith of the business community dealing in mercantile and trade cannot be permitted to be shaken by resorting to technicalities of law and the procedural wrangles as appears to have been done in this instant case. Therefore, the citations relied on by the respondent/plaintiff are applicable to the facts and circumstances of this case, whereas the rulings relied on by the appellant/defendant are not applicable to this case.



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22. In the above material facts and circumstances, this Court holds that the plaintiff has proved the execution of pro-note and receipt of loan amount as mentioned in Ex.A.1. Hence, the Ex.A.1 - pro-note is a genuine one and the point No.1 is answered accordingly.

23. **Point No.2**

The defendant has also pleaded that he has only obtained the loan from one Thirunavukkarasu and handed over the signed, unfilled stamp paper to him. It is further contended that since the plaintiff purchased a house from the said Thirunavukkarasu and entered into the house and took away all the documents including his unfilled signed paper, the plaintiff by misusing the same has filed the present suit. Admittedly, there is no plea that the said Thirunavukkarasu preferred any complaint against the plaintiff for the alleged events and the defendant has not examined the said Thirunavukkarasu to substantiate his case. It is established that the defendant was doing business in the film industry and also the stand that he is a stranger to the plaintiff is not proved, because the plaintiff has established contact with the defendant by letting oral and documentary



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evidence. Even the defendant has also admitted in his cross examination that the plaintiff has played a small role in a film. Further, when the blank pro-note signed by the defendant, was said to have been left with the said Thirunavukkarasu, which was subsequently found in possession of the respondent/plaintiff, the said Thirunavukkarasu is the competent person to establish the stand taken by the defendant. But, the defendant has not chosen to examine the said Thirunavukkarasu, which is very fatal to this defence. Therefore, the theory of the appellant/defendant being a stranger to the plaintiff has been made only for the purpose of wriggling out of civil liability of paying back the suit money. Hence, the point No.2 is answered in favour of the respondent/plaintiff.

24. For all these reasons, the judgment and decree of the trial Court is sustainable in law and the same need not be interfered by way of this appeal suit. Thus the appeal suit fails.

25. In the result, the Appeal Suit is dismissed with cost. The judgment and decree passed in O.S.No.42 of 2018, dated 28.04.2023 on the



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file of the learned III Additional District Judge, Thanjavur at Pattukottai is confirmed. Consequently, the connected Miscellaneous Petition is closed.

(N.S.S.,J.) (P.V.M.,J.)
08.11.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The III Additional District Judge,
Thanjavur at Pattukottai
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

N.SESHASAYEE, J.
AND



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P.VADAMALAI. J.

VSD

Pre-delivery Judgment in
A.S(MD)No.126 of 2024
and
C.M.P(MD)No.6651 of 2024

08.11.2024