

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.758 of 2015 &

M.P.No. 1 of 2015

N.Shanmugasundaram ... Appellant/2nd Defendant

-Vs-

1. S.Velusamy
2. M/s.Essar Clocks and Watches  
rep. by its Directing Partner Ramaselvakumar,  
Having its business place at No.66-F1,  
Industrial Estate, Venkitasamy Nagar,  
Athypalayam Road, Ganapathy,  
Coimbatore-641 006.
3. Ramaselvakumar
4. K.Perianayaki
5. Selvaraj ... Respondents/Plaintiff and  
Defendants 1, 3 & 5

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree passed in A.S.No.101 of 2011 dated 20.02.2014 on the file of the V Additional District and Sessions Judge, Coimbatore, confirming the judgment and decree made in O.S.No.332 of 2000 dated 07.03.2007 on the file of the Principal Sub Judge, Coimbatore.

For Appellant : Mr.R.Subramanian  
for M/s.M.A.P.Thangavel

For Respondents : ...

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J U D G M E N T

The 2<sup>nd</sup> defendant in O.S.No.332 of 2000 on the file of the learned Principal Subordinate Judge, Coimbatore is the appellant herein and the 1<sup>st</sup> respondent is the plaintiff in the suit. The other respondents are the other defendants in the suit. The said suit was filed by the 1<sup>st</sup> respondent for recovery of a sum of Rs.1,53,019/- together with interest. The suit was laid on

the basis of a promissory note. The trial court, by decree and judgment dated 07.03.2007, decreed the suit as against the defendants 1 and 2. As against the same, the appellant herein filed an appeal in A.S.No.101 of 2011 on the file of the learned V Additional District and Sessions Judge, Coimbatore. The lower appellate court by decree and judgment dated 20.02.2014 dismissed the appeal thereby confirming the decree and judgment of the trial court. As against the same, the appellant is before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.

3. The case of the plaintiff in brief is as follows:

The 1<sup>st</sup> defendant is a partnership firm and the defendants 2 to 4 are its partners. The 5<sup>th</sup> defendant is the husband of the 4<sup>th</sup> defendant who is also looking after the partnership business. The defendants 2 to 4, acting on behalf of the 1<sup>st</sup> defendant, borrowed a sum of Rs.1,00,000/- on 09.10.1996 and duly executed a promissory note in favour of the plaintiff thereby agreeing to repay the said loan amount with interest at the rate of 24% p.a. on demand and on the same day, a letter of undertaking was also given in favour of the plaintiff. But as promised, the defendants did not repay the amount though oral demand was made by the plaintiff. Therefore, the plaintiff issued a notice dated 28.08.1997 calling upon the defendants to repay the principal sum with interest due under the promissory note. But there was no reply issued to the same, instead, the defendants paid a sum of Rs.26,981/- towards interest. That was acknowledged by the plaintiff. Thereafter, the defendants issued a notice on 25.04.1998 calling upon the plaintiff to return the promissory note and other documents entrusted to the plaintiff on the allegation that the entire amount due under the above loan transaction had been discharged. Thereafter, on 29.06.1998, the plaintiff issued a notice calling upon the defendants to pay the amount due under the promissory note. A reply notice was issued on 13.07.1998 for the same. In the said reply, again, the liability to pay any more amount under the promissory note was disputed. It was also contended that what was borrowed under the promissory note was only Rs.46,250/- and not Rs.1,00,000/-. Thereafter, according to the plaintiff, the defendants issued a cheque on 28.9.1998 for a sum of Rs.1,21,019/- in discharge of the above liability under the promissory note. When the said cheque was presented for collection, it was dishonoured for want of sufficient funds in their account. Thereafter, the plaintiff filed a criminal

prosecution against the defendants in STC.No.46 of 1999 before the Judicial Magistrate No.V, Coimbatore. In that case, the trial court convicted the defendants 2 and 3 under Section 138 of the Negotiable Instruments Act. As against the same, they filed an appeal and the same was also dismissed. Thus, the conviction and sentence imposed on the defendants 2 and 3 had become final. It is the further contention of the plaintiff that as per the above loan transaction, the amount claimed in this suit is due from the defendants.

4. The defendants contested the suit. They took the plea that whatever borrowed was only Rs.46,250/- and not Rs.1,00,000/-. They also stated that the entire amount was repaid and there was no amount due to the plaintiff. Thus, according to the defendants, the suit is liable to be dismissed.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, the plaintiff was examined as P.W.1 and as many as 16 documents have been exhibited. On the side of the defendants, the 2<sup>nd</sup> defendant/appellant herein was examined as D.W.1 and as many as 10 documents have been exhibited. Having considered all the above, the trial court decreed the suit as prayed for. As against the Same, the appeal filed by the appellant herein was also dismissed by the lower appellate court. That is how, the appellant is before this Court with this Second Appeal.

6. The learned Counsel for the appellant would submit that the lower appellate court has not appreciated both the oral and documentary evidence in their proper perspective. He would further submit that in the notice dated 25.04.1998 vide Ex.B.1, the defendants had stated that the entire amount was paid towards the above said loan transaction and there was no amount due. He would also submit that the cheque dated 28.09.1998 was in fact issued by the defendants in discharge of the above liability. According to him, the cheque was taken from the defendants by the plaintiff at the time when the loan was extended, as a security. It is his further contention that the said cheque was given only as a blank cheque. All these facts have not been considered by the courts below is the grievance of the appellant.

7. I have considered the above submissions.

8. At the outset, I should say that there is no substantial question of law at all involved in this Second Appeal warranting admission. There is no denial of the execution of the promissory note and when that be so, the

presumption under Section 118 of the Act is against the defendants. Of course, such presumption is rebuttable. But the defendants have not let in any oral or documentary evidence to rebut the said presumption. Though it is stated that a sum of Rs.46,250/- alone was borrowed by the defendants, absolutely, there is no evidence to substantiate the said contention. Since the execution of the promissory note had been admitted, the natural presumption arising under Section 118 of the Act is that the amount mentioned in the said document was really paid by the plaintiff. This presumption has not been rebutted at all by the defendants. It is submitted that the entire amount due under the above said loan transaction was discharged. But in the written statement, a contra plea has been taken. This has also been considered by the courts below. Though it is contended that the cheque dated 28.09.1998 for a sum of Rs.1,21,019/- was not issued in discharge of the liability under the promissory note in question, the criminal court has convicted the appellant and the other defendants for the offence under Section 138 of the Negotiable Instruments Act holding that the cheque was issued only in discharge of the liability under the promissory note in question. The criminal appeal has also been dismissed. Thus, there is a clear finding by the criminal court that the plea taken by the defendants that there was no liability under the promissory note is false. In view of all the above, in my considered view, the courts below were right in decreeing the suit. As I have already narrated, absolutely, there is no question of law much less a substantial question of law involved warranting admission of the Second Appeal.

9. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

tsi

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Principal Subordinate Judge, Coimbatore.
  2. The V Additional District and Sessions Judge, Coimbatore.
- + 1 cc to M/s.M.A.P.Thangavel, Advocate Sr 68991  
UG/CO  
KR/18/1/16

S.A.No.758 OF 2015

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