IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.273 of 2013
and M.P.No.1 of 2015

P.Ravi ... Appellant/Defendant

vs.

R.Anbalagan ... Respondent/Plaintiff

Appeal suit filed under Order 41 Rule 1 and 2 of CPC, against the judgment and decree dated 25.07.2012 in O.S.No.71 of 2010 on the file of II Additional District Judge, Salem.

For Appellant :Ms.Hema Sampath, Senior counsel for M/s.Sampathkumar Associates

For Respondent : Mr.T.Murugamanicakam for Ms.Zeenath Begum.

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Appeal Suit is preferred against the judgment and decree dated 25.07.2012 passed in O.S.No.71 of 2010 by the II Additional District Court, Salem.

2. The respondent herein as Plaintiff has instituted O.S.No.71 of 2010 praying to pass a decree of money, wherein, the present appellant has been arrayed as sole defendant.

3. The material averments made in the Plaint are that on 09.04.2008, the defendant has received a sum of Rs.9,00,000/- from the Plaintiff and to that extent, he executed the suit Promissory Note. Despite repeated demands made by the Plaintiff, the defendant has not paid any amounts either towards Principal or towards interest. Under the said circumstances, on 17.03.2010, the Plaintiff has issued a legal notice and thereby, called upon the defendant to discharge his liability. Even after receipt of the same, the defendant has not discharged his liability and under the said circumstances, the present suit has been instituted for the relief sought therein.

4. In the Written Statement filed on the side of the defendant, it is averred to the effect that on 09.04.2008, the defendant has not received a sum of Rs.9,00,000/- from the Plaintiff and executed suit promissory note. The defendant has purchased a Tata Trailer Lorry bearing Registration No.TN 27 M 0618. The defendant has entered into Hire Purchase Agreement with Sriram Finance Company Limited and in pursuance of that contract, the defendant has obtained a loan of Rs.6,00,000/-. The entire loan amount together with interest should be payable in 48 monthly installments. Since the defendant has not been able to pay over dues, approached the Plaintiff in the year 2004 for getting a sum of Rs.2,10,000/-. The Plaintiff has agreed to clear all over dues subject to condition that he would get the vehicle transferred and accordingly, the Plaintiff has paid the amount and at that time, as a security, the Plaintiff has obtained signature as well as thumb impression of the Plaintiff on a blank promissory note. The Plaintiff has purchased the vehicle for a sum of Rs.6,50,000/- and after adjustment, the loan amount of Rs.2,00,000/- with interest is due. The defendant has also approached the Plaintiff for getting back the Promissory Note which bears his signature as well as thumb impression. But the Plaintiff has represented that the same has been misplaced. The suit Promissory Note is not supported by consideration and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the rival pleadings raised on either side, the trial court has framed necessary issues and after analysing the available oral and documentary evidence on record, has decreed the suit as prayed for. Against the judgment and decree passed by the trial court, the present Appeal Suit has been preferred at the instance of the defendant as appellant.

6. The sum and substance of the case of the Plaintiff is that on 09.04.2008, the defendant has received a sum of Rs.9,00,000/- from the Plaintiff and to that extent, he executed a suit promissory note and despite repeated demands made by the Plaintiff, the defendant has failed to discharge his liability and ultimately, a legal notice has been issued on 17.03.2010 and even after receipt of the same, the defendant has not paid the amount and under the said circumstances, the present suit has been instituted for the relief sought therein.

7. The defence taken on the side of the defendant is that in the year 1999, the defendant has purchased a Tata Trailer Lorry bearing Registration No.TN 27 M 0618, by way of entering into Hire Purchase Contract with Sriram Finance Company Limited for a sum of Rs.6,00,000/- and since the defendant has not been able to pay over dues, he approached the Plaintiff. The Plaintiff has agreed to discharge over dues of the defendant and also agreed

to purchase the vehicle in auction and accordingly, he has done it and at the time of obtaining loan, the Plaintiff has obtained signature as well as thumb impression of the defendant on the suit promissory note and after such transaction, the defendant has approached the Plaintiff to return the blank pro-note. But the Plaintiff has represented to the effect that he misplaced such promissory note and by way of utilising the same, the present suit has been instituted and suit pro-note has not been supported by consideration and the present suit deserves to be dismissed.

8. The trial court, after analysing the rival contentions put forth on either side, has decreed the suit as prayed for.

9. The learned senior counsel appearing for the appellant/defendant has contended to the effect that the suit pro-note has been marked as Ex.A.1 and the same has not been supported by consideration. During the year 1999, the defendant has entered into Hire Purchase Contract with Sriram Finance Company Limited for a sum of Rs.6,00,000/- and since he has not been able to pay over dues, he approached the Plaintiff and thereby obtained a sum of Rs.2,00,000/- for discharging the loan and at the time of advancing money, the Plaintiff has obtained signature as well as thumb impression of the defendant on a blank pro-note and further the Plaintiff has purchased the vehicle of the defendant in an auction and after purchase, the defendant has approached the Plaintiff to return the blank pro-note, wherein, the defendant has put his signature as well as thumb impression. But the Plaintiff has represented to the effect that he misplaced the same and therefore, the suit pro-note is not supported by consideration and the trial court, without considering the aforesaid factual facts, has erroneously decreed the suit and hence, the judgment and decree passed by the trial court is liable to be interfered with.

10. To repudiate the contentions of appellant/defendant, the learned counsel appearing for the respondent/Plaintiff has laconically contended to the effect that on 09.04.2008, the defendant has received a sum of Rs.9,00,000/- by way of debt from the Plaintiff and to that effect, he has executed Ex.A.1 and for the purpose of proving the due execution of Ex.A.1 and also passing of consideration, replete evidence is available on the side of the Plaintiff and the trial court, after considering the overall evidence available on record, has decreed the suit and therefore, the judgment and decree of the trial court do not require any interference.

11. As stated earlier, the suit Pro-note dated 09.04.2008 has been marked as Ex.A.1. On the basis of rival submissions made on either side, the only legal point that arises for consideration in the present Appeal Suit is as to whether Ex.A.1

is supported by consideration?

12. The consistent case of the Plaintiff is that on 09.04.2008, the Plaintiff has advanced a sum of Rs.9,00,000/- to the defendant by way of debt and to that effect, the Plaintiff has executed Ex.A.1. But the defence put forth on the side of the defendant is otherwise to the effect that in the year 1999, the defendant has purchased a vehicle and to that effect, a Hire Purchase contract has come into existence between the defendant and Sriram Finance Limited for a sum of Rs.6,00,000/- and all the dues are payable in 48 monthly installments and since the defendant has not been able to pay dues to the said Finance Limited, he approached the Plaintiff for getting a sum of Rs.2,00,000/- and further agreed that the Plaintiff would purchase the vehicle and accordingly, the Plaintiff has advanced a sum of Rs.2,00,000/- to the defendant and at the time of advancing the said amount, the Plaintiff has obtained the signature as well as thumb impression of the defendant on a blank pro-note and the same has been utilised subsequently by way of filing the present suit.

13. Considering the defence taken on the side of the defendant, the entire burden lies on the defendant to prove the defence taken in the written statement.

14. On the side of the Plaintiff, he has been examined as P.W.1. In fact, this court has scanned the entire evidence adduced by P.W.1. During the course of cross examination, even a suggestion has not been put to P.W.1 to the effect that at the time of advancing loan to the defendant, the Plaintiff has obtained his signature as well as thumb impression on a blank pro-note. In contra, a suggestion has been put to P.W.1 to the effect that in the year 2004, the defendant has put his signature and thumb impression on a blank pro-note and given the same to Sriram Finance Limited and the same has been utilised for the purpose of instituting the present suit. Therefore, it is needless to say that during the course of cross examination made to P.W.1, the defendant has taken a different plea. Since the defendant has taken a different plea, as pointed out earlier, the defence taken on the side of the defendant cannot be accepted.

15. As mentioned supra, the specific contention put forth on the side of the appellant/defendant is that after discharging loan transaction, the defendant has approached the Plaintiff to return the blank pro-note. But the Plaintiff has represented that he has misplaced the same even in the year 2008. If really, the defendant has approached the Plaintiff to return the alleged blank pro-note and the Plaintiff has given an evasive reply, definitely, the defendant would not have remained silent without giving notice till the year 2010. Therefore, it goes without saying that the entire defence taken on the side of the

defendant cannot be admitted and further no sufficient evidence is available on the side of the defendant, so as to substantiate the defence taken on his side.

16. It has already been pointed out that the suit pro-note has been marked as Ex.A.1 and for the purpose of its due execution and passing of consideration, the Plaintiff has given clinching evidence. Further on the side of the defendant, the signature as well as thumb impression found in Ex.A.1 are clearly admitted. Under the said circumstances, the court can very well draw the presumption available under Section 118 of the Negotiable Instrument Act, 1881.

17. It is true that the presumption available under Section 118 of the Negotiable Instrument Act, 1881, is nothing but a rebuttable presumption. For the purpose of rebutting the evidence available on the side of the Plaintiff, no acceptable evidence is forth coming on the side of the defendant. Further as taunted earlier, the defendant has given a clear go by to the defence taken in the written statement, by way of making a different plea in the cross examination of P.W.1. Therefore, viewing from any angle, the argument put forth on the side of the appellant/defendant cannot be accepted.

18. As pointed out earlier, on the side of the respondent/plaintiff, replete evidence is available for due execution and passing of consideration of Ex.A.1, since the said aspect has been clearly proved on the side of the respondent/plaintiff that Ex.A.1 is supported by consideration.

19. The trial court, after pondering the available evidence on record, has rightly decreed the suit. In view of the discussions made earlier, this Court has not found any error nor illegality in the judgment and decree passed by the trial court and altogether, the present appeal suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed with costs. The judgment and decree passed in O.S.No.71 of 2010, by the trial Court are confirmed. Connected miscellaneous petitions is closed.

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

nvsri

To
1.The II Additional District Judge, Salem.
2.The Section Officer, V.R.Section, High Court, Madras.

+1 CC to M/s. Zeenith Begum, Advocate sr 80877.
+1 Cc to M/s. Sampath Kumar, Advocate sr 80626.

Appeal Suit No.273 of 2013

CNR(CO)
SP(07/03/2018)