

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 15.02.2017****PRONOUNCED ON : 21.02.2017****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S. A.No.259 of 2011****and****M.P.No.1 of 2011**

Elangovan	...	Appellant
	Vs.	
Sivasamy	...	Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 31.08.2009 made in A.S.No.51 of 2008 on the file of the Principal District Court, at Perambalur, reversing the judgment and decree dated 19.12.2007 made in O.S.No.34 of 2005 on the file of the Sub Court, Ariyalur.

For Appellant	: Ms. R.Anu for M/s.Srinath Sridevan
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For Respondent	: Mr.M.V.Krishnan
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JUDGMENT

In this second appeal, challenge is made by the defendant against the judgment and decree dated 31.08.2009 made in A.S.No.51 of 2008 on the file of the Principal District Court, Perambalur, reversing the judgment and decree dated 19.12.2007 made in O.S.No.34 of 2005 on the file of the Sub Court, Ariyalur.

2. The suit has been laid by the plaintiff for recovery of money on the basis of the promissory note.

3. According to the plaintiff, the defendant, on 14.04.2002, borrowed a sum of Rs.1,00,000/- from him and in evidence thereof, executed the suit promissory note promising to repay the said sum with interest on demand. Inasmuch as the defendant failed to honour his promise despite several demands and also the issuance of notice, according to the plaintiff, he has been necessitated to institute the suit.

4. The defendant has set up a defence contending that he had borrowed a sum of Rs.15,000/- from the plaintiff on 10.08.2001 and towards the same, the plaintiff had obtained the signed blank

promissory note from him and thereafter, the defendant had paid interest regularly towards the above said borrowed sum and resultantly, on 20.02.2004, paid the entire amount in the presence of the witnesses and further, agreed to receive back the signed blank promissory note from the plaintiff later as per the request of the plaintiff and inasmuch as the plaintiff failed to return the said signed blank promissory note subsequently, it is the case of the defendant that in the presence of the witnesses, again, on 17.01.2005, he requested the plaintiff to return back the said bond. However, the plaintiff contended that the defendant has to pay Rs.19,350/- being the principal sum plus interest and only on the payment of the same, he would return back the bond and therefore, according to the defendant, he had sent a notice dated 29.01.2005 calling upon the plaintiff to return the said bond and to the same, the plaintiff sent a reply on 04.02.2005 containing the false allegations and therefore, according to the defendant, the suit promissory note is not supported by consideration and hence, the suit is liable to be dismissed.

5. It is also pleaded that the defendant had sent a reply on 17.02.2005 repudiating the case of the plaintiff set out in the notice sent on 04.02.2005.

6. Considering the defence set out by the defendant, it is evident that the defendant has admitted the signature in the suit promissory note marked as Ex.A1. Therefore, it could be seen that the presumption, under Section 118 of the Negotiable Instrument Act, comes into play. Accordingly, it is for the defendant, at the first instance, to discharge the onus lying on him that the suit promissory note is not supported by consideration.

7. As adverted to earlier, according to the defendant, in respect of the borrowal of a sum of Rs.15,000/- from the plaintiff on 10.08.2001, he had given to the plaintiff a signed blank promissory note. However, with reference to the above case of the defendant that he had borrowed a sum of Rs.15,000/- from the plaintiff on 10.08.2001, no proof whatsoever is placed. Equally, the plea taken by the defendant that at that point of time, he had handed over a signed blank promissory note to the plaintiff, has also not been substantiated with acceptable evidence.

8. It is the further case of the defendant that he had, thereafter, repaid the above said borrowed sum with interest and finally discharged the entire debt on 20.02.2004. As regards the payment of interest and the settlement of the debt in entirety finally

on 20.02.2004, there is no material forthcoming on the side of the defendant. If really, the defendant had borrowed a sum of Rs.15,000/- from the plaintiff on 10.08.2001 and in token of the same, had handed over the signed blank promissory note to the plaintiff and if, thereafter, the defendant had paid or discharged the said debt, it could be seen that he would have taken adequate steps in the manner known to law to retrieve the signed blank promissory note alleged to have been given by him to the plaintiff. At the foremost, the defendant has not established that he had borrowed a sum of Rs.15,000/- from the plaintiff on 10.08.2001. In such view of the matter, the defence put forth that for the said transaction, he had given a signed blank promissory note to the plaintiff, as such, cannot be accepted. The plea put forth by the defendant that after the discharge of the debt as per the request of the plaintiff, he had deferred the receipt of the signed blank promissory note from the plaintiff cannot be believed and accepted in any manner. If really there is any element of truth in the above defence set out by the defendant, as a prudent person, one would have expected the defendant to at least get back the signed blank promissory note, on the discharge of the debt. But he would state that as the plaintiff had requested, he had returned back without getting back the signed blank promissory note, which is far-fetched to be accepted.

9. Further, according to the defendant, in the presence of the witnesses, on 17.01.2005, he demanded the plaintiff to return the signed blank promissory note, however, the plaintiff insisted to pay the principal plus interest by the defendant and only on the payment of the same, he would return back the signed blank promissory note. With reference to the above said event, according to the defendant, the same had occurred in the presence of four witnesses, out of them, only Kaliyaperumal has been examined as DW2. Even DW2, in his evidence, has not referred to the above said incident in the course of his evidence. The same has also been noted by the first appellate Court. Therefore, it could be seen that absolutely there is Nil evidence on the part of the defendant as regards the event set out to have taken place on 17.01.2005 with reference to the retrieval of the alleged signed blank promissory note said to have been given by the defendant to the plaintiff for the earlier borrowal alleged to have been made on 10.08.2001. Further, according to the defendant, he had sent a notice to the plaintiff on 29.01.2005 calling upon the plaintiff to return back the said signed blank promissory note. The said notice has also not been placed before the Courts below. No reason has been adduced for the same. It is seen that according to the defendant, the plaintiff has sent a reply notice to the same and

the reply notice dated 04.02.2005 has been marked. Further, according to the defendant, to the said notice, he has sent a reply on 17.12.2005. The said reply is not forthcoming. Therefore, it is found that the various pleas taken by the defendant that the plaintiff had made use of the signed blank promissory note given by him, at the time of the borrowal of Rs.15,000/- on 10.08.2001, is found to be nothing but falsehood and accordingly, it is seen that the defendant is unable to place any acceptable evidence with reference to the same.

10. As regards the case of the plaintiff, the plaintiff has examined himself as PW1 and the scribe of the promissory note, marked as Ex.A1, as PW2, Both PWs1 & 2 have tendered clear evidence, as to the borrowal of the suit debt from the plaintiff by the defendant and the execution of the suit promissory note by the defendant in favour of the plaintiff for the same. Nothing has been elucidated during the course of cross examination of PWs1 & 2 to discredit their testimony with reference to the above said aspects. It is therefore, found that as found by the first appellate Court, the plaintiff has established his case beyond reasonable doubt through the evidence of PWs1 and 2 and the promissory note marked as Ex.A1

11. During the course of the cross examination of PW2, a document purported to contain the signature of PW2 has been projected and when the signature contained in the said document was confronted, it appears, PW2 has admitted his signature found in the said document. The said document has come to be marked as Ex.B1. Ex.B1 is stated to be a statement given by PW2 to the defendant's advocate as regards his defence. It is found that Ex.B1 has not been attested by the concerned advocate. It also does not bear any date. It does not contain any recital that the contents of the said document had been read over to PW2 and he had admitted the same to be true in the presence of concerned advocate. As adverted to earlier, the concerned advocate has not attested the said document. Further, as regards the contents in the said document, nothing has been brought to the notice of PW2, during the course of cross examination, other than, contradicting him with the signature found in the said document. It is therefore seen that PW2 is not even put on notice or nothing is elucidated from him, as to under what circumstances, the said document had come to be signed by him. In such circumstances, solely by PW2 admitting the signature found in Ex.B1, it cannot be inferred or presumed that the defendant has discharged the onus resting upon him as mandated under Section 118 of the Negotiable Instrument Act. Therefore, it could be seen that Ex.B1

does not, in any manner, support the defendant's version.

12. As regards the evidence of DW2, it is found that as rightly observed by the first appellate Court, his evidence is contradictory and unreliable. He has admitted to have subscribed his signature in the document, knowing the said document to be a concocted one. Further, he would equally state that at the first instance, he had refused to be a party to the said document and however, when the same had been accomplished or written through PW2, he had accepted to be a signatory of the said document by affixing his signature as a witness. Therefore, it is found that the evidence of DW2 is artificial, unreliable and not trustworthy.

13. The evidence of DW3, as regards his attestation in Ex.B1, when Ex.B1 has not been established to have been signed by PW2 knowing the contents therein and also the person/advocate, in whose presence, the said document is said to have been executed has not attested the same or testified to have admitted the execution of the same by PW.2 and when it is found that Ex.B1 also does not bear any date and further, when the defendant has not cared to vouchsafe the said document by examining the concerned advocate, it could be seen that the first appellate Court has rightly disbelieved Ex.B1 to

uphold the defendant's version.

14. In the light of the above discussions, it is evident that the defendant has not discharged the onus placed upon him that the suit promissory note is not supported by consideration. In such view of the matter, the argument put forth by the defendant's counsel that he had discharged his onus and the plaintiff having failed to rebut the same or establish his case that the suit promissory note is supported by consideration, the first appellate court has erred in accepting the plaintiff's case cannot be countenanced. However, in view of the above discussions, it is only found that the defendant has not discharged the onus placed upon him under Section 118 of the Negotiable Instrument Act. Therefore, the burden does not shift to the plaintiff as contended by the defendant's counsel. In any event, as seen above, the plaintiff has established his case beyond the reasonable doubt through the evidence of PWs1 & 2 that the defendant had borrowed the suit debt from the plaintiff and in evidence thereof, executed the suit promissory note. On the other hand, the plaintiff has miserably failed to establish his defence version in any angle and even the projected evidence as discussed above is found to be unreliable and unacceptable.

15. In view of the foregoing reasons, the authorities relied upon by the defendant's counsel and reported in ***AIR 1961 SC 1316 (Kundan Lal Rallaram V. Custodian, Evacuee Property, Bombay)*** and ***AIR 1987 AP 139 (G.Vasu V. Syed Yaseen Sifuddin Quadri)*** as rightly put forth by the plaintiff's counsel would not be applicable to the facts and circumstances of the case at hand. The Principles of Law enunciated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

In conclusion, no substantial question of law is involved in this appeal. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
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21.02.2017

To
1. The Principal District Court, Perambalur.
2. The Sub Court, Ariyalur.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
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and
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