

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2017

PRONOUNCED ON:

CORAM :

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.379 of 2011

&

M.P.No.1 of 2011

D.Krishnan ... Appellant/Defendent

Vs.

T.C.Ramaswamy ...Respondent/Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 22.11.2010 passed in A.S.No.11 of 2010 on the file of the District Judge, Nilgiris at Uthagamandalam reversing the judgment and decree dated 29.06.2010 passed in O.S.No.11 of 2009 on the file of the Subordinate Judge, Nilgiris at Uthagamandalam.

For Appellant : Mr.S.Kingston Jerold

For Respondent : Mr.Lenin

J U D G M E N T

Challenge in this second appeal is made by the defendant against the Judgment and decree dated 22.11.2010 passed in A.S.No.11 of 2010 on the file of the District Judge, Nilgiris at Uthagamandalam reversing the judgment and decree dated 29.06.2010 passed in O.S.No.11 of 2009 on the file of the Subordinate Judge, Nilgiris at Uthagamandalam.

2.The Second Appeal has been admitted and the following substantial questions of law are formulated for consideration.

(a)Whether the judgment and decree of the lower appellate court is vitiated by its failure to consider the non applicability of Section 118 of the Negotiable Instruments Act to the facts and circumstances of the instant case?

(b)Whether the presumption under Section 118 of the Negotiable Instruments Act is duly rebutted by the appellant even assuming that Section 118 of the Negotiable Instruments Act is applicable to the instant case?

3.The suit has been laid by the plaintiff for recovery of money on the basis of a promissory note. According to the plaintiff, the defendant borrowed a sum of Rs.2,50,000/- from him and in evidence there of executed the suit promissory note on 08.01.2006 marked as Ex.A1, promising to repay the said sum with interest and inasmuch as the defendant had failed to honour the claim despite several demands and also even after the issuance of the legal notice dated 06.11.2008, the copy of which has been marked as Ex.A2, according to the plaintiff, he has been necessitated to lay the suit.

4.The defence version is that he did not borrow the suit amount from the plaintiff as put forth in the plaint and on the other hand according to the defendant, he received a sum of Rs.1,00,000/- from the plaintiff during January 2005 and executed an unfilled promissory note and thereafter during October 2008, he had repaid the above said sum but failed to get back the unfilled promissory note in good faith and therefore according to the defendant, the plaintiff fabricated the suit promissory note and filed the suit without any cause of action.

5.Inasmuch as the defendant, as rightly found by the courts below, had admitted his signature in the suit promissory note, it could be seen that the presumption under Section 118 of the Negotiable Instruments Act would come into operate. According to the defendant, he had borrowed a sum of Rs.1,00,000/- from the plaintiff during January 2005 and executed an unfilled promissory note. The above defence version has been challenged by the plaintiff. Despite the same, other than the ipse dixit testimony of the defendant examined as DW1, there is no material forthcoming on the side of the defendant to evidence that as pleaded by him, he had borrowed a sum of Rs.1,00,000/- from the plaintiff during January 2005 and executed an unfilled promissory note.

6.Further, according to the defendant, he had repaid the above said sum during October 2008 with interest, however, did not get back the unfilled promissory note in good faith from the plaintiff and according to him, making use of the above said unfilled promissory note, the plaintiff had fabricated the suit promissory note. As adverted to earlier, at the foremost, the defendant had failed to establish that he had borrowed a sum of Rs.1,00,000/- from the plaintiff during January 2005 and executed an unfilled promissory note. Further, his case that he had discharged the said sum during October 2008 is also not buttressed by any material. If really, the defendant had borrowed any sum from the plaintiff during January 2005 and executed an unfilled promissory note and thereafter discharged the said sum during October 2008, as a prudent person, he would

have received the unfilled promissory note, alleged to have executed by him and handed over to the plaintiff.

7. However, the defendant's version is that in good faith he had not received back the unfilled promissory note, after the discharge of the amount. The above version of the defendant does not merit acceptance and has to be thrown out. All these facts would only go to disclose that inasmuch as the defendant has not borrowed any sum much less Rs.1,00,000/- from the plaintiff during January 2005 and not executed any unfilled promissory note in favour of the plaintiff at that point of time and further not discharged the said amount during October 2008 as pleaded, it could be seen that the defendant is unable to place any proof to establish the above said version. Therefore, it could be seen that as rightly put forth by the plaintiff's counsel, for the purpose of the defence, the defendant has made the above defence, with a view to wriggle out from his responsibility in repaying the suit claim to the plaintiff.

8. It is argued by the defendant's counsel that the plaintiff has admitted that the defendant does not know to read and write and therefore, the plaintiff having failed to establish that it is only the defendant, who had executed the suit promissory note, the case of the plaintiff should not be accepted. No doubt, the plaintiff has admitted that the defendant does not know to write in Tamil and according to the plaintiff, the defendant had brought the filled up promissory note while receiving the amount from the plaintiff.

9. Be that as it may, as rightly found by the first appellate court, the defendant having admitted his signature in the suit promissory note, it could be seen that the promisee namely the plaintiff gets a legal right to fill up the same as per Section 20 of the Negotiable Instruments Act. Therefore, the reasoning of the first appellate court that the mere fact that the plaintiff has admitted that the defendant does not know to write in Tamil would not lead to the conclusion that the defendant had not executed the suit promissory note as pleaded by the plaintiff does not suffer from any infirmity.

10. Per contra, the plaintiff examined as PW1 has given a clear testimony that the defendant borrowed a sum of Rs.2,50,000/- from him on 08.01.2006 and in evidence there of executed the suit promissory note in his favour promising to repay the said sum. Prior to the institution of the suit, the plaintiff had issued a legal notice calling upon the defendant to pay the amount due under the promissory note. The receipt of the same has not been challenged by the defendant. If the defendant had not executed the suit promissory note as put

forth by the plaintiff and not received any consideration there under, nothing prevented the defendant from controverting the claim of the plaintiff made under the legal notice marked as Ex.A2.

11.On the other hand, inasmuch as the defendant had borrowed the suit amount from the plaintiff and executed the suit promissory note, unable to resist the claim of the plaintiff made under Ex.A2, it could be seen that the defendant had remain silent without challenging the same.

12.In the light of the above discussions, it could be seen that the first appellate court has rightly invoking the presumption that could be raised in respect of the suit promissory note under Section 118 of the Negotiable Instruments Act and further rightly found that the presumption raised under Section 118 of the Negotiable Instruments Act having not been rebutted in any manner by the defendant and accordingly, it could be seen that the first appellate court had accepted the plaintiff's case. No acceptable ground has been placed by the defendant to warrant any interference to the above findings of the first appellate court in upholding the plaintiff's case.

13.In such view of the matter, the substantial questions of law formulated in this second appeal are answered against the defendant and in favour of the plaintiff.

14.In conclusion, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

dn Sub Assistant Registrar
To

1. The District Judge, Nilgiris,
at Uthagamandalam
2. The Subordinate Judge,
Nilgiris at Uthagamandalam

+1cc to Mr.Rakhunathan, Advocate, S.R.No.5322
+1cc to Mr.Lenin & Bhagya, Advocate, S.R.No.4958

NG(CO)
RS(16/02/2017)

Pre-delivery Order in
S.A.No.379 of 2011