

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.02.2018

Delivered on: 22.02.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.321 of 2017

and

C.M.P.No.12284 of 2017

Mrs.A.Janaki

.... Appellant/Defendant

vs.

Mr.S.B.Rajasundaram

.... Respondent/Plaintiff

Appeal suit filed under Section 96 read with Order XLI Rule 1 of C.P.C. against the judgment and decree dated 01.03.2017 passed in O.S.No.78 of 2014, by the Principal District Judge, Cuddalore.

For Appellant : Mr.T.Velumani

For Respondent : Mrs.Hema Sampath,Sr.counsel
for Mrs.R.Meenal

JUDGMENT

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

Challenge in this Appeal Suit is to the judgment and decree dated 01.03.2017, passed in O.S.No.78 of 2014, by the Principal District Court, Cuddalore.

2.The respondent herein, as plaintiff, has instituted O.S.No.78 of 2014, on the file of the trial Court, praying to pass a money decree, wherein, the present appellant has been shown as sole defendant.

3.The material averments made in the plaint are that the defendant is a daughter of one Arulprakasam. The daughter of the plaintiff, by name, Suganthi, has been living at Thookanambakkam. The plaintiff has used to visit her house very often. The father of the defendant has made acquainted with the plaintiff. The defendant has maintained a cordial relationship with the family members of the plaintiff. The plaintiff has sold his lands and settled at Pondicherry. The defendant and

her father have approached the plaintiff to give financial assistance so as to purchase a property at Cuddalore. The plaintiff has advanced a sum of Rs.17 lakhs on various occasions to the defendant. The defendant has gone to Singapore. After her return, on 12.05.2014 she has issued a cheque for a sum of Rs.17 lakhs so as to discharge her liability and the same has been put into concerned bank, but the concerned bank has returned the same stating 'funds insufficient'. Under such circumstances, the present suit has been instituted for the relief sought therein.

4.The material averments made in the written statement are that the present suit is frivolous. The plaintiff is a distant relative of the defendant. The plaintiff has enjoyed certain liberty in the house of the defendant. Taking advantage of the situation, the plaintiff has stolen a cheque leaf from the cheque book of the defendant and by utilising the same, the plaintiff has filled it up as if the same has been given by the defendant for a sum of Rs.17 lakhs. The signature found in the cheque is not the signature of the defendant. The defendant has borrowed a loan of Rs.24 lakhs from the State Bank of India, Cuddalore, O.T.Branch and subsequently repaid the same and due to that the account of the defendant has shown as 'insufficient funds'. 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 both the oral and documentary evidence, has decreed the suit as prayed for, by way of passing the impugned judgment and the same is being challenged in the present Appeal Suit.

6.The sum and substance of the case of the plaintiff is that on various occasions, the defendant has received a sum of Rs.17 lakhs and in order to discharge the same, she has given the cheque dated 12.05.2014 for the said sum and the same has been presented in the concerned bank, but the concerned bank has returned the same stating 'funds insufficient' and therefore, the present suit has been instituted for getting the relief sought therein.

7.The only defence put forth on the side of the defendant is that the plaintiff has maintained a concordial relationship with the family members of the defendant and by taking advantage of the said situation, he has stolen a cheque leaf from the cheque book of the defendant and subsequently, filled it up for a sum of Rs.17 lakhs. The signature found in the cheque is not the signature of the defendant and therefore, the present suit is liable to be dismissed.

8.The trial Court, after evaluating the available evidence on record, has decreed the suit as prayed for.

9.The learned counsel appearing for the appellant/defendant has vehemently contended to the effect that the cheque in question has been marked as Ex.A1. The plaintiff has stealthily removed a cheque leaf from the cheque book of the defendant and by utilising the same and also by way of forging the signature of the defendant, the present suit has been instituted and prior to institution of the present suit, pre-suit notice has not been issued and the trial Court, without considering the acceptable defence taken on the side of the defendant, has erroneously decreed the suit and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

10.Per contra, the learned Senior counsel appearing for the respondent/plaintiff has sparingly contended that in the instant case, replete evidence is available on the side of the plaintiff so as to prove that Ex.A1 has been given by the defendant and further, the trial Court itself has compared the signature found in Ex.A1 with the admitted signatures of the defendant and ultimately found that Ex.A1 has been given by the defendant and therefore, the judgment and decree passed by the trial Court do not require any interference.

11.Before considering the rival submissions made on either side, the Court has to look into the petitions filed in C.M.P.Nos. 22464 of 2017 and 1609 of 2018.

12.As mentioned supra, the consistent case of the plaintiff is that on 12.05.2014, the defendant has issued Ex.A1 for a sum of Rs.17 lakhs. The defence put forth on the side of the defendant is that the plaintiff has stealthily removed the cheque leaf from the cheque book of the defendant and also by way of forging the signature of the defendant, Ex.A1 has been falsely created. Since such a defence has been taken on the side of the defendant, the initial burden lies upon the plaintiff to prove that Ex.A1 is a genuine document.

13.On the side of the plaintiff, he has been examined as P.W.1 and his specific evidence is that before issuance of cheque in question, on various occasions, the defendant has received a sum of Rs.17 lakhs and after her return from Singapore, on 12.05.2014 she has issued Ex.A1 for a sum of Rs.17 lakhs so as to discharge her liability. On the side of the defendant, she has been examined as D.W.1 and her specific evidence is that the signature found in Ex.A1 is not her signature. The trial Court has made a comment to the effect that for the purpose of utilising service of an expert, so as to compare the disputed signature found in Ex.A1 with the admitted

signature of the defendant, the defendant has not evinced any interest. Under the said circumstances, the petitions mentioned supra are filed on the side of the appellant/defendant.

14.It is an everlasting principle of law that as per Section 73 of the Indian Evidence Act, 1872, the Court itself can compare the disputed signature with admitted signatures.

15.In fact, this Court has closely compared the signatures of the defendant found in the written statement and ultimately found that one signature is mutually congruous with other signatures. But the stroke remains intact. Therefore, the defendant is in the habit of putting feigned signatures. As mentioned in many places, the consistent case of the defendant is that the signature found in Ex.A1 is not her signature.

16.Considering the nature of the defence and also on the basis of provision of Section 73 of the said Act, in fact, this Court has compared the alleged signature of the defendant found in Ex.A1 with her admitted signatures found in the written statement and ultimately found that the stroke of all the signatures is one and the same, even though there is a slight variation. Therefore, it is needless to say that Ex.A1 is a genuine document.

17.Considering the fact that Ex.A1 is a genuine document, an expert need not be deployed so as to compare the alleged disputed signature of the defendant with her admitted signature. Under the said circumstances, C.M.P.Nos.22464 of 2017 and 1609 of 2018 are liable to be dismissed.

18.The learned counsel appearing for the appellant/defendant has relied upon the following decisions:

(1)2015(1) DCR 35-N.Raveendrananthan Nair and Another vs. Vijayakumar, wherein the High Court of Kerala has held that initial presumption under Section 118(a) of the Negotiable Instruments Act, 1881, becomes unavailable when the plaintiff admits in the plaint itself different considerations.

(2)In (2008)4 Supreme Court Cases 54-Krishna Janardhan Bhat vs. Dattatraya G.Hegde, at paragraph No.30, it is observed that the proviso appended to the said Section provides for compliance with legal requirements.

(3)In AIR 1951 Calcutta 262-Ahmed Hossein vs. Mt.Chembelli and other, wherein it is observed as follows:

"Only way in which liability on a cheque may arise is when (1) the cheque is dishonoured and (2) notice of such dishonour has been given or circumstances exist (as enumerated in S.98, Negotiable Instruments Act) which render it unnecessary to give such notice. The notice of

dishonour, as the law as to cheques stands, is a part of the cause of action on a dishonoured cheque, and not a condition precedent necessary for a case on a cheque, the performance or occurrence of which is to be implied in the plaint under O.6, R.6, Civil Procedure Code."

19.From a conjoined reading of the said decisions, the Court can easily discern that the initial presumption available under Section 118(a) of the Negotiable Instruments Act, 1881, cannot be exercised if the plaintiff himself states in his plaint different considerations. Further, if any complaint is lodged under Section 138 of the Negotiable Instruments Act, 1881, a notice in respect of dishonour of a particular cheque is very much essential. Further, as per provision of Order 6 Rule 6 of the Code of Civil Procedure, 1908, any performance or occurrence of which is intended to be contested, shall be specifically pleaded in the pleadings.

20.The contention put forth on the side of the appellant/defendant is that prior to institution of suit, the plaintiff has not issued any pre-suit notice.

21.It is an admitted fact that the present proceeding has not been initiated under the Negotiable Instruments Act, 1881. This is nothing but a simple suit for recovery of amount mentioned in Ex.A1.

22.Considering the fact that the present suit has been instituted only to recover the amount mentioned in Ex.A1, cause of action has arisen since Ex.A1 has been issued in favour of the plaintiff. For creating cause of action, pre-suit notice is totally unwarranted. Therefore, viewing from any angle, the defence as well as legal point put forth on the side of the appellant/defendant are not factually and legally sustainable.

23.As adverted to earlier, the plaintiff has given acceptable evidence so as to prove Ex.A1. The trial Court, after considering the overall evidence available on record, has rightly decreed the suit and in view of the discussion made earlier, this Court has not found any error or illegality in the judgment and decree passed by the trial Court and therefore, 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.78 of 2014, by the trial Court are confirmed. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

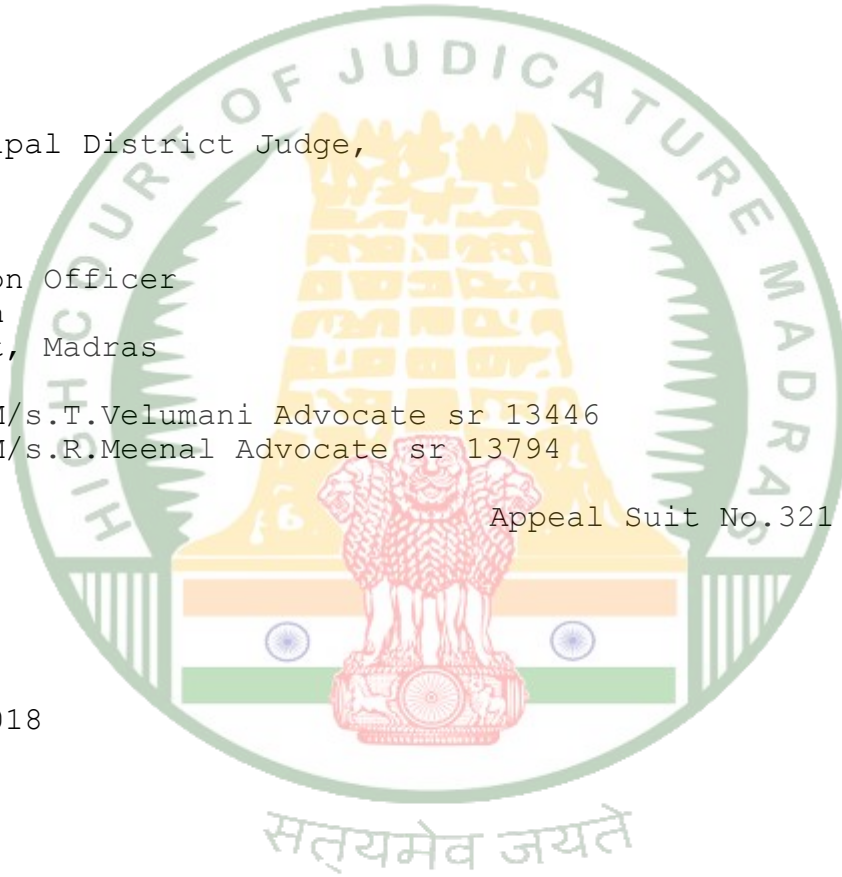
The Principal District Judge,
Cuddalore.

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The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.T.Velumani Advocate sr 13446
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