IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Second Appeal No.300 of 2018
and C.M.P.No.8323 of 2018

K.Mohan .. Appellant/Defendant

Vs.

S.Jawahar .. Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C to set aside the judgment and decree dated 12.12.2017 made in A.S.No.25 of 2016 on the file of the District Court, Udhagamandalam, confirming the judgment and decree dated 09.10.2015 made in O.S.No.9 of 2012 on the file of the Subordinate Court, Udhagamandalam.

For Appellant : Mr.N.K.Srinivasan

J U D G M E N T

This Second Appeal has been filed to set aside the judgment and decree dated 12.12.2017 made in A.S.No.25 of 2016 on the file of the District Court, Udhagamandalam, confirming the judgment and decree dated 09.10.2015 made in O.S.No.9 of 2012 on the file of the Subordinate Court, Udhagamandalam.

2.The appellant is defendant and respondent is the plaintiff in O.S.No.9 of 2012 on the file of the Subordinate Court, Udhagamandalam. The respondent filed the said suit for recovery of a sum of Rs.1,06,215/- together with interest at the rate of 12% per annum on Rs.90,000/-. According to the respondent, the appellant borrowed a sum of Rs.90,000/- on 02.06.2010 and executed promissory note on the same day, promising to repay the same together with interest. The appellant towards repayment, issued a cheque bearing No.523239 dated 07.04.2011 for a sum of Rs.70,000/- drawn on Syndicate Bank, Coonoor Branch. On presentation, the said cheque was returned for insufficient funds. The respondent sent notice dated 27.04.2011 through his Advocate to the appellant. The appellant did not send any reply and did not pay the amounts even after receiving the said notice. Hence the respondent filed the said suit.

3.The appellant filed written statement and denied having borrowed a sum of Rs.90,000/- from respondent and executed promissory note. According to the appellant, the respondent is a money lender, lending money on exorbitant interest without obtaining any license from the competent authority. The appellant through one Rajesh, who is the agent of respondent, borrowed a sum of Rs.10,000/- for his urgent medical expenses during the month of February 2007. The respondent at that time took appellant's signature in the blank promissory note, three blank signed cheque leaves and signature in the white paper as well as in bond paper. The respondent issued a cheque for a sum of Rs.4,500/- after deducting Rs.500/- towards one month interest in the presence of Rajesh and one M.Saravanakumar. Subsequently, on 21.03.2007, the respondent issued another cheque for a sum of Rs.4,500/- after deducting Rs.500/- towards one month interest. The appellant deposited two amounts of Rs.2,000/- each in the account of respondent and another sum of Rs.4,000/-. Thereafter, the appellant could not repay the balance amounts to the respondent. The appellant did not borrow a sum of Rs.90,000/- and did not execute the suit promissory note and did not issue any cheque dated 07.04.2011, as alleged by the respondent. The respondent has fabricated the suit promissory note as well as cheque and filed the suit.

4.Based on the pleadings, the learned Trial Judge framed necessary issues. Before the Trial Judge, the respondent examined himself as P.W.1 and one Murugesan was examined as P.W.2 and marked 5 documents as Exs.A1 to A5. The appellant examined himself as D.W.1 and one S.Rajesh was examined as D.W.2 and marked three documents as Exs.B1 to B3. The learned Trial Judge considering the pleadings, oral and documentary evidence and arguments of the counsel for the respondent and the appellant, decreed the suit. Against the said judgment and decree dated 09.10.2015 made in O.S.No.9 of 2012, the appellant filed First Appeal, A.S.No.25 of 2016 on the file of the District Court, Udhagamandalam. The learned First Appellate Judge framed necessary points for consideration. Considering the materials on record, judgment of the Trial court and point for consideration, the learned First Appellate Judge dismissed the Appeal, confirming the judgment of the Trial Court.

5.Against the said judgment and decree dated 12.12.2017 made in A.S.No.25 of 2016, the appellant/defendant has come out with the present Second Appeal.

6.The learned counsel appearing for the appellant contended that the Courts below failed to consider the details of cheque issued by the appellant and the date on which the cheque book was issued by the Bank. The cheque is dated 02.06.2010 and cheque book was issued by the Syndicate Bank on 07.07.2006. Subsequently, the appellant's account number was changed and Bank issued another cheque book on 23.04.2007. After issuing the said cheque book, the appellant obtained two cheque books dated 24.06.2009 and 10.07.2010. This would clearly show that the cheque, Ex.A2 dated 07.04.2011 was not issued by the appellant on that date. The Courts below failed to consider that one G.Kumaresan who is the agent of respondent issued notice dated 21.03.2013 stating that appellant borrowed a sum of Rs.75,000/- on 06.09.2012 and issued cheque bearing No.523240 dated 09.12.2012 for a sum of Rs.75,000/-.

6(a).The Courts below failed to consider the case of the appellant that appellant gave three blank signed cheques bearing Nos.523238, 523239 and 523240. The said G.Kumaresan is not a money lender and he has no capacity to lend such huge amounts. This would clearly show that the respondent misused and fabricated the blank signed promissory note and three blank signed cheques issued by the appellant. The transaction between the appellant and respondent was during the year 2007 and appellant has paid Rs.8,000/- to the respondent and balance amount along with interest is only Rs.1000/- and learned counsel for the appellant further contended that appellant never borrowed a sum of Rs.90,000/- from the respondent and did not execute any promissory note and did not issue any cheque.

7.Heard the learned counsel for the appellant and perused the materials available on record.

8.The suit filed by the respondent is based on the promissory note. The respondent has examined himself as P.W.1 and spoke about borrowing and execution of promissory note and issue of cheque, Ex.A2. The respondent also examined P.W.2 who was the witness to the promissory note. The appellant himself was examined as D.W.1 and one S.Rajesh was examined as D.W.2. The D.W.2, S.Rajesh in his evidence has stated that in his presence, the respondent gave a cheque for a sum of Rs.4,500/- and he was not aware of any other amounts paid by the respondent subsequently. The appellant did not examine M.Saravanakumar who was alleged to have been present when the respondent gave a cheque for a sum of Rs.4,500/- to the appellant. The appellant has admitted that he used to borrow small amounts from the respondent and repay the same. The appellant has also admitted his signature in the suit promissory note as well as in the cheque marked as Ex.A2. Once the signature is admitted in the promissory note, the presumption under Section 118 of the Negotiable Instruments Act comes into play and appellant must rebut the same by acceptable evidence. In the present case, the appellant failed to rebut the presumption.

9.The learned counsel appearing for the appellant in the Second Appeal contended that the three cheques, Ex.A2 and other two Cheques bearing Nos.523240 and 523238 were of the year 2007 and the said cheques were given to the respondent in blank with signature of the appellant. According to the counsel for the appellant, the bank account number of the appellant was changed and further cheque books were issued to the appellant and after utilizing the same, two more cheque books were received by him on 24.06.2009 and 10.07.2010. The appellant has not produced any evidence to substantiate this claim. The appellant has not produced his statement of account or passbook to show the change in account number and date of issue and utilization of other cheques as alleged by him in the grounds of appeal. The appellant has not examined any of the officials from the bank to substantiate this contention.

10.From the materials on record, it is seen that the appellant has not taken such a stand in the Courts below. The two cheques, Exs.A2 and B3 were returned by the bank for insufficient funds. In such circumstances, the appellant ought to have proved the utilization of subsequent cheques from 23.04.2007 till July 2010. The Courts below considering and appreciating the pleadings, oral and documentary evidence and arguments advanced by the counsel for the appellant as well as respondent, decreed the suit and dismissed the First Appeal by giving valid reason. There is no error of law warranting interference by this Court with the judgment dated 12.12.2017 made in A.S.No.25 of 2016. Therefore, no Question of Law arose much less than the Substantial Question Law. The Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The District Judge,
Udhagamandalam

2.The Subordinate Judge,
Udhagamandalam.

Copy to: The Section Officer, VR Section,
High Court, Madras.

+ 2 ccs to Mr.N.K. Srinivasan, Advocate Sr.34676

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and C.M.P.No.8323 of 2018

AK(CO)
EU(11/07/2018)