

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28.09.2018

JUDGMENT PRONOUNCED ON : 12.10.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.345 of 2008

Narayanan

..Appellant/Plaintiff

Vs.

Ravi

..Respondent /Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 19.06.2006 made in AS.No.104 of ***2002** on the file of the sub-Court, Ariyalur, Confirming the decree and judgment of the Court of District Munsif, Ariyalur made in OS.No.253 of 1997 dated 25.01.2000.

For Appellant : Mr.M.V.Krishnan

For Respondent : Mr.S.Gunalan - No appearance

J U D G M E N T

1. The plaintiff in OS.No.253 of 1997 is the appellant. The suit was laid for recovery of a sum of Rs.25,400/- said to be due on a promissory note executed by the defendant on 19.10.1994, acknowledging a borrowing of a sum of Rs.20,000/- and agreeing to pay interest at 12% per annum. The plaintiff had restricted the claim for interest at 9% per annum. According to the plaintiff, the defendant did not repay the money borrowed despite repeated demands which necessitated issuance of legal notice on 08.01.2009. Though, the said notice was received by the defendant, the defendant neither chose to comply with it, nor sent any reply. Hence, the plaintiff had come forward with the suit seeking recovery of money as aforesaid.

2. The defendant filed a written statement contending that the promissory note was not supported by consideration. According to the defendant, he had borrowed a sum of Rs.20,000/- from the plaintiff and had executed two blank promissory notes. It is claimed that using the two blank forms signed by the defendant, the plaintiff has created two promissory notes and has filed two suits in OS.Nos.253 and 258 of 1997 against the defendant. It is also contended that the defendant had paid a

sum of Rs.16,000/- in discharge of the borrowing. On the above contentions, the defendant sought for dismissal of the suit.

3. At trial, the plaintiff examined himself as PW1 and marked Exs.A1 to A4 and the defendant apart from examining himself as DW1 examined one Sivaperumal as DW2.

4. The learned trial Judge, on framing the relevant issues concluded that the plaintiff has not proved execution of the promissory notes and on the said conclusion dismissed the suit. Aggrieved, the plaintiff filed an appeal in AS.No.104 of 2002. The appellate Court also concurred with the findings of the trial Court. Hence, the plaintiff had come forward with the above Second Appeal. At the time of admission, the following question of law was framed:-

whether the Courts below are right in placing the burden on the plaintiff to establish the execution of the document and the receipt of consideration when the defendant had admitted his signature in the pronote and the receipt of consideration?

5. I have heard Mr.M.V.Krishnan, learned counsel appearing for the appellant and despite this appeal having been adjourned for hearing the respondent, the learned counsel for the respondent was not present to argue the Second Appeal.

6. Mr.M.V.Krishnan, learned counsel appearing for the appellant would mainly contend that the Courts below were not right in holding that the plaintiff has not proved the execution of the promissory note by the defendant. Taking me through the written statement, filed in the suit, Mr.M.V.Krishnan, would submit that the signature of the defendant in the suit promissory note has been admitted. It is the contention of the defendant that the plaintiff had obtained two blank forms while lending a sum of Rs.20,000/- and has created two promissory notes each for a sum of Rs.20,000/-. Therefore, according to Mr.M.V.Krishnan, once the execution of the document is admitted and the defendant takes a plea that the promissory note was an inchoate negotiable instrument, it is for him to prove failure of consideration. He would also invite my attention to Section 20 of the Negotiable Instruments Act to contend that a person signing a blank instrument or an inchoate negotiable instrument thereby gives an authority to the holder of the instrument to fill up the same, make a negotiable instrument and sue upon it.

7. Mr.M.V.Krishnan, would also rely upon the judgment of the Hon'ble Supreme Court in Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Payrelal reported in AIR 1999 SC 1008, wherein, the Hon'ble Supreme Court had held that when the defendant takes a plea that the promissory note was executed for a collateral security and not for consideration

received, it is for the defendant to prove absence of consideration and onus cannot be shifted on to the plaintiff. Drawing my attention to the observations of the Hon'ble Supreme Court made in the said judgment which reads as follows:-

"Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would dis-entitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as existence of negative evidence is neither possible nor contemplated and even if led is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption the defendant has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist. We find ourselves in the close proximity of the view expressed by the

Full Benches of the Rajasthan High Court and Andhra Pradesh High Court in this regard."

The learned counsel for the appellant would fault the Courts below for casting the burden on the plaintiff to show passing of consideration. The trial Court had disbelieved the evidence of DW2. The plaintiff apart from examining himself, has examined PW2, who is the scribe who had deposed that the plaintiff had in fact paid the money on the execution of the suit promissory notes.

8. The lower appellate Court has rejected the claim of the plaintiff on the ground that the plaintiff has not examined the persons who had signed as attesting witnesses to the documents. The lower appellate Court has also concluded that the plaintiff has not proved the execution of Ex.A1 promissory note. I am unable to concur with the said findings of the Courts below. Though, the lower appellate Court had referred to the judgment of the Hon'ble Supreme Court in *Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Payrelal* referred to supra, it has not discussed the effect of the said judgment.

9. The law relating to execution of promissory note has been clearly spelt out in the said judgment of the Hon'ble Supreme Court. Once the signature in the promissory note is admitted the plaintiff viz., the holder of the promissory note is entitled to fill up the same and sue upon it, in view of Section 20 of the Negotiable Instruments Act, which reads as follows:

"20. Inchoate stamped instruments.— Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 1 [India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount : provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."

10. In *Malar Finance Corporation vs. G. Rathinam And Ors.* reported in 2001 (3) MLJ 753, this Court had considered the scope of Section 20 of the Negotiable Instruments Act and

answered the question of law that was framed in the said appeal as follows:-

"In the instant case, the defendants had admitted having affixed their signatures in a blank promissory note. The plaintiff was well within its powers to fill up the promissory note and on the basis of the completed promissory note, entitled to sue for recovery of money due under the note. The contrary view expressed by the Courts below cannot at all be sustained. Section 20 of the Act had not been brought to the notice of the Courts below."

11. In view of the aforesaid categorical pronouncement, once it is found that the defendant had admitted his signature in the promissory note and had chose to plead absence of consideration, it is for him to prove the absence of consideration. Both the Courts below have not considered this vital question, but have placed the burden on the plaintiff, ignoring the provisions of Section 118 of the Negotiable Instruments Act and held that it is for the plaintiff to prove execution and passing of the consideration. Unfortunately, the Courts below have proceeded in ignorance of the statutory provisions which had led to such perverse findings being recorded by the Courts below.

12. I am therefore of the considered opinion that the question of law raised has to be answer in favour of the appellant and against the respondent. Once the said question of law is answered in favour of the appellant, the next question that would arise is as to whether the defendant had proved absence of consideration.

13. As already stated, both the Courts below have rejected the evidence of DW2. PW2 the scribe of the document has spoken about passing of the consideration. Even in the absence of such evidence, there is a statutory presumption created under Section 118 of the Negotiable Instruments Act in favour of the plaintiff. It is for the defendant to have dislodged the said presumption by letting in cogent evidence to show absence of consideration.

14. As already observed the Courts below have rejected the evidence of DW2 as unreliable. Once, the evidence of DW2 is rejected, we are left with only the interested testimony of the defendant, in order to deny absence of consideration. I do not think that the interested testimony of the defendant as DW1 alone could be taken as such strong evidence to dispel or rebut the presumption created under Section 118 of the Negotiable Instruments Act.

15. I am therefore of the considered opinion that the Second Appeal deserves to be allowed and the same is allowed. The judgment and decree of the Courts below are set aside. The suit in OS.No.253 of 1997 will stand decreed as prayed for with interest at 9% from 19.10.1994 till date of suit and at 6% from the date of suit till date of realization. The plaintiff will also be entitled to costs throughout.

Sd/--

Assistant Registrar(CS vi)

Dated: 26/12/2018

***Corrected as per Letter
dated 26/02/2019
by the Counsel for the
Appellant**

Sd/-Assistant Registrar(CS VI)

Dated: 19/03/2019

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Sub-Judge, Ariyalur.

2. The District Munsif, Ariyalur.

3. The Section Officer, V.R. Section,
High Court of Madras, Chennai 600 104.

**To be Substituted to
this Order already
Despatched on 4/2/19**

सत्यमेव जयते

S.A.No.345 of 2008

ASK(26/12/2018)

GN(19/03/2019)

WEB COPY