BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE: 16.02.2018
CORAM:
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

A.S. (MD)No.32 of 2017
and
C.M.P.(MD)No.2069 of 2017

M.Parameshwari : Appellant/ defendant

Vs.

M.C.Thenmozhi : Respondent/Plaintiff

Prayer: Appeal is filed under section 96 of the Code of Civil Procedure, against the decree and judgment dated 26.10.2016 passed in the suit in O.S.No. 42 of 2011 on the file of the learned Additional District Judge, Ramanathapuram.

For Appellant : T.R.Jeyapalam
For Respondent : Mr.V.Sitharanjandass

J U D G M E N T

The defendant in the suit in O.S.No.42 of 2011 on the file of the Additional District Judge, Ramanathapuram, is the appellant in this first appeal. The respondent/plaintiff filed a suit in O.S.No.42 of 2011 for recovery of a sum of Rs.14,18,834/- along with interest at the rate of 12% on the principal sum of Rs.12,00,000/- and for costs.

2.The case of the plaintiff is that the defendant borrowed a sum of Rs.12,00,000/- on different dates agreeing to pay interest at the rate of 12% and executed four promissory notes. The date of promissory notes and the amount borrowed by the defendant from the plaintiff are stated as follows:

1) 01.07.2009, Rs.3,00,000/- marked as Ex.A1.
2) 22.03.2010, Rs.4,00,000/- marked as Ex.A2.
3)30.07.2010, Rs.3,00,000/- marked as Ex.A3.
4)05.08.2010, Rs.2,00,000/- marked as Ex.A4.

3.It is the further the case of the plaintiff that despite repeated requests to repay the amount with interest, the defendant did not repay the amount nor paid interest. The suit was contested by the appellant denying the execution of the promissory notes or receipt of any money as loan from the plaintiff. It is the case of defendant that the promissory notes alleged to have been executed by the plaintiff are forged and that the promissory notes have been fabricated by showing the plaintiff's associates as witnesses. It is also contended by the defendant that there was no necessity for the defendant to borrow any money for construction of the house. It is further contended by the defendant that the plaintiff has no means to advance such a huge sum of Rs.12,00,000/- within a short span of three months. It is also stated by the defendant that the defendant's husband and brothers are in abroad and that they are well-off and therefore, the defendant was never in need of any money that too for borrowing a huge sum of Rs.12,00,000/-. It is also the case of the defendant that the defendant alone helped the plaintiff's husband to go abroad. It is further stated that the plaintiff used to get the assistance of plaintiff for depositing the money in bank and to withdraw the money which was transferred by way of exchange by her husband. It is further stated that the plaintiff who was acquainted with the signature of the plaintiff has created/fabricated the suit promissory notes. It is also contended that the defendant used to put the signature of the plaintiff to withdraw the money sent to the defendant. It is further stated that the plaintiff because of the mis-understanding has manipulated the suit promissory notes with an evil design to grab the property of the defendant. The trial Court ignoring the specific pleading of the plaintiff has framed the following issues:

1. Whether the defendant is liable to pay Rs.2,00,000/- with interest for pro note executed by her date on 01.07.2009 to plaintiff?

2.Whether the defendant is liable to pay Rs.4,00,000/- with interest for pro note by her date on 22.03.2010 to plaintiff?

3.Whether the defendant is liable to pay Rs.3,00,000/- with interest for pro note by her date on 30.07.2010 to plaintiff?

4.Whether the defendant is liable to pay Rs.2,00,000/- with interest for pro note executed by her date on 05.08.2010 to plaintiff?

5.Whether the pro note dated on 01.07.2009 was created by the plaintiff?

6.Whether the pro note dated on 22.03.2010 was created by the plaintiff?

7.Whether the pro note dated on 30.07.2010 was created by the plaintiff?

8.Whether the pro note dated on 05.08.2010 was created by the plaintiff?

4.The plaintiff produced Ex.A1 to Ex.A4 the four promissory notes and examined herself as PW.1 apart from two other witnesses. On the defendant's side, the defendant examined herself as DW.1 and examined one Venkatasamy as DW.2. Ex.B1 to B18 were marked. The four documents namely, Ex.X1,C1,C2 and C3 were marked as Court documents. The trial Court relying upon the evidence of PW.1 to PW.3 rendered a finding that the execution of four promissory notes and the borrowal of Rs.12,00,000/- by the defendant is proved. It is to be noted that the trial Court had earlier dismissed the petition filed by the plaintiff herself to send the promissory notes for expert opinion as the same was filed at the time of arguments. The dismissal of the petition was also confirmed by this Court in a Civil Revision Petition filed by the plaintiff. The trial Court in this case refused to compare the signature by itself to express any opinion as to the genuineness of the document. Though it was suggested that the signature of the defendant found in the vakalath could have been compared with the disputed signature in the promissory notes, the trial Court has not done that exercise. However, on the basis of the evidence of attestor of the promissory notes, the trial Court found that the promissory notes were executed by the defendant after receiving the money shown in the promissory notes. Though a specific plea was raised by the defendant with regard to the means of plaintiff and the in capacity of the plaintiff to mobilise such a huge money within a short span of three months, no issue was raised by the trial Court nor there is any discussion. The trial Court thus decreed the suit as prayed for and held that the defendant is liable to pay a sum of Rs.14,18,834/- along with interest at 6% on the principal amount upto the date of decree. Aggrieved by the judgment and decree of the trial Court, the defendant has preferred the above first appeal.

5.The learned counsel for the appellant went through the entire judgment of the lower Court and demonstrated before this Court that the judgment contains several mistakes viz., spelling, grammar and substance. It was further contented that the trial Court has rendered the judgment in such a way that no one could understand the contents of the judgment. It was further stated that from the judgment of the trial Court, it is impossible to ascertain, the understanding of the judge, about the facts and nature of evidence produced before the Court. It is further pointed out that the submissions on behalf of the defendant has not been fully addressed by the trial Court and that the entire judgment is vitiated particularly on the procedural irregularities. The learned counsel for the appellant referred to the pleadings and the evidence of all the witnesses and demonstrated that there was no proper appreciation of facts with reference to the documents and evidence in this case by the trial Court and that therefore, the judgment of the trial court has to be set aside and that the matter should be remitted to the lower Court for fresh disposal. Further the learned counsel for the appellant pointed out the following aspects:

(i) When the defendant specifically denied the receipt of any money from the respondent and specifically disputed the execution of the promissory notes the trial Court has not considered the issue with reference to the documents available before the Court.

(ii) The specific case of defendant that the respondent/plaintiff had no financial capacity to advance such as huge amount (Rs.12,00,000/-) within a short span of few months, and produced Bank statements, there was no discussion with reference to evidence.

(iii) Though it is stated in the promissory notes that the defendant borrowed the amount for the purpose of putting up a construction, the trial Court ignored the evidence to the effect that the construction of the house

was put up long back and that the house-warming ceremony was conducted by the plaintiff long before the borrowal of the money under the suit promissory notes. The statement of accounts pertaining to the account of plaintiff was relied upon to show that the money alleged to have been borrowed by the plaintiff cannot be believed. It is the specific case of plaintiff that she paid the money to defendant out of the money she received from her husband who is working in abroad. In such circumstances, the bank statement pertaining to the plaintiff's account number is ignored by the trial Court.

6. Several other aspects pointed out by the learned counsel for the appellant before the trial Court appears to have been ignored by the trial Court. But the trial Court has held that the plaintiff has proved the due execution of the promissory notes as well as receipt of money under the four promissory notes filed as Ex.A1 to Ex.A4. Leave alone the contentious issues that arise for consideration before the trial Court, on the basis of the pleadings and evidence, this Court is unable to accept the judgment of the lower Court as a judgment which reflects the mind of the Judge. From the reading of the judgment, it is seen that clerical, typographical and grammatical errors are in abundance and no sentence is properly framed. It is very difficult to understand the reasoning of the judge in relation to the factual issues. Even after spending some time this Court is unable to understand the factual basis taken into consideration for rendering the findings by the trial Court.

7.It is admitted in this case that the plaintiff is residing in a tiled house on rental basis. It is also admitted that the plaintiff had no other source except the money which she gets from her husband who is in abroad. The amount credited to the account of plaintiff is meagre insufficient to match the huge amount that was alleged to have been advanced to the defendant. Despite the fact that the plaintiff is bound to prove his case, the plaintiff miserably failed to prove the genuineness of the transaction by getting an expert opinion. Though an attempt was made after hearing the arguments by the plaintiff, the petition filed by the plaintiff to send the document for expert opinion was dismissed on the ground of unexplained delay after holding that the attempt was only to drag on the proceedings and not for any *bona fide* purpose. Even the Civil Revision Petition filed by the respondent before this Court was dismissed confirming the view expressed by the trial Court. It is in these circumstances, the points raised by the defendant assume more importance and the Court below ought to have decided the case after framing proper issues. The plaintiff herself admits that the defendant has completed house-warming ceremony long prior to the suit promissory notes and that the case of plaintiff and the recitals of promissory notes indicating the purpose for borrowing money was to construct the house are improbable.

8.In this case, it cannot be disputed that burden lies on the plaintiff to prove the due execution of the promissory notes and passing of consideration as the defendant specifically denied the execution and passing of consideration under the promissory notes. Having regard to the documents available on record. It is very difficult, to hold that the plaintiff has sound financial background so as to advance such huge amount of Rs.12,00,000/-. When these issues were raised by the defendant, the trial Court without even properly framing issues rejected the contentions of the defendant who has disputed the genuineness of the documents Ex.A1 to Ex. A4 namely, the promissory notes. The judgment of the trial Court is incapable of understanding with certainty atleast to know the mind of the trial Court. Since the reasoning of the trial Court cannot be gathered, this Court is not in a position to appreciate the judgment of the trial Court as one properly delivered. The judgment of the trial Court on merits is also vitiated for the failure of the lower Court to consider some of the vital points raised by the learned counsel for the defendant in defence. The judgment is wholly unintelligible and there is lack of clarity so as to appreciate its correctness. Though this Court has got ample power to consider the pleadings and evidence and to deliver a judgment on merits, this Court preferred to remit the matter to the trial Court for two reasons. The trial Court, earlier refused to entertain the petition to send the promissory notes for expert opinion on the ground of delay and this Court has confirmed the same in Civil Revision Petition. However, the opinion of expert regarding the signature found in Ex.A1 to Ex.A4 is certainly relevant for a fair and final adjudication of the main issue that arise for consideration in this case. Having regard to the specific stand taken by the defendant in the written statement, the trial Court ought to have framed specific issues so that their will be focus on material aspects and cogency in reasoning. In this case, regarding the financial capacity of the plaintiff and the necessity for the defendant to borrow such huge money for the purpose stated in the promissory notes, there is no focus by trial Court. Since the judgment of the trial Court appears to be a uncorrected judgment and it is unintelligible and does not disclose either the mind of the Judge or the facts and evidence considered with clarity, this Court instead of exercising the power to re-appreciate the evidence find it appropriate to remit the matter to the trial Court.

9.As a result, the judgment of trial Court in O.S.No.42 of 2011 is set aside and the matter is remitted to the trial Court to decide afresh the suit after framing the following issues:

(i) Whether the signatures found in the document Ex.A1 to Ex.A4 is proved to be the signature of defendant by the plaintiff?

(ii) Whether the plaintiff had the financial capacity to lend a sum of Rs.12,00,000/- to the defendant under the four promissory notes Ex.A1 to Ex.A4 at the relevant point of time?

(iii) Whether the plaintiff has proved the due execution and passing of consideration under the suit promissory notes?

(iv) To what relief the plaintiff is entitled to?

10.As pointed out earlier, it is open to the respondent/plaintiff to file a petition to send the promissory notes for getting expert opinion to find out whether the signatures found in the promissory notes Ex.A1 to Ex.A4 are the signatures of the plaintiff. There is one difficulty which is expressed by the learned counsel for the respondent. The defendant has not produced any document containing his admitted signatures which is contemporary. It is open to the plaintiff to send for any contemporary document containing signature of plaintiff either from the bank or from the registration department or from any other source within the knowledge of the plaintiff. The counsel for the appellant / defendant ensure that he would give the particulars of the bank account of the plaintiff. It is open to the plaintiff to file necessary petition before the trial Court so as to get any document containing the signature of the plaintiff to the forensic laboratory for comparison.

11.The counsel for the appellant seeks permission of this Court to get the refund of Court fee filed on the memorandum of appeal under Section 67 of the Tamil Nadu Court fees and Suits Valuation Act,1955. The appellant is entitled to refund of Court fee, as this appeal is allowed and the matter is remitted to lower Court for fresh decision. Hence, the appellant is permitted to get the refund of Court fee. Since the matter is only remitted, the security furnished by the appellant / defendant shall continue till the suit is disposed of by the trial Court pursuant to the order of remand. However, there is no order as to costs.

12.The parties shall appear before the trial Court on 03.04.2018.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To
The Additional District Court, Ramanathapuram.
Copy to:- The Section Officer, V.R.Section, (2 copies)
Madurai Bench of Madras High Court, Madurai
+One cc to Mr.T.R.Jeyapalam, Advocate, SR.No.49413
+One cc to Mr.v.Sitharanjandas, Advocate, SR.No.49440
gsp
RL/6C/6P/SV/MMS/SAR1/27/3/2018