

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2019

PRONOUNCED ON : 08.04.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.313 of 2007

1. K.Haridasan (deceased)
2. Jayalakshmi
3. Rajeswari
4. Thirugnanasambandan ...Appellants/Appellants/Defendant

Appellants 2 to 4 brought on record as Lrs of the deceased sole appellant vide order of court dated 03.12.2009 made in M.P.No.1 of 2008 in S.A.No.313 of 2007.

Vs.

P.Muninatha Naidu ...Respondent/Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 28.09.2006 rendered in A.S.No.82 of 2006 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 11.11.2005 passed in O.S.No.3552 of 2003 on the file of the XI Assistant Judge, City Civil Court, Chennai.

For Appellants : Ms.Elizabeth Ravi
for Mr.V.Venkatesan
For Respondent : Mr.R.Suryanarayanan
for Mr.N.Ishtiaq Ahmed.

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 28.09.2006 passed in A.S.No.82 of 2006 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 11.11.2005 passed in O.S.No.3552 of 2003 on the file of the XI Assistant Judge, City Civil Court, Chennai.

2. The second appeal has been admitted on the following substantial questions of law.

"1. When the undertaking letter does not contain any undertaking to pay the sum claimed to the order or any demand, whether such a document could be treated as a promissory note under Section 4 of the Negotiable Instruments Act?

2. When the suit document could not be treated as a promissory note, whether in such circumstances, the onus of proof could be saddled upon the defendant, over looking the fact that the presumption under Section 118 of the Negotiable Instruments Act would not be available to the plaintiff?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

5. The plaintiff has laid the suit against the defendant for the recovery of money and in brief, according to the plaintiff, the defendant borrowed a sum of Rs.50,000/- and executed a promissory note in evidence thereof on 09.07.2000 promising to repay the same within a year without interest and the defendant was doing mango business and the amount was borrowed for the said business purpose and the defendant did not make any payment as promised within a year and hence the plaintiff demanded the defendant to pay the sum with interest @ 24% per annum and it is also stated that the defendant paid a total sum of Rs.14,000/- in piecemeal and failed to settle the whole amount. Demanding the said sum due to him, the plaintiff issued a legal notice on 02.06.2003 calling upon the defendant to pay the sum and despite the receipt of the notice, the defendant has not honoured the same nor sent any reply and in the light of the Ordinance No.2 of 2003 passed by the Tamil Nadu Government, in all, the plaintiff has come forward with the suit seeking a sum of Rs.47,500/- due to him with interest at the rate of 12% per annum and hence the suit.

6. The defendant resisted the plaintiff's suit contending that the suit promissory note is not a valid document and the claim of the plaintiff that he had appropriated the amount paid by the defendant towards interest is false inasmuch as the suit promissory note does not prescribe any payment of interest and the defendant denies the execution of the suit promissory note and the plaintiff has not made out clearly as to how he could make a claim of Rs.47,000/- with interest based on the suit

promissory note, the plaintiff has not come forward with clean hands and the suit is totally devoid of merits and hence liable to be dismissed.

7. In support of the plaintiff's case P.W.1 was examined and Exs.A1 to A3 were marked. On the side of the defendant, D.Ws.1 and 2 were examined and no document was marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the courts below were pleased to accept the plaintiff's case and granted the appropriate relief in favour of the plaintiff. Impugning the same, the second appeal has been laid.

9. The suit has been laid by the plaintiff against the defendant for the recovery of the suit sum due to him based on the promissory note dated 09.07.2000 marked as Ex.A1. According to the plaintiff, the defendant borrowed a sum of Rs.50,000/- from him and executed the suit promissory note and promised to repay the same within a year, however, failed to pay the same within the accepted period and hence according to the plaintiff, he is entitled to claim the interest on the borrowed sum and deducting the payment of Rs.14,000/- paid by the defendant in piecemeal towards interest, according to the plaintiff, he has been necessitated to levy the suit against the defendant for the recovery of the amount due to him as the defendant failed to respond to the legal notice sent by him prior to the institution of the suit and accordingly, prayed for the appropriate relief.

10. The defendant, in short, resisted the plaintiff's case by contending that the suit promissory note is not a valid document and also disputed the execution of the same and the borrowal of any amount from the plaintiff and put forth the case that the plaintiff has not made out clearly as to how he is entitled to maintain the suit for a sum of Rs.47,500/- with interest and accordingly prayed for the dismissal of the plaintiff's suit.

11. During the course of arguments, the main contention put forth by the defendant's counsel is that Ex.A1 is not a promissory note as defined under Section 4 of the Negotiable Instrument Act and accordingly the plaintiff is not entitled to maintain the suit as such. The abovesaid argument of the defendant is based on the footing that inasmuch as the wordings in Ex.A1 do not clearly undertake to pay the sum to the order of the plaintiff on demand, accordingly, it is put forth that the suit promissory note would not come under the definition of a promissory note as described in the Negotiable Instrument Act and on that score alone, the suit is liable to be dismissed.

12. However, the abovesaid contention does not merit acceptance. The defendant, in the written statement, has not come forward clearly with a defence that the suit promissory note does not satisfy the definition of a promissory note as described in Section 4 of the Negotiable Instrument Act. With reference to the abovesaid contention, the defendant's counsel would only state that there is no clear wording in the promissory note Ex.A1 that the defendant has undertaken to pay the borrowed sum to the order of the plaintiff, which is one of the requirements for a promissory note and accordingly as there is no unconditional undertaking to pay the amount, the plaintiff is not entitled to maintain the suit. However, in the decision reported in 2003 (1) CTC 36 (Pitchumani Thevar Vs. Subbu Thai), while considering the definition of the promissory note in the Stamp Act, noting that the same is wider than the definition of the promissory note in the Negotiable Instrument Act, accordingly in the said decision, it has been held that the term "to the order of" is determined to be one of the requirements and further held that the promissory note need not contain the said expression and it has been further held that an unconditional undertaking to pay certain sum of money to certain person is sufficient for holding the document as a promissory note. The abovesaid view has also been reiterated by this Court in the decision reported in 2017 (3) CTC 499 (R.Amutha Vs. Jeyachitra). I had also an occasion to consider the abovesaid decisions in the judgment rendered by me dated 22.03.2019 passed in Second Appeal No.959 of 2005 (C.Thirugnanasambandam vs. K.Rajagopal).

13. In the light of the abovesaid principles of law, considering the terms contained in the suit promissory note Ex.A1, it is seen that there is a clear undertaking on the part of the defendant to pay a certain sum of money to the plaintiff within a particular period of time and accordingly, the promissory note recites that the borrowed sum does not carry interest. The promissory note also further recites that the amount had been borrowed by the defendant in connection with the loss sustained in his business. The scribe of the suit promissory note examined as D.W.2 has clearly deposed the circumstances under which Ex.A1 suit promissory note had been executed and he has stated that the defendant and the plaintiff were doing mango business together and the defendant sustained loss in the said business and for managing the loss, the money had been borrowed by the defendant. That apart, in the proceedings related to the suit, the defendant has filed an affidavit in I.A.No.18961 of 2004, wherein, he has clearly averred that he had been doing joint fruit business with the plaintiff and that the abovesaid fruit business suffered a heavy loss. Therefore, all the abovesaid facts, put together, would go to show that as recited in the suit promissory note, the

defendant's business venture ended in failure and he had sustained loss and only to make up the loss, it is found that, he had borrowed the suit sum from the plaintiff and agreed to pay the borrowed sum within a year in favour of the plaintiff and accordingly on that premise, it is seen that the suit promissory note does not contain the recital as regards the payment of interest. However, inasmuch as the defendant has failed to pay the borrowed sum within the stipulated period, according to the plaintiff, he has been necessitated to claim the amount with interest as per law.

14. That apart, prior to the institution of the suit, the plaintiff has also issued a legal notice calling upon the defendant to pay the borrowed sum based on the suit promissory note. The receipt of the notice marked as Ex.A2 has not been controverted. No sufficient cause has been given by the defendant for not sending the reply. Inasmuch as the defendant had borrowed the suit sum from the plaintiff as recited in Ex.A1 promissory note, it is seen that he has been unable to refute the claim of the plaintiff made under Ex.A2 legal notice and not chosen to send a reply.

15.As above noted, in the written statement, the defendant, as such, had not refuted the instrument under which he had borrowed the sum from the plaintiff as not being a promissory note. He has also not controverted the same by sending a reply to the legal notice sent by the plaintiff. The materials are placed on record evidencing under what circumstances, the defendant had borrowed the suit sum from the plaintiff. The recitals "to the order of" is not necessarily be contained in a suit promissory note as above noted. The recitals in Ex.A1 promissory note contains an undertaking on the part of the defendant to pay a fixed sum of money to the plaintiff and in such view of the matter, in all, it is found that the suit laid by the plaintiff, based on Ex.A1 promissory note, is legally sustainable and accordingly considering the abovesaid facts in toto and when the defendant has not placed any contra material repudiating his liability to pay the suit sum under the promissory note Ex.A1 and his own witness D.W.2 has explained the circumstances under which the suit promissory note had come to be scribed by him and executed by the defendant, in all, it is found that the courts below had analysed the materials placed on record in the right perspective and come to the conclusion that the suit promissory note is a valid instrument and the plaintiff is entitled to seek the amount due to him by way of the same.

16.If really the defendant had not borrowed any sum from the plaintiff, there would have been no necessity on the part of the defendant to pay any sum towards the borrowed sum. According to

the plaintiff, after several demands, the defendant paid a sum of Rs.14,000/- in piecemeal in connection with the borrowed sum. Thus, it is found that as the defendant had borrowed the suit amount from the plaintiff and executed Ex.A1 promissory note, he had paid the amount in installments but not the entire sum and accordingly it is seen that the plaintiff has been necessitated to lay the suit for the sum still remaining unpaid from the defendant by way of the present lis.

17. Considering the recitals in Ex.A1 promissory note and rightly holding that the note satisfies all the ingredients of a promissory note, the courts below had rightly invoked the presumption under Section 118 of the Negotiable Instrument Act against the defendant, which cannot be assailed in any manner as unwarranted or against the provisions of law. In all, it is seen that the courts below are justified in accepting the plaintiff's case and no interference is called for.

18. The counsel for the defendant in support of her contentions, placed reliance upon the following decisions reported in

1. 2013(2) CTC 864 (G.Ramamoorthy vs. M.S.R. Sivakumar and another)
2. (1996) 8 Supreme Court cases 586 (K.P.O. Moideenkutty Hajee vs. Pappu Manjooran and another)
3. (2005)1 MLJ 85 (S.Ameer vs.Vivek Enterprises, represented by its sole proprietor R.Kaliaperumal)
4. 2006 (1) CTC 437 (B.Rajamanickam vs. R.Rathinambal)

The counsel for the plaintiff in support of his contentions placed reliance upon the decision reported in AIR 2008 Supreme Court 2898 (Mallavarapu Kasivisweswara Rao vs.Thadikonda Ramulu firm and ors). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

19. In the light of the above discussions, in my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly answered against the defendant and in favour of the plaintiff.

20. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is dismissed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

bga

To

1. VI Additional Judge, City Civil Court, Chennai.
2. XI Assistant Judge, City Civil Court, Chennai.

Copy to

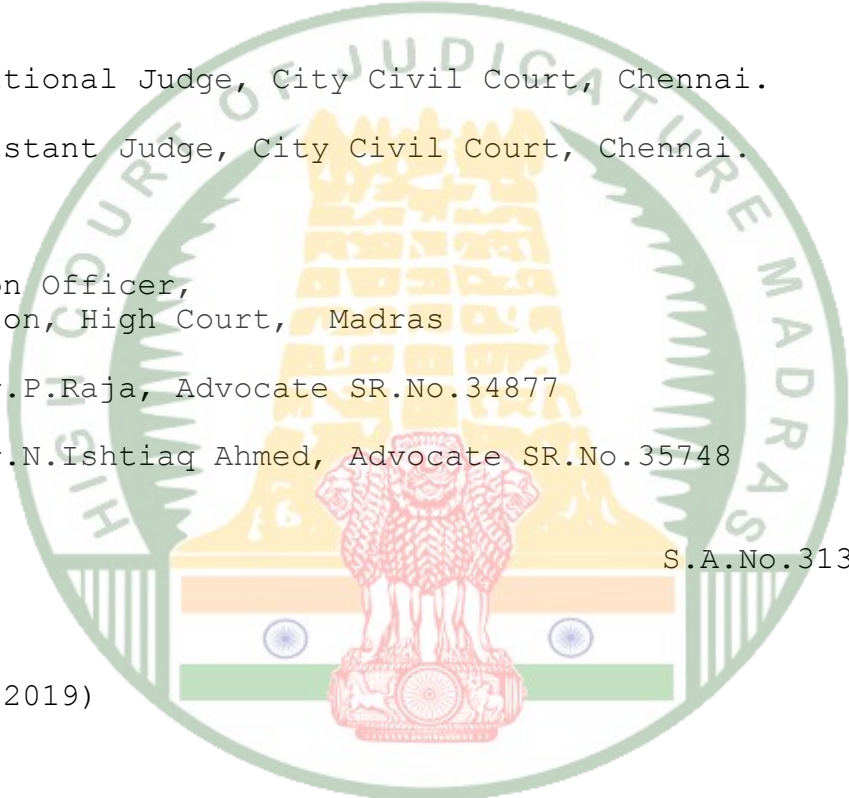
The Section Officer,
V.R. Section, High Court, Madras

+1cc to Mr.P.Raja, Advocate SR.No.34877

+1cc to Mr.N.Ishtiaq Ahmed, Advocate SR.No.35748

S.A.No.313 of 2007

NRL (CO)
GMY (06/09/2019)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. Below the lion is a red wheel (Chakras) with a central hub. The entire emblem is set against a background of horizontal stripes in orange, white, and green. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular border around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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