

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.03.2019

PRONOUNCED ON : 28.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1269 of 2006

Kishore Kumar ...Appellant / Defendant

Vs.

Mariappan ...Respondent / Plaintiff

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 27.01.2006 made in A.S.No.4 of 2005 on the file of District Court, Nagapattinam, reversing the judgment and decree dated 17.09.2004 made in O.S.No.89 of 2003 on the file of the principal sub court, Nagapattinam.

For Appellant : Mr.Srinath Sridevan

For Respondent : Mr.S.Sounthar

JUDGMENT

In this second appeal, Challenge is made to the judgment and decree dated 27.01.2006 passed in A.S.No.4 of 2005 on the file of District Court, Nagapattinam, reversing the judgment and decree dated 17.09.2004 passed in O.S.No.89 of 2003 on the file of the Principal Subordinate Court, Nagapattinam.

2. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

3. Suit for recovery of money.

4. The case of the plaintiff, in brief, is that the defendant, for the purpose of his family expenses and business endeavours, borrowed a sum of Rs.75,000/- from the plaintiff on 10.06.2000 and evidencing the same, executed a suit promissory note in favour of the plaintiff promising to repay the borrowed sum with interest as recited therein and thereafter, the defendant failed to repay the borrowed sum with interest as

promised despite several demands and therefore, the plaintiff issued a legal notice on 28.04.2003 calling upon the defendant to pay the suit sum and to the same the defendant sent a reply dated 16.05.2003 containing false allegations and hence according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that he has not borrowed the suit sum from the plaintiff on 10.06.2000 as alleged and executed the suit promissory note in favour of the plaintiff as put forth in the plaint. According to the defendant, he has not borrowed the suit sum and the suit promissory note has been concocted by the plaintiff and further it is stated that to the notice sent by the plaintiff, he has sent a reply containing the true facts and according to the defendant, there had been some business transactions between him and the plaintiff and in connection with the same, dispute arose between the parties and accordingly, in the mediation effected with reference to the same, it has been agreed that the defendant should settle the amount due to the plaintiff and accordingly the defendant had also settled the amount and the plaintiff had also obtained the business concern run by the defendant as well as the lease hold right on 13.01.2000 and therefore, inasmuch as the plaintiff had failed to settle the amount due to the defendant in time and as the defendant demanded the same, it is stated that the plaintiff had concocted the suit promissory note and laid the false case and hence the suit is liable to be dismissed.

6. On the basis of the above pleas, the parties went for trial and in support of the plaintiff's case P.Ws.1 to 3 were examined and Exs.A1 to A4 were marked. On the side of the defendants D.Ws.1 and 2 were examined and Ex.B1 to B2 were marked. Exs.X1 and X2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit and on appeal by the plaintiff, the first appellate court was pleased to set aside the judgment and decree of the trial court and thereby granted the relief in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

"1. Whether the first appellate court was correct in reversing the judgment of the trial

court and decreeing the suit when the plaintiff has not proved his case by adducing sufficient evidence to accept his case?

2. In a promissory note, when the signature is disputed, does the initial burden not rest upon the plaintiff to prove the document and when the plaintiff has utterly failed to do so, whether the first appellate court was correct in reversing the judgment of the trial court.

9. According to the plaintiff, the defendant borrowed a sum of Rs.75,000/- from him on 10.06.2000 and executed the suit promissory note promising to repay the borrowed sum with interest and inasmuch as he has failed to honour his promise, despite several demands and the issuance of legal notice and on the other hand sent a reply containing false allegations, according to the plaintiff, he has been necessitated to institute the suit against the defendant for appropriate relief.

10. Per contra, according to the defendant, he has not borrowed the suit sum from the plaintiff nor executed the suit promissory note in favour of the defendant on 10.06.2000 as claimed in the plaint and according to the defendant, he and the plaintiff were engaged in some business transactions earlier and following the dispute, in connection with the same, they had endeavoured to settle the same in the presence of panchayathars, etc., and thereby, on 13.01.2000, the plaintiff had taken over the business venture of the defendant and the other rights and thereafter also the plaintiff has failed to settle the amount due to the defendant and on the defendant demanding the same, it is stated that the plaintiff aggrieved over the same, had concocted the suit promissory note and laid the case falsely against him and hence the same is liable to be dismissed.

11. Inasmuch as the defendant has disputed the borrowal of the suit sum as well as execution of the suit promissory note in favour of the plaintiff, at the foremost, the plaintiff has to establish that the defendant had borrowed the suit sum and executed the promissory note in his favour as claimed in the plaint and with reference to the abovesaid case of the plaintiff, the plaintiff has examined himself as P.W.1 and P.W.1 in his evidence, has clearly deposed that the defendant had borrowed the suit sum from him on 10.06.2000 and executed the suit promissory note in his favour marked as Ex.A1 and thereafter failed to repay the same despite several demands and the issuance of the legal notice marked as Ex.A2 and on the other hand sent a reply containing false facts marked as Ex.A3 and P.W.1, the plaintiff, has also deposed that the suit promissory note has been written by the scribe Bose and attested

by the witness Rajagopal and it is only the witness Rajagopal, who had directed the plaintiff to pay the suit sum to the defendant and despite the cross examination of the plaintiff by the defendant, no information had been elucidated from him in support of his defence version as projected by the defendant. As rightly determined by the first appellate court, no dent has been made in the testimony of the P.W.1 by the defendant during the course of cross examination. The evidence of P.W.1 seems natural, convincing and trust worthy. In support of the evidence adduced by the plaintiff, the attesor Rajagopal, examined as P.W.2, has also tendered evidence that he had attested the suit promissory note Ex.A1 and he same had been written by Bose and one Subramani had also attested the suit promissory note and the same had come to be executed by the defendant in favour of he plaintiff for the borrowal of Rs.75,000/- by the defendant and he has further clearly stated that the defendant received the sum of Rs.75,000/- from the plaintiff and executed the suit promissory note and that he had witnessed the same. During the cross examination also P.W.2 has asserted that he had also, on earlier occasion, arranged for the borrowal of the debt on the part of the defendant from the plaintiff and also stated that it is he who had handed over the suit sum to the defendant and denied the suggestion that the defendant had not borrowed the suit sum and executed the suit promissory note in favour of the plaintiff. As rightly found by the first appellate court, the evidence of P.W.2 has been corroborative in all aspects to the evidence of the plaintiff and nothing has been culled out from the mouth of P.W.2 to discredit his testimony in any manner and thus the evidence of P.W.2, being corroborative to the evidence of the plaintiff, P.W.1, in all material aspects, the first appellate court is found to be justified in relying upon the evidence of P.W.2 also for accepting the plaintiff's case. Not only that, the plaintiff, in support of his case, has also examined the scribe of the suit promissory note Bose as P.W.3 and P.W.3 has also deposed that it is he who had written the suit promissory note and he had been taken by the defendant and one Rajagopal and he had witnessed the receipt of the amount by the defendant and the execution of the suit promissory note. P.W.3 had also withstood the cross examination made on him by the defendant and nothing has been extracted from him by the defendant to disbelieve his testimony. Therefore, P.W.3's evidence also supports the plaintiff case in all material aspects and accordingly the first appellate court has rightly placed reliance upon his evidence to accept the plaintiff's case.

12. It is mainly put forth by the defendant that as the plaintiff and the defendant were engaged in the business transactions and thereafter controversy had arisen between the

parties and thereafter, at the intervention of the mediator, they had settled the issues on 13.01.2000 by way of the document marked as Ex.X1 and thereby it is argued that when the relationship between the parties had been to the abovesaid level on 13.01.2000 itself, to say that thereafter, within five months, the defendant borrowed the suit sum from the plaintiff and executed the suit promissory note in favour of the plaintiff belies acceptability and therefore, it is stated that only due to misunderstanding, the plaintiff has concocted the suit promissory note and laid the suit falsely. However, as rightly determined by the first appellate court, though the misunderstanding between the plaintiff and the defendant in connection with their business transactions had been existing at one point of time, when the materials placed on record would go to show that they had, to some extent, compromised the same one way or the other on 13.01.2000, it is thus found that they had amicably settled the issues between them qua the business transaction done by them. Therefore, when they had smoothly parted with reference to the same from each other on 13.01.2000, to say, that even thereafter, they continued to remain as adversaries, as put forth by the defendant, cannot be readily accepted. In such view of the matter, when thereafter, nearly five months later, when the defendant had approached the plaintiff for debt to meet certain contingencies, accordingly, it is found that the plaintiff had also chosen to advance the same to the defendant by taking the promissory note from him in the presence of the witnesses and the scribe and accordingly, it is seen that the witness and the scribe examined by the plaintiff, with reference to the same, had tendered clear evidence as regards the abovesaid aspects. It is not the case of the defendant that the plaintiff had obtained his signature in the suit promissory note by using illegal methods. He would only plead that he had not executed the suit promissory note nor borrowed the sum from the plaintiff. Further according to him, as the parties had been not seeing eye to eye and had chosen to resolve their earlier dispute only on 13.01.2000 one way or the other, the case of the plaintiff that the defendant borrowed the suit sum from him on 10.06.2000 is highly improbable and hence the defence version should be accepted. However, as above pointed out, when the parties are known to each other well in advance prior to the suit transaction and in fact endeavoured in business ventures jointly and owing to certain problems, they had chosen to entered into some arrangement on 13.01.2000, on that score alone, it could not be held that the conflict which has existed between them continued to subsist even after 13.01.2000 and thereby the plaintiff case should be determined as improbable, as such, cannot be accepted when the plaintiff has adduced evidence in support of his case through his evidence as well as the evidence of P.Ws.2 and 3 and when the defendant had not suggested any specific motives on the part of P.Ws.2 and

3 to depose in favour of the plaintiff and against him and on the other hand, when the defendant had tendered evidence that he is not aware of the witnesses examined on behalf of the plaintiff and that he was not present in the court when they were examined and when no motives had been attributed on their part for depositing in favour of the plaintiff and against him and as abovenoted when their evidence has also been not shown to be untrustworthy by the defendant in any manner, in such view of the matter, the first appellate court is found to be fully justified in relying upon the evidence of P.Ws.1 to 3 cumulatively and thereby rightly accepted the plaintiff's case .

13. In the light of the evidence of P.Ws.1 to 3 when it has been established by the plaintiff that the defendant had borrowed the suit sum and executed the suit promissory note, it is for the defendant to let in contra evidence to rebut the presumption that could be raised against him under Section 118 of the Negotiable Instrument Act. However, the defendant had not placed any acceptable material other than his theory that there had been some ill feeling between him and the plaintiff on earlier occasion in connection with their business ventures and when the abovesaid ill feeling had been settled between them on 13.01.2000 itself as above found and to say that the same continued to exist between the parties and the parties have not seen eye to eye even thereafter, as such, cannot be accepted, particularly, in the absence of any material pointing to the same on the part of the defendant. The first appellate court is, therefore, found to have analysed the materials placed on record in the proper perspective and thereby upheld the plaintiff's case.

14. As determined by the first appellate court, the trial court seems to have been carried away by the evidence on the part of the plaintiff that he does not know the defendant prior to 13.01.2000 when the compromise has been effected between them by way of Ex.X1 document. As rightly found and determined by the first appellate court, the abovesaid evidence of the plaintiff seems to have weighed with the mind of the trial court in high proportion and on that footing, the trial court has branded the plaintiff as a liar and consequently, failed to accept his case one way or the other as if he has not come to the court with clean hands. But when the evidence of the party has to be viewed cumulatively adduced by him both during the chief examination and cross examination and not in isolation or in a slipshod manner and accordingly, it is found that the evidence of the plaintiff coupled with the evidence of P.Ws.2 and 3 examined, in toto, would go to show that the plaintiff's case is true and the defendant's version is not acceptable and the defendant having failed to discharge the burden resting upon him, as determined by the first appellate court, in all, it is seen that the first appellate court has rightly come to the

conclusion that the defendant had borrowed the suit sum from the plaintiff and executed the suit promissory note in his favour and thereby liable to pay the said sum with interest as prayed for by the plaintiff.

15. In the light of the abovesaid discussions, the contention of the defendant's counsel that the plaintiff has not established his case by adducing acceptable and reliable evidence, does not merit acceptance and when the plaintiff has established the borrowal of the suit sum by the defendant from him as well as the execution of the suit promissory note Ex.A1 by the defendant in his favour by adducing reliable and convincing evidence as above pointed out and the same having been rightly accepted by the first appellate court, in such view of the matter, when there is no valid and reliable contra evidence put forth by the defendant to the same as required by law, the first appellate court is found to be fully justified in setting aside the judgment and decree of the trial court and granting the relief infavour of the plaintiff as prayed for. The substantial questions of law formulated in this second appeal are accordingly answered against the defendant and in favour of the plaintiff.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

bga

To

1. The District Judge, Nagapattinam

2. The Principal Subordinate Judge, Nagapattinam.

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

+1 cc to Mr.S.Sounthar, Advocate, S.R.No.30154

S.A.No.1269 of 2006

KS (CO)
SSM(11/10/2019)