IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2019

PRONOUNCED ON: 22.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.959 of 2005

C.Thirugnanasambandam ... Appellant / Defendant

Vs.

K.Rajagopal ... Respondent / Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 11.04.2005 made in A.S.No.32 of 2004 on the file of the Additional Sub Court, Salem confirming the judgment and decree dated 14.10.2004 made in O.S.No.336 of 2004 on the file of the II Additional District Munsif Court, Salem.

For Appellant : Ms.Zeenath Begum
for M/s.V.Rajesh

For Respondent : No appearance
Set exparte
Vide order dated 28.02.2019.

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J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 11.04.2005 passed in A.S.No.32 of 2004 on the file of the Additional Subordinate Court, Salem confirming the judgment and decree dated 14.10.2004 passed in O.S.No.336 of 2004 on the file of the II Additional District Munsif Court, Salem.

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

3. Suit for recovery of money.

4. The case of the plaintiff in brief is that on 27.03.1997 the defendant borrowed a sum of Rs.40,000/- from the plaintiff for his urgent family expenses and executed the loan document in favour of the plaintiff on the same day agreeing to repay the said sum with the interest at the rate of 24% per annum within three months. The plaintiff demanded the defendant to repay the borrowed sum with interest several times and despite the same, the defendant did not pay any amount, though he has sufficient means to clear the debt. The plaintiff sent a notice on 20.08.1997 to the defendant directing him to pay the borrowed sum and to the same, the defendant sent a reply containing false allegations. The defendant is not entitled to the benefits of the Debt Relief Acts and hence the suit.

5. The case of the defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. The defendant did not borrow the suit amount from the plaintiff on 27.03.1997 and executed the loan document agreeing to repay the alleged borrowed sum with interest at 24% to the plaintiff within three months and the same is denied. The defendant's brother in law V.Kanagaraj was working as an accountant under the plaintiff during the year 1997 and misunderstanding arose between the plaintiff and V.Kanagaraj in respect of certain accounts and inasmuch as the defendant is well known to the plaintiff and Kanagaraj, on 27.03.1997 the plaintiff asked the defendant to settle the dispute between him and Kanagaraj and accordingly the defendant held talks with the plaintiff and his brother in law Kanagaraj and on that day, the plaintiff told the defendant to sign in the blank papers and empty promissory notes and without the same, he would not believe the words of Kanagaraj and in such circumstances, as the defendant put the signatures in the blank papers and empty promissory notes given by the plaintiff and the plaintiff promised that he was getting the defendant's signature only a matter of security for the conduct of Kanagaraj and further promised that he would not take any action on the basis of the blank papers and promissory not es signed by the defendant. The plaintiff sent a false notice and to the same the defendant sent a suitable reply containing true facts. There is no cause of action for the suit and hence the suit is liable to be dismissed.

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

7. 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 decreed the suit in favour of the plaintiff as prayed for.

Aggrieved over the same, the present second appeal has been preferred.

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

> 1.Whether Ex.A1 agreement is a negotiable instrument as contemplated under the Negotiable Instruments Act, 1881?
>
> 2.If Ex.A1 is not intended to be a negotiable instrument, whether the holder has the authority to fill up the document, as if it was an inchoate instrument under Section 20 of the Negotiable Instruments Act, 1881?

9. The suit has been laid by the plaintiff for recovery of money based on the loan document marked as Ex.A1. According to the plaintiff the defendant borrowed a sum of Rs.40,000/- from him to meet his family expenses on 27.03.1997 and executed the loan document Ex.A1 in his favour promising to repay the said amount with interest as recited therein and despite several demands and the issuance of notice, inasmuch as the defendant has not repaid the borrowed the sum as promised, according to the plaintiff, he has been necessitated to institute the suit against the defendant for recovery of money.

10.The defendant resisted the plaintiff's case contending that his brother in law V.Kanaga Raj was working with the plaintiff and as dispute arose between the plaintiff and V.Kanagaraj, he was asked to mediate in the said issue and accordingly when he attempted to mediate, it is stated that the plaintiff insisted the defendant to put his signature in the blank papers and empty promissory notes for believing the assurance of V.Kanaga Raj and accordingly the defendant, on the assurance given by the plaintiff that he would not take any action based on the same, put his signatures and thus it is putforth by the defendant that he had not borrowed any sum from the plaintiff as pleaded in the plaint and accordingly, prayed for the dismissal of the plaintiff's suit.

11. The loan document under which the plaintiff is stated to have been borrowed the suit sum from the defendant has been marked as Ex.A1. On a perusal of Ex.A1, it is found that it had been written on a non-judicial stamp paper of the value Rs.10 and it is seen that the same contains the signature of the defendant as well as the signatures of his brother in law V.Kanagaraj and one S.Eswaran, who had attested the same as

witnesses. The above document recites that the defendant borrowed the sum of Rs.40,000/- from the plaintiff on 27.03.1997 promising to repay the borrowed sum to the plaintiff with interest with 24 % per annum within three months and accordingly, it is found that the plaintiff placing reliance upon the abovesaid document, has come forward with the present suit for the recovery of money due to him from the defendant. It is not the case of the defendant in the written statement that he had put his signature in the non-judicial stamp paper while mediating the alleged dispute between the plaintiff and his brother in law V.Kanagaraj. On the other hand, according to the defendant, there was some dispute between the plaintiff and V.Kanagraj and he was asked to settle the same, and in the said process, the plaintiff insisted him to put his signature in the blank papers and empty pronotes for accepting the assurance of Kanagaraj and in that context, according to the defendant, he has put his signature in the blank papers and empty promissory notes. It is further put forth by the defendant that the plaintiff had assured that he would not take any action based on the abovesaid documents in which the defendant's signatures had been obtained. Therefore, when it is not the plea of the defendant in the written statement that he had put his signatures in non-judicial stamp paper and on the other hand, he has only raised the defence that he had put his signature in the blank papers and empty promissory notes and on the other hand, when the plaintiff is found to have come forward with the suit for the recovery of the suit amount based on the execution of Ex.A1 by the defendant in a non-judicial stamp paper, in such view of the matter, as rightly determined by the Courts below, Ex.A1 loan document cannot be stated to have been secured from the defendant by the plaintiff as putforth by the defendant in the written statement. In the evidence, the defendant examined as D.W.1 has clearly admitted that his signature is found in Ex.A1 and also further admitted that his co-brother Eswaran had put a signature in Ex.A1 and also admitted that Ex.A1 non-judicial stamp paper was purchased on the same date when he has put his signature and also further submitted that while he had put up the signature, both the atttestors had attested the same and accordingly, when the defendant has clearly admitted his signature in Ex.A1 loan document as well as the signatures of the attestors, who had signed the same, his case is that the signatures had been obtained in the abovesaid document, while he attempted to mediate between the plaintiff and V.Kanagaraj as put forth by him, as such, cannot be readily accepted. When no plea has been taken by the defendant that at the relevant point of time, his signatures had been secured on non-judicial stamp papers by the plaintiff, on the abovesaid ground alone, it is found that the defendant has put forth a false defence somehow or the other to resist the plaintiff's case.

12. It is the plea of the defendant that as there was some dispute between the plaintiff and his brother in law V.Kanagaraj and he was asked to resolve the said dispute, accordingly, in such circumstances, as per the direction of the plaintiff, he had put his signatures in blank papers and empty promissory notes. If that be so, one would expect the defendant to speak clearly as regards the dispute between the plaintiff and V.Kanarajraj, for he had been asked to settle the same one way or the other and why the plaintiff and V.Kanagaraj were unable to settle the same on their own. In this connection, the defendant examined as D.W.1, during the course of cross examination, has admitted that he was working as a manager of the Central Cooperative Bank, Salem and also he would state that he does not know the dispute between the plaintiff and V.Kanagaraj and he has also not evinced interest to know about the same and therefore, when as per the admission of the defendant, he has no knowledge about the alleged dispute between the plaintiff and V.Kanagaraj and not evinced interest to know the same, his case that he had been asked by the plaintiff to settle the alleged dispute between the plaintiff and his brother in law and in such circumstances, the case projected by him that on that account, his signatures had been obtained by the plaintiff in stamp papers and empty pronotes falls to the ground. Therefore, it is found that the defendant, some over the other, with a view to avoid his liability to repay the borrowed amount from the plaintiff, has taken untenable pleas and accordingly unable to establish the same by acceptable evidence and material.

13. Furthermore, the defendant has not pleaded in the written statement that his co-brother Eswaran was also directed by the plaintiff to mediate the issue between the plaintiff and V.Kanagaraj, on the other hand, the defendant has meekly admitted that his co-brother Eswaran was present at the relevant point of time and accordingly he has also stated that Kanagaraj and Eswaran had signed as witnesses in the loan document marked as Ex.A1 in which his signature had been obtained by the plaintiff. As rightly found by the trial court, if really there had been a dispute between the plaintiff and V.Kanagaraj and the defendant had been solicited to mediate the same, one would have accepted the plaintiff to obtain only the signature of Kanagaraj in the loan document or some other document and would have only requested the defendant to attest the said document one way or the other. On the other hand, the case projected by the defendant that as regards the issue between the plaintiff and V.Kanagaraj, he had been asked to sign the document and Kanagaraj and his co-brother Eswaran had been asked to attest the document is found to be a far-fetched theory and totally belies acceptance and the abovesaid care appears to be circumscribed by artificiality and without any rhyme or reason.

14. The defendant in his written statement has not stated that his signatures had been obtained by the plaintiff in the loan document out of coercion or in other forced circumstances. However, during the course of his evidence, the defendant would state that while he went to mediate the dispute between the plaintiff and Kanagaraj , the plaintiff slapped Kanagaraj and when he prevented the same, he was asked to put his signatures in blank papers and empty promissory notes as a security. But, it is not the plea of the defendant in the written statement. The defendant's witness Eswaran examined as D.W.2 would go one step further, and according to D.W.2, he would state during the course of cross examination that he does not know the dispute between the plaintiff and V.Kanagaraj and according to him, the plaintiff slapped Kanagaraj and further according to him inasmuch as the plaintiff threatened him he had signed the document and also would further state that he had not lodged any complaint against the plaintiff for obtaining his signature on in a forcible manner. Therefore, as per the evidence of D.W.2, his signature had been obtained by the plaintiff by threat and coercion in the loan document and on the other hand, the case putforth by the defendant is that at the time of effecting mediation between the plaintiff and Kanagaraj, his signatures had been obtained in the blank papers and empty promissory notes and the defendant has not pleaded that any threat or coercion had been exercised by the plaintiff in obtaining his signature or the signature of Kanagaraj or the other attestor Eswaran in the loan document. The defendant and his witness D.W.2 are found to have been developing the case step by step without any basis or foundation and the same would only go to expose that inasmuch as the defendant had borrowed the suit sum from the plaintiff and executed the loan document in favour of the plaintiff and only with a view to avoid the same one way or the other had developed a false defence and unable to substantiate the same, it is found that various contradictions are seen in the defence version put forth by the defendant as well as the evidence tendered by him and his witness examined as D.W.2.

15. As rightly determined by the trial court, inasmuch as the defendant is related to Kanagaraj as well as Eswaran, accordingly, the plaintiff while advancing the same to the defendant on 27.03.1997, the plaintiff had chosen to obtain the signatures of Kanagaraj and Eswaran as recited in the said document and accordingly it is seen that both Kanagaraj as well as Eswaran had, without any protest, signed the document as witnesses.

16. To substantiate that the defendant had borrowed the suit sum from the plaintiff, the plaintiff has examined himself as P.W.1 and the scribe of the document as P.W.2 and both P.Ws.1

and 2 had tendered clear evidence that the defendant had borrowed the suit sum from the plaintiff on 27.03.1997 and in evidence thereof had executed the loan document marked as Ex.A1. Though the signature of P.W.2 is not found in Ex.A1 loan document as the scribe of the same, inasmuch as, there is no dispute that P.W.2 was also employed under the plaintiff at the relevant point of time, and in the natural course of events, it is found that the document had come to be written by P.W.2 as per the instructions of the plaintiff and accordingly he had tendered evidence with reference to the same in a clear manner. Merely because the signature of P.W.2 is not disclosed in Ex.A1 loan document, on that score alone, we cannot discard his evidence, when his evidence is found to be otherwise acceptable and perfect.

17. On a reading of the recitals contained in Ex.A1 loan document, it is found to be a promise or an unconditional undertaking of the defendant and singed by him to pay certain money to the plaintiff and in such view of the matter, it is seen that Ex.A1 contains the ingredients of a promissory note as contemplated under section 4 of the Negotiable Instruments Act. Accordingly, the first appellate court is also found to have invoked section 20 of the Negotiable Instruments Act for holding that the plaintiff as the holder of the said document is also entitled to fill up the contents thereof and sue the defendant based on the said document. In this connection, the counsel appearing for the plaintiff contended that, inasmuch as, Ex.A1 loan document is not obtained as a promissory note in the normal manner by obtaining the signature of the defendant on the Adhesive stamp, but his signature is found to have been obtained on a non-judicial stamp paper, in such view of the matter, according to her, the document marked as Ex.A1 cannot be considered as a promissory note and furthermore, it has also putforth by her that there is no clear promise on the part of the defendant to pay the said sum to the order of the plaintiff as mandated under section 4 of the Negotiable Instruments Act. Insofar as the argument that the promissory note can be obtained by getting the signature of the promisee on Adhesive Stamps and not otherwise, the contention has been negatived by this Court in the decision reported in AIR 1978 Madras 412 [P.Moorthy Vs. A.R.Kothandaraman] wherein, it has been held that the promissory note can be stamped with adhesive stamps or be engrossed on a stamp paper following the decision of the Rajasthan High Court. As regards the argument that there is no clear indication to repay the borrowed sum on the part of the defendant to the order of the plaintiff in Ex.A1 loan document, in the decision reported in 2003 (1) CTC 36 [Pitchumani Thevar Vs. Subbu Thai], considering the definition of the promissory note in the Stamp Act and the same being wider than the definition of the

promissory note in the Negotiable Instruments Act and accordingly 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 and when the abovesaid ingredients are found to be recorded in Ex.A1 loan document, in such view of the matter, it is found that Ex.A1 loan document would also satisfy the definition of a promissory note as contemplated under section 4 of the Negotiable Instruments Act and as defined in the Stamp Act. The abovesaid position of law has also been followed by this Court in the latest decision reported in 2017 (3) CTC 499 [R.Amutha Vs. Jeyachitra] wherein also, it has been held that the promissory note can be written on paper having an impressed stamp or it can be stamped with Adhesive Stamps of requisite value and further held that the promissory note engrossed on non-judicial stamp paper sufficiently stamped does not suffer from any legal infirmity. It is further seen that in the abovesaid decision, considering the recitals of the loan document in issue, it has been held that though there is no specific undertaking to pay the borrowed sum to the order of, inasmuch as the document contained the recital that the holder of the document had the option to bring the property to sale in the event of the payment not being made, accordingly on that premise, it has been held that the same would constitute an acceptance and unconditional undertaking to be performed on the part of the maker of the instrument. Similarly, when on a reading of the recitals contained in Ex.A1 loan document, it is seen that the defendant has given an unconditional undertaking to repay the borrowed sum recited therein with interest to the plaintiff on demand within a particular period of time and in such view of the matter, though the term "to the order of " has also been recited therein, but not properly worded, that cannot be taken advantage by the defendant to contend that the said document would not satisfy the ingredients of the promissory note, when as per the abovereferred to decision, when the document recites unconditional undertaking to pay certain sum of money to certain person, the same is sufficient for construing the document as a promissory note and the absence of the term "to the order of" would not in any way militate against the suit document, as being not the promissory note, in such view of the matter, in all, it is seen that the first appellate court has rightly determined that Ex.A1 loan document satisfied the definition of the Negotiable Instrument i.e., promissory note under the concerned Acts and also justified in invoking section 20 of the Negotiable Instrument Act for upholding the plaintiff's case.

18. In view of the above discussions, in my considered opinion no interference is called for in the judgment and decree of the Courts below.

19.In the light of the above discussions, the substantial questions of law formulated in the 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. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Additional Sub-ordinate Judge, Salem.

2.The II Additional District Munsif, Salem.

Copy to

The Section Officer,
VR Section, High Court, Chennai.

+1 cc to M/s.Deenath Begam, Advocate, S.R.No.27934

S.A.No.959 of 2005

RV(CO)
SSM(13/06/2019)