



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2019

CORAM

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE Mrs. JUSTICE T.KRISHNAVALLI

A.S.(MD)No.188 of 2011

S.Jayapaul

.. Appellant/Defendant

Vs.

N.Virumandi

.. Respondent/Plaintiff

Prayer : Appeal Suit filed under Section 96 of the Code of Civil Procedure praying to set aside the Judgment and Decree dated 15.03.2011 passed in O.S.No.79 of 2004 on the file of the Additional District Judge-cum-Fast Track Court No.III, Madurai.

* * *

For Appellant : Mr.S.Subbiah, Senior Counsel
for Mr.G.Aravinthan

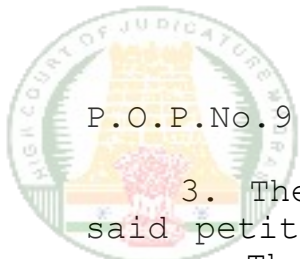
For Respondent : Mr.V.Sitharanjandoss
for Mr.D.Senthil

JUDGMENT

(Judgment of the Court was delivered by PUSHPA SATHYANARAYANA, J

The defendant in O.S.No.79 of 2004 instituted this first appeal aggrieved over the judgment and decree of the Additional District Judge-cum-Fast Track Court No.III, Madurai, dated 15.03.2011 passed in O.S.No.79 of 2004 allowing the suit.

2. The case of the respondent/plaintiff, as per the plaint averment, is that the appellant/defendant borrowed (i) Rs.5,00,000/- on 21.07.1996, (ii) Rs.5,00,000/- on 05.02.1997 ; and (iii) Rs.4,50,000/- on 05.10.1997 from the respondent/plaintiff for the purpose of constructing a school and also for purchasing vacant site to form lay outs, after executing promissory notes of even dates. The appellant/defendant agreed to return the amounts on demand along with interest at the rate of 2% per month for every Rs.100/-. In spite of repeated demands, the appellant/defendant failed to return neither the principal nor the interest. Hence, the plaintiff sent a legal notice dated 31.03.1998, which was replied on 19.04.1998. In such backdrop, the respondent/plaintiff filed the informo paupris in



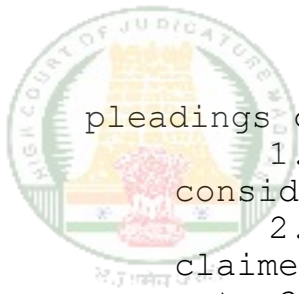
P.O.P.No.9 of 1998 on 29.04.1998.

3. The appellant/defendant filed his counter affidavit to the said petition on 02.10.2001 questioning the maintainability of the same. The defendant stated that the plaintiff fraudulently filed the pauper petition based on the concocted documents, when he has means to pay the Court fee. It is also stated that the plaintiff was a Clerk in Dindigul District Co-operative Bank and was in receipt of about a sum of Rs.10,000/- per month and he was the member of the Hindu Joint Family, which owns about 10.49.5 Hectares of agricultural land and earns Rs.10,00,000/- per annum as agricultural income, of which his share was Rs.2,00,000/- p.a. It is also stated that the plaintiff sold one house site and another house property for valid sale consideration and he acted as power of attorney to one Mr.Jeyaram and received commission.

3.1. In the written statement filed before the trial Court, the defendant stated that he was working as a Professor in Vivekananda College, Sholvandan, and when he required Rs.50,000/- to meet some urgent needs, he requested his friend one Ramar to arrange for a loan. It is stated that he was asked by Ramar to come with original title deeds of two properties, signed blank cheques and signed blank pronotes as security. Accordingly, the defendant kept all those documents in a handbag and when he was returning from Pandikoil, after attending a function in his motorcycle on 08.03.1998, he lost the said handbag. It is also stated that he lodged a complaint with Karuppayurani Police Station on 10.03.1998, who issued "Not Traceable Certificate" on 06.04.1998. In the meanwhile, he received the legal notice of the plaintiff and replied to the same. Thus, the defendant sought for dismissal of the suit.

4. The plaintiff filed his reply statement, wherein, it is stated that he had been issued with the license by the Tahsildar, Vadipatti, to run the lending business on 27.08.1996, which got expired on 31.03.1998. Since the defendant cheated him and failed to return the money, in spite of giving an Undertaking letter on 06.10.1997 that he would return the money, he could not renew the license. It is claimed by the plaintiff that the registered envelope sent by the defendant's Advocate on 16.08.2004 contained only one blank paper, for which, he gave a reply on 18.08.2004 and lodged complaint with the Bar Council of Tamil Nadu. Thus, the plaintiff sought for decreeing the suit.

5. Before the trial Court, the respondent/plaintiff examined himself as P.W.1, besides examining one Selvaraj as P.W.2, and marked Exs.A.1 to A.24. On the side of appellant/defendant D.Ws.1 to 4 were examined and Exs.B.1 to B.14 were marked. Exs.C.1 and C.2 were marked as Court documents.



pleadings of the parties :

1. Whether the suit promissory notes are supported by consideration or not ?

2. Whether the defendant is liable to pay the amount claimed by the plaintiff on the foot of the promissory note ?

3. What other reliefs the plaintiff is entitled to ?

After evaluating the evidence adduced by both sides, the trial Court decreed the suit. The defendant was, inter alia, directed to pay the Court fees of Rs.1,46,588/- to the State Government. Hence, the defendant filed this first appeal.

7. Learned counsel for the appellant/defendant contended that the trial Court failed to appreciate the evidence available on record in its proper perspective and supplied its own wrong reasons without any material on record and thus, committed error in decreeing the suit.

8. On the other hand, learned counsel for the respondent/plaintiff submitted that the judgment of the trial Court is based on the materials available on record in the form of oral and documentary evidence and hence, needs no interference.

9. This Court heard the learned counsels on either side and perused the materials available on record.

10. From the pleadings and the submissions of the learned counsel for the parties, the following issues are framed for consideration in this first appeal :

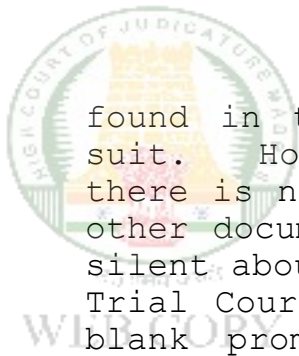
"(i) Whether there was passing of consideration based on the suit promissory notes ?

(ii) Whether the plaintiff is entitled to the relief granted by the Trial Court ? and

(iii) Whether the trial Court was right in decreeing the suit ? "

Issue Nos.(i) & (ii) :

11. It is to be stated that the appellant/defendant admitted his signature in the subject pronotes, Exs.A3 to A5, but denied the borrowal of any amount and thus, denied his liability to pay any amount to the respondent/plaintiff. His only defence is that he kept original title deeds of two properties, signed blank cheques and signed blank pronotes as security in the handbag, in which, his visiting cards were also kept and when he was returning from Pandikoil, after attending a family function in his motorcycle on 08.03.1998, he lost the said handbag. He lodged a complaint with Karuppayurani Police Station on 10.03.1998, who issued "Not Traceable Certificate" on 06.04.1998. However, in the interregnum, when he received the legal notice dated 31.03.1998, he realized that the documents were stolen and forged documents and using the address

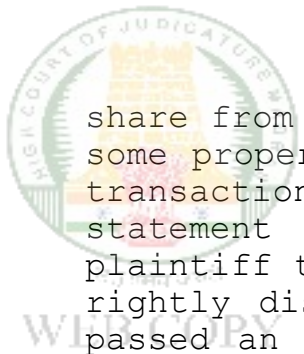


found in the visiting card, the plaintiff fraudulently filed the suit. However, in the complaint-Ex.B.3, the earliest document, there is no mention about keeping the visiting cards along with the other documents. Ex.A.9 - his reply notice dated 19.04.1998 is also silent about the visiting cards. It was brought to the notice of the Trial Court that even in Ex.B.3, the defendant merely mentioned as blank promissory notes and only in the said reply notice the defendant added blank signed cheque leaf. The defendant mentioned about keeping visiting cards in the handbag only in the police complaint dated 01.07.1998.

12. There is no suggestion put to the plaintiff before the trial court by the defendant as to why the plaintiff used his office address in the pronotes, when his residence address was mentioned in the documents found in the handbag. The non-production of the visiting card before the trial court by the defendant also cannot be brushed aside lightly. The defendant claimed that he gave a complaint (Ex.B5) on 01.07.1998 to the Karuppayurani Police Station that the plaintiff was attempting to misuse the missing documents. But no FIR has been registered on the complaint and hence, the said document is of no avail to the defendant. The defendant examined his friend Ramar, who arranged for the loan, as D.W.4. But there is no other independent witness examined by the defendant to corroborate the version of this interested witness. Thus, the contention of the learned counsel for the appellant/defendant that the stolen and forged pronotes have been used for the purpose of this suit cannot be accepted.

13. At this juncture, it is to be stated that the appellant/defendant, who examined himself as D.W.1, deposed that the plaintiff was not known to him earlier and on verification only, he came to know about the attestors to the pronotes. But his pleadings is silent about these aspects. Further, the evidence of P.W.2, who was the scribe and also one of the witnesses to the pronotes, and also wrote Ex.A.6-Undertaking Letter given by the defendant to the plaintiff, speaks about passing of money under the pronotes and acceptance of the liability by the defendant and there is no material placed before the trial court to disbelieve his evidence. Though it was argued by the defendant that the signatures of the witnesses to the suit pronotes were obtained in blank pronotes only by examining D.W.3, in the absence of any other clinching material, the said contention was rightly rejected by the trial court. Further, the defendant denied the execution of Ex.A.6 and alleged that his signature contained therein was forged one. But he failed to discharge the burden of establishing the forgery by taking steps to send the concerned document for expert opinion.

14. The defendant argued that the plaintiff has no means to lend such amount and also there is no need for him to borrow such large sums as loan amount. But the defendant himself admitted in his



share from agricultural income of the Hindu Joint Family and he sold some properties and also received commission with respect to a sale transaction for acting as a Power Agent. Hence, the contradictory statement of the defendant with respect to the capacity of the plaintiff to lend the amounts covered under the subject pronotes was rightly disbelieved by the trial Court and the trial Court though passed an ex-parte order in his pauper O.P., rightly directed the plaintiff to pay the Court Fee. Further, the trial Court did not countenance the contention of the defendant that there is no need for him to borrow such large sums as loan amount based on the undisputed materials available on record and this Court finds no reason to disturb the said conclusion arrived at by the trial Court.

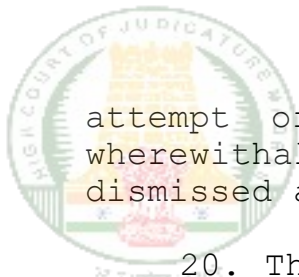
15. The trial Court categorically held that the defendant was not interested in speedy disposal of the suit and he was dragging on the proceedings. This is so on the premise that though he entered appearance in 1998 itself in P.O.P.No.9 of 1998, failed to file the statement of objection and allowed the said petition to be decreed ex-parte in the year 2001. Even thereafter, he filed a petition to set aside the ex-parte order, which was allowed with costs, and failed to pursue the same and thus, allowed the suit numbered.

16. The defendant claimed that the plaintiff, being the person engaged in money lending business, is bound to maintain accounts books. However, he failed to produce the accounts books, though the defendant insisted the plaintiff to produce the same by filing I.A.No.580 of 2010 in O.S.No.79 of 2004. To be noted, I.A.No.580 of 2010 was dismissed by the trial Court on 25.11.2010 and C.R.P. (PD) No.11 of 2011 filed by the defendant as against the said order was also dismissed on 11.01.2011. As stated above, the defendant himself admitted in his counter that the plaintiff had means to lend and he cannot take umbrage under the non-filing of the accounts books by the plaintiff.

17. From the above discussion, it is clear that the defendant failed to rebut the presumption and also to discharge the initial burden of proving the non-passing of the consideration under the suit pronotes, which is available to him under Section 118 of the Negotiable Instruments Act and thus, the trial Court found him liable to pay the amounts covered under the suit pronotes.

18. In the foregoing circumstances, the trial court disbelieved the version of the appellant/defendant given his conduct of adding on the missing valuable documents one after another in the subsequent communications, not approaching the police immediately to take criminal action, not giving instructions to the bank to stop payment and also carrying such valuable document to obtain loan for a sum of Rs.50,000/- only. This Court finds no material to interfere with the said findings of the trial Court.

<https://hcservices.courts.gov.in/hcservices> The signatures on the suit pronotes are admitted. The



attempt of the defendant to prove that the plaintiff had no wherewithal to lend money failed as the I.A. filed by him was dismissed and confirmed by this Court.

20. The inconsistent testimony of the defendant and his conduct do not fit in with the rest of the evidence and probabilities of the case. Therefore, once the initial burden of the plaintiff is discharged regarding the execution of the pronote, the rule of presumption under Section 118 of the Negotiable Instruments Act helps him to shift the burden on the other side. As soon as the execution is proved, Section 118 of the Negotiable Instruments Act imposes a duty on the court to raise presumption in his favour. The defendant may adduce direct evidence to prove that the pronote was not supported by consideration. Only when defendant adduces acceptable evidence, the burden would shift on the plaintiff. The defendant having failed to do so, the issue Nos.(i) and (ii) are answered in favour of the plaintiff and against the defendant.

Issue No.(iii) :

21. In view of the findings rendered in issue Nos.(i) and (ii), as natural corollary, this issue is also answered in favour of the plaintiff/respondent.

22. In the result, the appeal suit is dismissed confirming the judgment and decree of the trial Court decreeing the suit. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Additional District Judge-cum- Fast Track Court No.III,
Madurai.

Copy to:

The Section Officer, (2 Copies)

VR Section, Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G. ARAVINTHAN, Advocate (SR-83434[F] dated 26/08/2019)

+1 CC to M/s.D. SENTHIL, Advocate (SR-83523[F] dated 27/08/2019)

A.S(MD)No.188 of 2011

26.08.2019

JMN(07.11.2019) 6P : 6C

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