IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.355 of 2018
and
C.M.P.No.9150 of 2018
and
C.M.P.Nos.3299 & 3308 of 2019

1.D.Sridhar
2.RadhaRanganathan .. Appellants/Defendants

Vs.

G.Venkatesan .. Respondent/Plaintiff

Appeal filed under Section 96 Order 41 Rule (1) of the Code of Civil Procedure, to set aside the judgment and decree as made in O.S.No.136/2014 dated 04.07.2017 on the file of the Principal District Judge, Cuddalore.

For Appellants : Mr.M.Aravind Subramaniam
For Respondent : Mr.D.Ravichander

J U D G M E N T

The appeal suit is filed against the judgment and decree dated 04.07.2017 passed in O.S.No.136 of 2014.

2. The defendants are the appellants before this Court and the respondents instituted a suit for recovery of money based on the Promissory Note executed by the defendants.

3. The facts in nutshell placed before this Court is that the defendants borrowed a sum of Rs.10,00,000/- on 10.01.2012 and executed a Promissory Note in favour of Mr.Prabakaran, son of Mr.Sivabhushanam(Ex.A1). The said Mr.Prabhakaran had assigned the suit promissory note in favour of the plaintiff Mr.G.Venkatesan(Ex.A2) for consideration on 01.10.2014. The plaintiff is the bonafide holder in due course of the suit promissory note for consideration. The assignment is endorsed on the back of the suit promissory note and the same was treated as part and parcel of the document and plaint. The plaintiff had been demanding the defendants to repay the loan amount along with the interest and the defendants had not repaid the amount and consequently, the plaintiff was constrained to institute the suit for recovery of money. The defendants filed a written statement, denying the contentions

by stating that the defendants were not even seen Mr.Prabakaran, the assigner of the plaintiff and they have not executed any promissory note in favour of Mr.Prabakaran. The defendants have stated that they had money transactions with Mr.Sivabooshanam of Nellikuppam, who is the father of Mr.Prabakaran. In February 2012, the 1st defendant borrowed a sum of Rs.25,00,000/- from Sivabooshanam and the said creditor had taken four promissory notes for Rs.10,00,000/- each. The 1st defendant had been paying Rs.50,000/- every month towards interest till May 2014, despite the fact that the interest was fixed at 24% per annum, which is exorbitant. The defendants denied the other averments and regarding the quantum of loan borrowed. The trial Court tried the suit by framing the issues as to Whether the suit promissory note has been executed by the defendants in favour of one S.Prabakaran, son of Sivabooshnam; Whether the said S.Prabakaran had assigned the promissory note in favour of the plaintiff; Whether the plaintiff is bonafide holder in due course of suit promissory note for consideration and Whether the plaintiff is entitled to get the suit amount from the defendants.

4. With reference to the Issues 1 to 3, the trial Court found that the said Mr.Prabakaran is none other than the son of Sivabooshnam, who filed the suit as if the said Prabakaran has assigned the promissory note in favour of the plaintiff. Thus, from the pleadings, it was made clear that the defendants admitted the execution of pronotes and they denied the quantum of consideration. The trial Court made a finding that once the defendants admitted the signature signed in the blank pronotes, they have to prove that consideration was not passed and they put signature only in the blank pronotes. The trial Court considered Section 20 of the Negotiable Instruments Act by holding that the holder of the promissory note is entitled to fill the blank instrument i.e., inchoate documents. Once the defendants admitted the execution of pronotes in blank paper, then the holder is entitled to fill up the same.

5. This apart, the trial Court considered the documents as well as the evidences of DW1, wherein DW1 admitted that he put signatures in the empty pronotes and then, the same was filled up by Sivabooshnam in the name of his son Prabakaran and then, they created the assignment in favour of the plaintiff. Since the defendants admitted the signatures burden lies on them to prove that they put the signature in the blank pronotes and the consideration was not pressed for that pronotes. However, the trial Court could not able to find any sufficient evidence on the part of the defendants to prove their contentions. DW1 admitted that he put signature in the blank pronotes and thereby admitted the execution. Per contra, the plaintiff has examined PW1 to 3 and they clearly deposed about the execution, attestation and passing of consideration and assignment. Thus, from the evidence of the plaintiffs that the said witnesses and documents, it is clear that the

defendants had executed the suit promissory note in favour of Mr.Prabakaran and the said Prabakaran assigned the said promissory note in favour of the plaintiff. Thus, the plaintiff is the bonafide holder in due course.

6. The learned counsel appearing on behalf of the appellants made a submission that though the signature was admitted by the appellant defendants, the quantum of consideration was filled up by the respondents plaintiff and the rate of interest fixed as 24% per annum, is also abnormal and enormous. This apart, the appellants had already deposited Rs.5,00,000/-(Rupees Five Lakhs only) in the execution proceedings before the trial Court and under these circumstances, the appeal suit is to be allowed.

7. It is further contended that the trial Court has committed an error in arriving a conclusion that the quantum of consideration as filled by the plaintiffs are correct. In fact, the loan borrowed is not as the amount mentioned in the suit promissory note and further, the rate of interest fixed is also enormous.

8. The learned counsel appearing on behalf of the respondents disputed the contentions by stating that once the signature is admitted by the appellant defendants and the said admission was made clear through evidences, then they cannot question the quantum of amount and in this regard, he cited the judgment of the Hon'ble High Court of Madras in the case of Ganapathy Thevar Vs. Shanmuga Thevar, reported in 2008 (3) CTC 470 and paragraph 12 of the judgment is extracted hereunder:

> "12. The judgments of both the Courts below, to say the least, are far from satisfactory. Here, is a case wherein the defendant would candidly admit the receipt of a sum of Rs.3,600/- (Rupees Three Thousand and Six Hundred only) from the plaintiff and also his signature in the suit promissory note format, in addition to having admitted that he had filled up the amount column in his hand writing. In such a case, I am of the considered opinion that Section 20 as well as Section 118 of the Negotiable Instruments Act, would come into operation. This is not a case where the plaintiff obtained signature of the defendant in a blank stamped paper. The suit promissory note is in the printed format. As such, admittedly, the defendant himself filled up the amount column at the top of the suit promissory note and signed beneath the already printed versions therein and that itself would amount to promissory note. Top it all, a promissory note need not be in a particular form only, what are all required under the Negotiable Instruments Act, is found set out under Sections 20 and 118 of the Negotiable Instruments Act."

The Court observed that a promissory note need not be in a particular form only, what are all required under the Negotiable Instruments Act, is found set out under Sections 20 and 118 of the Negotiable Instruments Act.

9. For all these reasons, now the appellants cannot dispute the promissory note as well as the loan borrowed and therefore, the appeal suit itself is devoid of merits and is to be dismissed. The learned counsel appearing on behalf of the respondents cited yet another judgment of the Madurai Bench of the Madras High Court in the case of Yesudhas and Others, Vs. Primala Regu, reported in 2016 (5) L.W.918 (Mad), wherein the Court made an observation as follows:

> "13.The lower appellate Court ignoring the special circumstances namely the non-examination of respondent / defendant which is fatal to the case of the respondent / defendant, came to the conclusion that the appellants / plaintiffs have not proved their case. The defendant, though pleaded that there was a written agreement signed by parties to prove her case, she did not produce the document. When the question is with regard to the burden of proof, the failure to produce the best evidence or the conscious attempt to avoid witness box cannot be ignored and the Courts in such circumstances are expected to draw adverse inference against the party who had failed to produce the best evidence or avoided witness box. The defendant who has avoided witness box is the best person to speak about the real nature of transaction. The respondent / defendant in the present case has not come forward to state her own case on oath and subject herself to the cross examination by the plaintiffs with reference to the main issue as to whether the payment alleged by the respondent / defendant were only in respect of the loan transaction under Ex.A1 or with reference to some other transactions. It is pertinent to point out that no one was examined on the defendant's side."

10. This Court is of the considered opinion that the plaintiff could able to establish that the suit promissory note was signed by the defendant. The defendant also admitted the signature during the course of cross examination. This being the factum, this Court do not find any perversity or infirmity in respect of the judgment and decree passed by the trial Court. As far as the interest is concerned, though the promissory note stipulates 24% interest per annum, the respondents plaintiff themselves prayed for 12% interest in the plaint and the trial Court also granted 12% interest from the date of the plaint till the date of decree and thereafter 6% per annum from the date of decree till the date of realization of amount. Accordingly, the appellants are

directed to pay the decreed amount along with the interest at the rate of 12% per annum from the date of plaint till the date of decree and thereafter, at 6% per annum from the date of decree till the realization of amount. The respondent is entitled to withdraw the amount already deposited by the appellants in the execution proceedings. The balance amount along with the interest is directed to be paid to the respondents by the appellants/defendants within a period of three months from the date of receipt of a copy of this order. Accordingly, A.S.No.355 of 2018 stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Kak

To

1.The Principal District Judge,
Cuddalore.

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

+1cc to Mr.M.Arvind Subramaniam, Advocate, S.R.No.1783
+1cc to Mr.D.Ravichander, Advocate, S.R.No. 1659

A.S.No.355 of 2018

GP(CO)
GN(08/01/2021)