



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 21.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S. (MD)No.203 of 2019

and

C.M.P. (MD)No.10288 of 2019

S.V.Sathiyaseelan

... Appellant / Defendant

Vs.

R.Vajravel

... Respondent / Plaintiff

PRAYER: This Appeal Suit is filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 27.04.2019 made in O.S.No.82 of 2018 on the file of the learned Principal District Judge, Tiruchirappalli.

For Appellant : Mr.K.Prabhakar

For Respondent : Mr.S.T.Gopinath

JUDGMENT

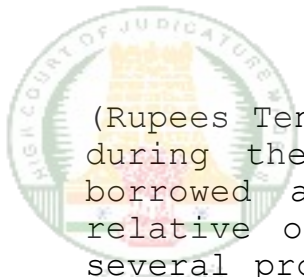
Aggrieved over the judgment and decree of the trial Court, decreeing the suit for recovery of money, the present Appeal Suit is filed.

2.The parties are referred to as per their rank before the trial Court.

3.The brief fact, leading to file this appeal, reads as follows:-

The defendant had borrowed a sum of Rs.20,17,000/- (Rupees Twenty Lakhs and Seventeen Thousand Only) from the plaintiff on 04.05.2015 and executed a promissory note, agreeing to repay the same together with interest at the rate of 12% per annum on demand either to the plaintiff or his order. The defendant has paid interest till the date of 04.07.2017, thereafter, failed to pay the amount. As the defendant has evaded the payment, the plaintiff had issued legal notice on 16.04.2018. Despite the notice, no amount has been paid, hence, the suit.

4.Denying the allegations, it is the contention of the defendant that he has involved in Real Estate Business. In this regard, there was a shortage of funds to the tune of Rs.10,00,000/-



(Rupees Ten Lakhs Only) payable by the defendant to one R.K.Sivasamy during the beginning of the year 2012. By that time, he had borrowed a sum of Rs.10,00,000/- from one Selvam, who is the relative of the said R.K.Sivasamy, on 02.04.2012 and handed over several promissory notes in blank condition and also original title deeds relating to the property owned by him situated at Mekkudi Village towards security of the due payment. On 06.10.2017, the defendant has repaid the entire loan amount with accrued interest to the said Selvam to the tune of Rs.19,00,000/- (Rupees Nineteen Lakhs Only). After repaying the entire loan with interest, the defendant has requested the said Selvam to return the promissory notes in blank condition and original title deeds relating to the property owned by him. However, the said Selvam has returned only few blank promissory notes and retained some other promissory notes signed by the defendant in blank condition, representing that the said promissory notes were misplaced somewhere and assured that he would return the same. Hence, it is the contention that there is no privity of contract between himself and the plaintiff and the plaintiff has no financial resource to lend such huge amount. After the suit, the said Selvam has also issued legal notice on 28.05.2018, alleging that on 08.11.2015, the defendant has borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) in urgent needs and executed a promissory note. Hence, it is the contention of the defendant that the plaintiff is stranger to the defendant, he has never seen the plaintiff, the defendant had not borrowed any amount from the plaintiff, hence, prayed for dismissal of the suit.

5.On the basis of the above pleadings, the trial Court has framed the following issues:-

"1.Whether is it true that the defendant has not executed the suit promissory note dated 04.05.2015 in favour of the plaintiff for valid consideration?;

2.Whether the defendant's contention is true that there is no cause of action for the suit?

3.Whether the plaintiff is entitled to relief for recovery of suit amount Rs.22,07,938/- with subsequent interest from the date of filing suit till date of realization?

4.To what any relief the plaintiff is entitled to?"

6.On the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A.1 to A.4 were marked. On the side of the defendant, D.W.1 was examined and Exs.B.1 to B.3 were marked. Based on the above materials, the trial Court has decreed the suit in favour of the plaintiff. Against which, the present appeal is filed.

7.The learned counsel appearing for the appellant vehemently



contended that though the signature in the promissory note is admitted, the defendant has established in the trial that the plaintiff has not advanced any amount. Once the circumstance has been brought on record to show that huge amount of Rs.20,17,000/- would not have been advanced by the plaintiff, the burden shifts on the plaintiff to prove the passing of consideration. The entire cross-examination of the plaintiff clearly indicates that he has not produced his bank account to establish his source of income to lend loan amount to the defendant and the fact that he had borrowed amount from third parties, has also not been established. Therefore, it is the contention of the appellant that the burden shifted on the plaintiff to prove the consideration has not been discharged. It is the further contention that once the defendant has rebutted the legal presumption, the entire burden lies on the plaintiff to prove passing of consideration. Therefore, he submitted that a perusal of the entire cross-examination of the plaintiff clearly shows that the defendant has dislodged the legal presumption. However, the trial Court has not considered this aspect and simply decreed the suit.

8.In respect of his submissions, he relied upon the judgment reported in **AIR 1961 SC 1316 (Kundan Lal Rallaram VS. The Custodian, Evacuee Property Bombay)** and **(1999) 3 SCC 35 (Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Payrelal)**.

9.The learned counsel appearing for the respondent submitted that the defendant has set up false pleadings, one in the legal notice and another one in the written statement, whereas, the promissory note has been clearly established and proved in the manner known to law. Hence, it is the contention that once the execution of the promissory note is proved, the legal presumption comes into play in favour of the plaintiff. The evidence on the side of the defendant is not sufficient to dislodge the legal presumption. Therefore, the trial Court has rightly found that the promissory note was executed and decreed the suit. Hence, he prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

11.In the light of the above submissions, now, the points arising for consideration are (i)Whether the execution of the promissory note dated 04.05.2015, in favour of the plaintiff is proved; (ii)Whether the promissory note is supported by passing of consideration; and (iii)What relief, the parties are entitled for?.

12.It is the case of the plaintiff that the defendant had borrowed a sum of Rs.20,17,000/- on 04.05.2015 and executed the suit promissory note Ex.A.1 on the same date and agreed to pay interest at the rate of 12%. The defendant has paid interest till

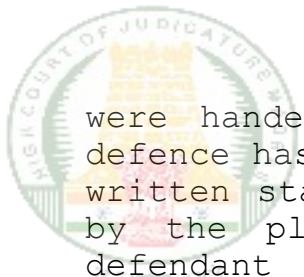


04.07.2017, thereafter, he defaulted. Therefore, the plaintiff has sent legal notice, whereas it is the case of the defendant that the plaintiff is the stranger to him and he never borrowed any amount from the plaintiff nor executed any promissory note and his contention that he has borrowed a sum of Rs.10,00,000/- from one Selvam in the year 2012 and left several promissory notes and even after the repayment of the above amount to Selvam, he did not hand over the promissory notes signed by the defendant in blank condition, only few were handed over. Therefore, it is the contention that the blank promissory note signed by the defendant and handed over to the said Selvam, has been misused by the plaintiff.

13.It is now well settled that in the case of promissory note, initial burden always lies on the plaintiff to prove the execution of the promissory note. Once the execution of the promissory note is proved, then legal presumption available under Section 118 of the Negotiable Instruments Act will come into play in favour of the plaintiff and such legal presumption is also rebuttable one. Such legal presumption need not be rebutted by the direct evidence alone. Even circumstantial evidence or even admission in the evidence is suffice to dislodge the statutory presumption.

14.A perusal of the entire evidence and pleadings, shows that it is the categorical case of the plaintiff that Ex.A.1 was executed by the defendant on receiving a sum of Rs.20,17,000/- as advance. The signature of the defendant in the promissory note is not in dispute. It is well settled that mere signing the document would not amount to execution. The execution implies signing document after reading and understanding the contents. The plaintiff in his evidence has stated that the promissory note was executed by the defendant. Besides P.W.2 one of the attester and scribe of the promissory note has also clearly spoken about the execution. From the evidence of P.W.1 and P.W2, this Court is of the view that the execution is clearly spoken and proved by the plaintiff. Once the execution is proved, the burden shifts on the defendant to rebut the legal presumption. Once the defendant is able to show that the promissory note is not supported by any consideration, then the burden again shifts on the plaintiff to prove passing of consideration.

15.In the light of the above settled position, when analysing the evidence of P.W.1 and P.W.2, it is the assertion of the plaintiff that the defendant is also doing the same business, namely, rice business, he is known to him and has requested the amount and the plaintiff has paid amount. It is also spoken by the plaintiff that the amount was mobilized in his business and he has also borrowed the amount from the relatives. P.W.2 in his evidence also asserted that the amount has been paid to the defendant. It is the categorical case of the defendant that the blank promissory notes



were handed over to one Selvam and the same was misused. Such defence has been pressed into service only for the first time in the written statement. Ex.A.2, legal notice dated 10.04.2018 was sent by the plaintiff to the defendant and reply was sent by the defendant on 24.02.2018. In the reply, there was no whisper whatsoever with regard to the said Selvam. If really the contention of the defendant was true that the promissory note was misused by the said Selvam, the spontaneous reaction of the defendant would be to take such defence at earlier point of time, but the legal notice is totally silent. In fact, in the legal notice, the signature of the promissory note is also denied. Whereas for the first time in the written statement, the defendant has taken a defence that the said Selvam handed over the blank promissory note to the plaintiff. It is further to be noted that it is the case of the defendant that he has borrowed a sum of Rs.10,00,000/- only from Selvam and paid that amount, including interest to the tune of Rs.19,00,000/-. At that time, he has only received few promissory notes. Such contention is also against the normal human conduct. If really the defendant has paid entire amount of Rs.19,00,000/- to the said Selvam, his normal conduct would be to demand all the documents handed over by him. The explanation that only few were handed over by the said Selvam is also highly improbable and unbelievable. That apart to show that the suit promissory note has been executed only to the said Selvam, there is no evidence on the side of the defendant and no steps whatsoever taken by the defendant atleast to summon the said Selvam to cross-examine before the Court.

16.In the judgment reported in AIR 1961 SC 1316 referred to above, in paragraph Nos.5 and 6, the Hon'ble Apex Court has held that the burden initially rests on the plaintiff, who has to prove that the promissory note was executed by the defendant. As soon as the execution of the promissory note is proved, the rule of presumption laid down under Section 118 of the Act helps the plaintiff to shift the burden to the other side. The burden of proof as a question of law rests, therefore, on the plaintiff; but as soon as the execution is proved, Section 118 of the Act imposes a duty on the Court to raise a presumption in his favour that the said instrument was made for consideration. This presumption shifts the burden of proof in the second sense, that is, the burden of establishing a case shifts to the defendant. The defendant may adduce direct evidence to prove that the promissory note was not supported by consideration, and, if he adduced acceptable evidence, the burden again shifts to the plaintiff, and so on.

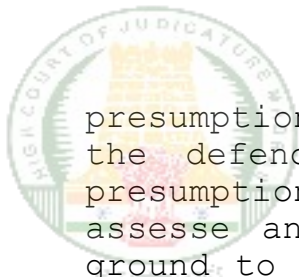
17.In the judgment reported in (1999) 3 SCC 35 referred to above, the Hon'ble Apex Court in paragraph No.12 has held as follows:-

"12.Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory



note is admitted, the presumption under Section 118 (a) would arise that it is supported by consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would dis-entitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as existence of negative evidence is neither possible nor contemplated and even if led is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption the defendant has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist. We find ourselves in the close proximity of the view expressed by the Full Benches of the Rajasthan High Court and Andhra Pradesh High Court in this regard."

18. Applying the above positions of law and considering the evidence as discussed above, this Court is of the view that merely placing truncated admission in the cross-examination, legal



presumption cannot be dislodged. The circumstance relied upon by the defendant is not at all sufficient to dislodge the legal presumption. Merely because the plaintiff is not an income tax assessee and has not produced any bank account, that cannot be a ground to discard the case of the plaintiff. The plaintiff in his evidence has clearly explained how he mobilized money and he has involved in trading business in a rural area. Such being the position, this Court also cannot lose sight of the fact that how the traders are dealing with the money in the business. Therefore, in the absence of any evidence, this Court cannot disbelieve the case of the plaintiff. The statutory presumption available under Section 118 of the Act has not at all been dislodged by the defendant. Accordingly, all the points are answered against the appellant and the judgment of the trial Court is confirmed.

19. In the result, this Appeal Suit is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

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To

The Principal District Judge,
Tiruchirappalli.

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The Section Officer, (2 Copies)
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-2497[F] dated 22/01/2020)

+1 CC to M/s.S.T.GOPINATH, Advocate (SR-2486[F] dated 22/01/2020)

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21.01.2020

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