IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :09.09.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.Nos.824 and 825 of 2008

A.S.No.824 of 2008:

M/s. Sri Murughavel Finance,
A Registered Firm,
Rep. by its Partner K. Venkatesh
20, Thiruvenkatasamy Street,
Erode ...Plaintiff/Appellant

Vs.

1.Muthusami

2.M/s.Laxmi Textiles rep. by its
Partner Murugesan
134/B, Salem Road,
T.Kailasampalayam,
Thiruchengode, Namakkal District.

3.M/s. Sivasakthi Textiles, rep. by its
Partner P.Natesan
134/B, Salem Road,
T.Kailasampalayam,
Thiruchengode, Namakkal District. ...Defendants/Respondents

A.S.No.825 of 2008:

M/s. Sri Murughavel Finance,
A Registered Firm,
Rep. by its Partner K. Venkatesh
20, Thiruvenkatasamy Street,
Erode ...Plaintiff/ Appellant

Vs.

1.M.Shanthi Proprietrix,
Gowri Sankar Textiles,
13/4B, Salem Road
T.Kailasampalayam, Tiruchengode

2.M/s Sri Lakshmi Saraswathi Textiles
Rep. by its Partner S.Murugesan
134/B, Salem Road,
T.Kailasampalayam,
Thiruchengode, Namakkal District. ... Defendants/Respondents

Prayer in A.S.No.824 of 2008: Appeal suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree in O.S.No. 48 of 2007 on the file of the learned I Additional District Judge, Erode dated 31.01.2008.

Prayer in A.S.No.825 of 2008: Appeal suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree in O.S.No. 50 of 2007 on the file of the learned I Additional District Judge, Erode dated 31.01.2008.

For Appellant: Mr.Vadivel Murugan
for Mr.R.G.Narendhiran
in both appeals

For Respondents:Mr.N.Manokaran
for R1 in both appeals

R2 -Not Ready in notice
in A.S.No.825 of 2008

R2 and R3 - Not Ready in
notice in A.S.No.824 of 2008

COMMON JUDGEMENT

A common Judgment is being pronounced in the above First Appeal, since the facts in both the suits namely O.S. No.48 of 2007 and O.S.No.50 of 2007 are identical, in so far as the plaintiff is concerned and the cause of action for filing the suit. However, I shall be dealing with the pleadings in both the suits separately. The parties are referred to in the same rank as before the Trial Court.

Plaintiff's case in O.S.No.48 of 2007:

2. The plaintiff claims to be a registered firm doing finance business at Erode. The firm is a registered firm. The first defendant which was a proprietary concern doing business in Textiles under the name and style of "Lakshmi Textiles" had issued cheques favouring the 2nd and 3rd defendants, which were also firms and close business associates of the 1st defendant.

The defendants 2 and 3 would discount these cheques on commission payment with the plaintiff on the assurance that the same would be honoured by the 1st defendant on presentation.

3. The 1st defendant had issued the following cheques which were discounted by the defendants 2 and 3 are detailed below:

M/s. Sri Lakshmi Saraswathi Textile (2nd Defendant):

S.No.	Cheque No.	Date of cheque	Drawn on	Sent for Collection	Amount
1.	133123	23-12-03	Andhra Bank	19-05-04	1,60,000
2.	133124	26-12-03	Andhra Bank	20-05-04	1,62,000
3.	133134	09-01-04	Andhra Bank	20-05-04	1,50,000
4.	133135	22-01-04	Andhra Bank	20-05-04	1,47,000
					6,19,000

M/s. Sivasakthi Textiles (3rd defendant):

S.No.	Cheque No.	Date of cheque	Drawn on	Sent for Collection	Amount
5.	133120	04-02-03	Andhra Bank	22-01-04	1,60,000
6.	133121	10-12-03	Andhra Bank	22-01-04	1,58,000
					3,18,000

When the cheques were presented by the plaintiff for collection, the same was returned with the endorsement "exceeds arrangements". The plaintiff therefore has instituted criminal proceedings under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate No. II, Erode, in C.C.No. 584 of 2004, in respect of one of the cheques, namely cheque No. 133123 dated 23.12.2003.

4. The plaintiff therefore made demands for the payment on the defendants, however there was no response from them. Thereafter, the plaintiff had issued legal notices dated 04.06.2004 for each of the cheques drawn in the name of the 2nd and 3rd defendants, respectively. The notices were served on the 1st defendant who, however did not respond to the same either by sending a reply or by making the payment. Therefore, the plaintiff is constrained to file the above suit.

Written Statement of the 1st Defendant in O.S.No.48 of 2007:

5. The 1st defendant had denied the allegation contained in the Plaint. They had taken out a preliminary objection that the plaintiff is not a registered firm and further that Mr. K. Venkatesan who has been described as a partner representing the plaintiff firm was not a partner of that firm. The defendant had denied the fact that he would discount his own cheques with the 2nd and 3rd defendants. The 1st defendant also contended that they had nothing to do with the defendants 2 and 3. It is also the case of 1st defendant that there was no direct transaction between the plaintiff and the 1st defendant and he would further contend that the plaintiff had to prove the passing of consideration to the defendants 2 and 3. In order to prove that the plaintiff had not become a holder in due course, the defendant had also extracted the contents of the complaint filed before the Judicial Magistrate No. II, wherein the plaintiff was represented by one Mr. Anbalagan and the said Anbalagan had stated that M/s.Lakshmi Saraswathi Textiles i.e., the 2nd defendant had not directly borrowed any money from the plaintiff. They would submit that in the light of the above statement it is crystal clear that the contention of the plaintiff that there was discounting of Bills was totally false.

6. The defendant would further submit that the plaintiff has introduced new cheques into the plaint which does not find mention in Section 138 proceedings before the Judicial Magistrate. Further, the suit is barred by time and there is no cause of action for filing the suit.

Plaintiff's case in O.S.No.50 of 2007:

7. The plaintiff had raised the very same contentions as in the suit O.S.No.48 of 2007, except for the fact that in this suit the subject matter were the following cheques:

S.No.	Cheque No.	Date of cheque	Drawn on	Sent for Collection	Amount
1.	0106572	26-11-03	Andhra Bank	08-05-04	1,63,000
2.	0106574	16-12-03	Andhra Bank	18-15-14	1,56,000
3.	0106575	19-12-03	Andhra Bank	20-09-03	1,55,000
					4,74,000

In all other respects the plaint was more or less identical to the plaint in the suit O.S.No.48 of 2007.

Written Statement of the 1st defendant in O.S.No.50 of 2007:

8. The 1st defedant had taken identical defence in this suit as well.

9. The I Additional District Judge, Erode (Trial Court) before whom the two suits were pending, on considering the pleadings in the two suits had framed issues.

i. Issues framed in O.S.No. 48 of 2007:

1) Whether the plaintiff's firm is a registered one and K.Venkatesh its partner?

2) Whether plaintiff is the holder in due course of the suit cheques and entitled to collect the suit amount on the cheques?

3) Whether proceedings before the Honourable Judicial Magistrate No.II, Erode in C.C.No. 584 of 2004 have a bearing on the present suit?

4) Whether the plaintiff is maintaining true and correct account in the normal course of business?

5) Whether the suit cheques are not truly drawn but forged?

6) Whether the suit is barred by limitation?

7) To what relief is the plaintiff entitled to in the suit?

ii. Issues framed in O.S.No. 50 of 2007:

1) Whether the plaintiff's firm is a registered one and K.Venkatesh its partner?

2) Whether plaintiff is the holder in due course of the suit cheques and entitled to collect the suit amount on the cheques?

3) Whether proceedings before the Honourable Judicial Magistrate No.II, Erode in C.C.No. 585 of 2004 have a bearing on the present suit?

4) Whether the plaintiff is maintaining true and correct account in the normal course of business?

5) Whether the suit cheques are not truly drawn but forged?

6) Whether the suit is barred by limitation?

7) To what relief is the plaintiff entitled to in the suit?

10. The plaintiff and the defendants had adduced common evidence for both the suits. On the side of the plaintiff, the

alleged partner K. Venkatesh examined himself as P.W.1 and one Meena and V.Ragunathan were examined as P.W.2 and P.W.3 respectively. They had marked Exs. A-1 to A-34. On the side of the defendants, one Muthuswamy, the proprietor of Lakshmi Textiles had adduced evidence and marked Exs. B-1 to B-4. The sole proprietor of the 1st defendant in O.S.No.50 of 2007 had not entered the box and it is only her husband Muthuswamy who is a proprietor of the 1st defendant in O.S.No.48 of 2007, who had adduced evidence.

11. The Trial Court on considering the evidence held that the said Venkatesh has not proved that he is the partner of the 1st defendant firm and further the registration of the 1st defendant firm had also lapsed and there was nothing to indicate that the same had been extended. The learned Judge also observed that there was no endorsement as contemplated under the Negotiable Instruments Act and further, the plaintiff has not been able to prove the passing of consideration.

12. The learned Judge had also taken note of the fact that the plaintiff was not able to prove that the 2nd and 3rd defendants had actually discounted the cheques and that he had business dealings with them. The Court took note of the fact that the summons which were issued to the 2nd and 3rd defendants at the address mentioned by the plaintiff had been returned with the endorsement "no such addressee". The learned Judge held that this only further strengthens the case of the 1st defendant that the plaintiff had no direct knowledge about the defendants 2 and 3. Ultimately, the learned Judge had dismissed the two suits. It is challenging the said Judgment and Decree in O.S.No. 48 of 2007 that the plaintiff has filed A.S.No. 824 of 2008 and A.S.No. 825 of 2008 has been filed, challenging the Decree and Judgment in O.S.No. 50 of 2007.

Submissions:

13. Mr.Vadivel Murugan, learned counsel appearing on behalf of the plaintiff / appellant in both the appeals would submit that the the Trial Court has placed too much of reliance on the fact that one Anbalagan has represented the plaintiff company in the Criminal Case and that he has not filed the suit. Being a partnership firm, it is well open to any of the partners to represent the firm and therefore, the said Venkatesh has represented the plaintiff in the suit. He would further contend that under the provisions of Order XXX Rule 2 of the Code of Civil Procedure, if a defendant had any doubt about whether the person sueing in his capacity as a partner was actually a partner of the firm, he could demand in writing to the

plaintiffs to disclose the details of the partners. He would contend that in the instant case, this procedure has not been followed by the 1st defendant and further, there is no proof on the side of the defendants to show that Venkatesh is not a partner of the plaintiff firm. He would further argue that the plaintiff has filed Ex.A-1, which is the Registration Certificate of the firm which would clearly show that the plaintiff firm is the registered firm and therefore competent to file the suit, as it does not suffer the bar under Section 69 of the Partnership Act. He would submit that the 1st defendant has admitted his signature in the cheques and has been contesting the Criminal Proceedings. He would also argue that the findings of the Criminal Court would have no relevance to the Civil Proceedings and therefore, the finding of the Trial Court that the cheques have not been discounted based on the evidence in C.C. No. 584 of 2004 is without basis. He would submit that the Judgment and Decree of the Court below in both the suits deserves to be set aside and the suit has to be decreed.

14. Per contra, Mr. N. Manoharan, learned counel appearing on behalf of the 1st respondents in both the appeals (respective 1st defendant's in the suit) would submit that a duty is cast upon the plaintiff to prove that the person who represents the plaintiff firm is a partner and the 1st defendant cannot be called upon to prove the negative. He would further submit that the cheques which are the subject matter of the two suits have not been endorsed in the manner as contemplated under Sections 16 and 50 of the Negotiable Instruments Act. He would also submit that the Criminal Court's order would also have a bearing on the Civil suit when the subject matter (cause of action) is more or less identical. He would also point out the admission of P.W.2, who would submit that Venkatesh is not a partner in the plaintiff firm and that it was only Anbalagan who was the partner. He would point out the discussion of the Trial Court in this regard. The learned Judge had observed as follows:

> " A staff in the Plaintiff's institution has deposed as P.W.2 and in her cross examination, she has stated that the plaintiff Venkatesh and one Kumar were partners in Murugavel textiles. It is very very important to note that the present plaintiff Murugavel finance and Murugavel Textiles are distinct establishments and according to P.W.2 a staff in the plaintiff's institution Venkatesh and Kumar were partners only in Murugavel Textiles."

15. The learned counsel would further submit that the said Venkatesh was totally in the dark about the facts of the case

which is clearly evident from his cross-examination. All these put together would only go to show that Venkatesh had nothing to do with the plaintiff firm and this coupled with the facts that the plaintiff has not produced any evidence to prove that Venkatesh is a partner will only aid the 1st defendant. He would further submit that the learned Trial Judge has discussed the fact that the cheques had not been endorsed in the manner contemplated under the Act. In support of this argument regarding the valid endorsement, the learned Counsel has relied upon the following Judgements:

(1) 2010 CRI.L.J. 3323 - M/s Jayaram Finance, Kancheepuram and Anr. Vs. Jayaprakash.

(2) 2011 (1) LW CRL 542 - Palaniappa Mills rep. by its partner, P. Natarajan Vs. A.Vaithiyalingam

(3) 2012 (2) MLJ CR 621 - G.B.Finance, rep, by Power ofAttorney Agent, Thiru. Kotteeswaran

16. The learned Counsel has also produced the Judgment in Criminal Appeal Nos. 176 & 177 of 2006, which were the appeals filed by the plaintiff firm, challenging the acquittal of the proprietors of the 1st defendant firm in both the suits by orders dated 03.10.2005 in C.C. Nos. 584 and 585 of 2004 respectively. This Court has dismissed the appeals and upheld the Judgment of the learned Judicial Magistrate II, Erode.

17. The points for consideration arising in the above First Appeals are:

> "a) Whether the person sueing on behalf of the plaintiff's firm has proved that he is the partner of the said firm?
>
> b) Whether the cheques have been endorsed in favour of the plaintiff as per the provisions of the Negotiable Instruments Act?
>
> c) Whether the Judgment and Decree of the Trial Court calls for any interference? "

Point No.1 :

18. The plaintiff firm is represented by one Mr. K. Venkatesh who has been described as its partner. The 1st defendant had even at the very outset contended that K. Venkatesh is not a partner of the plaintiff firm, since the plaintiff firm in the Criminal Proceedings before the Judicial Magistrate No. II, Erode, in C.C. No.584 of 2004, is represented by one Mr. Anbalagan who is described as the partner of the plaintiff firm. Though the defendants has taken out a categoric defence that the said Venkatesh is not a partner the plaintiff has not chosen to prove the same by producing a copy of the list

of partners as registered with the Registrar of Firms. The non-production of the said document compels this Court to draw an adverse inference against the plaintiff. The finding of the Trial Court in this regard does not require any interference.

Point No.2 :

19. Section 9 of the Negotiable Instruments Act defines a holder in due course as follows:

> "Holder in due course".—"Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if 1[payable to order], before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title."

20. Section 15 defines endorsement as follows:

> "15. Indorsement.—When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser".

21. Section 16 of the Negotiable Instruments Act talks about the Indorsement "in blank" and "in full" and about the indorsee which is extracted herein below:

> "If the indorser signs his name only, the indorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full", and the person so specified is called the "indorsee" of the instrument.
>
> [(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.]"

22. Section 50 talks about the effect of the endorsement and provides certain illustrations. The illustrations given therein are as follows:

"Illustrations B signs the following indorsements on different negotiable instruments payable to bearer: —

(a) "Pay the contents to C only."
(b) "Pay C for my use."
(c) "Pay C or order for the account of B."
(d) "The within must be credited to C." These indorsements exclude the right of further negotiation by C.
(e) "Pay C."
(f) "Pay C value in account with the Oriental Bank."
(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others." These indorsements do not exclude the right of further negotiation by C."

23. As per section 50, the endorsement of a Negotiable Instrument followed by its delivery gives a right to the endorsee for further negotiation. The effect of an endorsement of a Negotiable Instrument with the endorsements as illustrated above has the effect of transferring to the endorsee the property therein with the right to further negotiate. However, the endorsement may expressly restrict or exclude such a right or merely constitute an endorsee right of further negotiation.

24. A perusal of Exs. A-1 to A-7 would clearly indicate that it does not contain an endorsement as contemplated under the Act. The cheque merely contains a seal and a signature with no express words acknowledging the endorsement. This Court in its Judgment reported in 2005 M.L.J (CRL.) 186 - Ashok Kumar, S/o. Srilakkushiwani, Erode, Vs. K.Gunasekaran, S/o. A.KaliappaMudaliar, Prop. Vijay Fabrics, ThiruchengodeTaluk, had discussed Section 50 of the Negotiable Instruments Act, particularly, the illustrations contained therein and has held as follows:

"11.A reading of Secs. 138 and 142 of N.I.Act would show that the complaint under Sec. 138 of N.I.Act can be lodged only by a "Payee" or "Holder in due course". Holder in due course is defined in Sec.9 of N.I.Act. Sec.9 of N.I.Act makes it clear that "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,or the payee or endorsee thereof. No doubt, complaint under Sec.138 of N.I.Act by such holder in due course is maintainable. But, in this case, the facts and circumstances under which Dilip Shivani has endorsed the cheques Exs.P.2 to P.4 to Maya Shivani are not forthcoming. Consideration for passing of the cheque is not satisfactorily proved. It is relevant to note that the transaction between the parties relates not merely to one cheque; but relate to as many as six chques. Substantial evidence ought to have been adduced to prove the endorsement. In the absence of endorsement in compliance of Sec. 50 of N.I.Act, the presumption that the holder of cheque is of a holder in due course cannot be drawn in favour of the complainant."

25. This Judgment has been followed in the later Judgments reported in 2010 CRI.L.J. 3323 - M/s Jayaram Finance, Kancheepuram and Anr. Vs. Jayaprakash, 2010 (1) LW CRL 542 - Palaniappa Mills rep. by its partner, P. Natarajan Vs. A.Vaithiyalingam and 2012 (2) MLJ CR 621 – G.B.Finance, rep, by Power of Attorney Agent, Thiru. Kotteeswaran. The last of the judgments was a similar case where except for the signature there was no endorsement to indicate the passing of consideration. The learned Judge observed as follows:

"Except the signatures, there is no endorsement to indicate passing of any consideration under the same

and any date relating to date of transaction and date of endorsement. In the absence of those particulars, mere signature on the back side of the cheque cannot be treated as proper endorsement amounting to valid assignment of any right under the cheque in favour of the complainant to treat him as holder in due course so as to accept his locus standi to maintain the present complaint."

26. The learned Judge ultimately found that there was no endorsement as contemplated under the Negotiable Instruments Act and therefore upheld the findings of the Trial Court that the accused was not guilty. In the light of the above Judgments and the provisions of the Act, it is evident that the cheques which are the subject matter of this suit has not been endorsed as per the provisions of the Act. That apart, the Criminal Proceedings initiated by the plaintiff on the two cheques in question has ended in an acquittal which was upheld by this Court on the ground that the plaintiff had not been able to prove the passing of consideration. The detailed finding of the I Additional District Judge, Erode based on the evidence does not require any

interference and accordingly I hold that the plaintiff has not proved the endorsement in the manner known to law and the Judgment of the Trial Court which has elaborately considered this issue does not require any interference.

Point No.3:

27. The plaintiff has not made out any case to find fault with the findings of the Trial Court and its consequent Judgment.

28. In fine, these appeals are dismissed and the Judgment and Decree of the learned I Additional District Judge, Erode, in O.S.Nos. 48 of 2007 and 50 of 2007 is confirmed. There shall be no order as to costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

shr
To
The I Additional District Judge,
Erode.
Copy to
The Section Officer
VR Section
High Court, Madras 104.

+2 CCS to Mr.N.Manokaran, Advocate srt 46115, 46116
+1 CC to Mr.R.G.Narendhiran, Advocate sr 46001.

A.S.Nos.824 and 825 of 2008

PP(CO)
SP(24/11/2021)