IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.104 of 2021

V.Kannan, S/o.Veersamy,
No.2, Saraswathi nagar,
Periyaganangkuppam,
Cuddalore TK, Cuddalore District,
Pincode 607001 ...Appellant/Appellant/Defendant

.Vs.

G.Ramesh,
S/o.Govindaraj,
No.62-B, Ovvaiyar Street,
Kamaraj Nagar, Manjakuppam,
Alpet, Cuddalore District,
Pincode 607 001 ...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the Decree and Judgment dated 26.02.2020 passed in A.S.No.28 of 2017 on the file of the I Additional District and Session Judge, Cuddalore as against the Decree and Judgment passed in O.S.No.72 of 2016 dated 07.03.2017 by the learned Principal Subordinate Judge, Cuddalore.

For Appellants : Mr.K.S.Jayaganeshan
for Mr.S.Muralikrishnan

J U D G M E N T

The Second Appeal is filed challenging the Judgment and Decree dated 26.02.2020 passed A.S.No.28 of 2017 by the learned I Additional District and Session Judge, Cuddalore, confirming the Decree and Judgment passed in O.S.No.72 of 2016 dated 07.03.2017 by the learned Principal Subordinate Judge, Cuddalore.

2.Respondent filed the suit for recovery of sum of Rs.1,35,667/- from the Appellant with the interest at the rate of 12% per annum from the date of Plaint till the date of Decree and thereafter at the rate of 6% per annum till the date of realization and for costs.

3.The brief case of the Respondent is that Appellant borrowed a sum of Rs.1,00,000/- from the Plaintiff on 31.03.2013 for his family expenses and executed a promissory note in favour of the Respondent, undertaking to repay the principal amount with interest at the rate of 12% per annum. Appellant has not paid any amount either towards principal or interest, despite repeated oral demand and inspite of causing a legal notice dated 02.03.2016. Appellant received the notice, but did not send any reply, no payment was also made. Therefore, Suit was filed.

4.Appellant filed written statement denying borrowal of Rs.1,00,000/- from the Plaintiff on 31.03.2013 and execution of promissory note. The specific case of the Appellant is that Appellant has no acquiescence with the Respondent. The so called promissory note is a fabricated and forged one. Appellant lodged complaint on 18.03.2016 before the Inspector of Police at Reddichavadi Police Station against Respondent and his brother Rajendra Prasad. The police after elaborate enquiry warned the Respondent. Appellant borrowed a sum of Rs.1,00,000/- from Respondent's brother Rajendra Prasad and executed a promissory note on the even date, agreeing to repay the same with interest. The matter was amicably settled before Lok Adalat on 29.01.2015 at Cuddalore in Case No.49/2014. Rajendra Prasad has created forged and fabricated promissory note and the same was filed by the Respondent. Appellant sent reply dated 30.03.2016 to the notice dated 02.03.2016. The suit was illegally filed. Therefore, Respondent is not entitled for any relief.

5.On the basis of this pleadings, the trial Court framed the following issues:

(i)Whether the Plaintiff is entitled to the suit amount with subsequent interest?
(ii)What relief the Plaintiff is entitled to?

Following additional issues also framed by the trial Court:

(i)Whether the suit pronote is a forged one?

6.During the trial, PW1 to 3 were examined and Ex.A1 to A3 were marked on the side of the Respondent/Plaintiff and DW1 was examined and Ex.B1 to B8 were marked on the side of the Appellant/Defendant.

7.On considering the oral and documentary evidence, the learned trial Judge found that the Appellant had admitted the signature in Ex.A1, promissory note and the plea of forgery was not true. Therefore, found that the suit transaction was true and decreed the suit. Appellant preferred an Appeal in

A.S.No.28 of 2017. The learned Appellate Judge has gone through the evidence, considered the submissions of the parties, perused the judgment of the trial Court and ultimately came to the conclusion that there is no infirmity in the judgment of the trial Court, warranting interference.In this view of the matter, learned first Appellate Judge confirmed the judgment of the trial Court and dismissed the Appeal. Challenging the judgment of the first Appellate Court, Appellant has preferred the Second Appeal before this Court.

8.Learned counsel for the Appellant submitted that there is specific pleading in the written statement that Appellant has no acquaintance with the Respondent and never borrowed any amount from the Respondent. The fact of the matter is that Appellant borrowed a sum of Rs.1,00,000/-from Respondent's brother Rajendra Prasad and blank promissory note was given to Rajendra Prasad, at the time of borrowal. It is now used for filing suit in the name of Respondent. In this regard, he gave a police compliant, police enquired Respondent's brother & others and warned them. In the previous Suit in O.S.No.49 of 2014, Appellant had a specific plea that he has handed over five signed blank promissory note to Rajendra Prasad and one of those promissory notes is now used for filing this Suit. These facts were elicited through Ex.B1 to B8 documents, from the evidence of DW1 and by cross examining PW1 to 3. Both the Courts below have not considered the evidence of Appellant and decreed the Suit. Therefore, he prayed for setting aside the judgment of the Courts below and for dismissing the Suit by allowing the Second Appeal.

9.Considered the submissions of the learned counsel for the Appellant and perused the records.

10.The facts narrated above show that the case of the Respondent is that Appellant borrowed a sum of Rs.1,00,000/- on 31.03.2013 and executed Ex.A1 Promissory note. Later Appellant has not repaid any money towards Principal or interest and therefore, notice dated 02.03.2016 was issued to the Appellant. Even after receipt of notice, Appellant has not paid the amount, necessitating the filing of the Suit. As already stated, it is the specific case of the Appellant that he had no prior acquaintance with the Respondent and had not borrowed any money from the Appellant. He borrowed Rs.1,00,000/- from Respondent's brother Rajendra Prasad and executed a promissory note on the even date. This matter had been settled before the Lok Adalat on 29.01.2015 in O.S.No.49 of 2014.

11.It can be gathered from the written statement of the Appellant that he had specifically stated that he borrowed a sum of Rs.1,00,000/- from Appellant's brother Rajendra Prasad and executed a promissory note on the even date, agreeing to repay the amount with interest. There is no specific pleading in the written statement that Appellant handed over multiple promissory notes in blank form with this signature. However, it appears during the course of his evidence, he stated that he borrowed a sum of Rs.85,000/- from Rajendra Prasad and gave him five signed blank promissory notes. When it is stated in the written statement that he borrowed a sum of Rs.1,00,000/- from Rajendra Prasad, during the course of his evidence, he contradicts this version and claims that he borrowed only a sum of Rs.85,000/- from Rajendra Prasad. He made improvement that he handed over five blank promissory notes to Rajendra Prasad. This aspect, that is, handing over five blank promissory notes to Rajendra Prasad is not specifically pleaded either in the complaint given before police on 18.03.2016 or in the written statement. It is the further evidence of the Appellant that he admitted that the signature in Ex.A1 Promissory note is his signature, but continue to say that he made his signature, when it was in a blank form. The Learned trial Judge drew reference to Section 118 of Negotiable Instruments Act and concludes that the Section 118 of Negotiable Instruments Act comes to the rescue of Respondent. It was also found that when a plea of forgery is taken in written statement and when Appellant admitted in the course of evidence that signature in Ex.A1 is his signature, the plea of forgery falls to the ground.

12.It is seen from the documents produced on the side of the Appellant, Exs.B1 and Ex.B8 Compact Discs, allegedly contain the recording of phone conversation between Appellant and PW2 & 3. It is claimed by the Appellant that PW2 & 3 also admitted that Appellant signed in blank promissory note, for the Court to draw presumption that suit promissory note was not executed as claimed by the Respondent. Admittedly, it is an electronic evidence. Electronic evidence requires certificate under Section 65(B) of Indian Evidence Act for being admitted as evidence. Not only that it appears no efforts have been taken to show that the conversation recorded in Ex.B1 & B8 was really between Appellant and PW2 & 3. No voice analysis test was undertaken before the Court below. Therefore, Ex.B1 and B8 cannot be relied by the Courts.

13.Section 118 of the Negotiable Instruments Act reads as follows:

> "118 Presumptions as to negotiable instruments. Until the contrary is proved, the following presumptions shall be made:-
>
> (a) of consideration-that every negotiable instrument was made or drawn for consideration, and

that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b)as to date- that every negotiable instrument bearing a date was made or drawn on such date;
(c)as to time of acceptance- that every accepted bill of exchange was accepted within a reasonable time after its date its date and before its maturity;

(d)as to time of transfer.- that every transfer of a negotiable instrument was made before its maturity;

(e)as to order of indorsements – that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps-that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course – that the holder of a negotiable instrument is a holder in due course;

provided that, where the instrument has been contained from its lawful owner, or form any person in lawful custody thereof, by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

14.As per this Section, presumption regarding consideration, date, time of acceptance, time of transfer, order of indorsement, as to stamp, the holder is the holder in due course had drawn until the contrary is proved. Thus from the analysis of the oral and documentary evidence produced, it has to be necessarily concluded that Appellant has given evidence without pleading and in fact contrary to the pleading. The plea of forgery is contradicted by his own admission of his signature in Ex.A1 promissory note. On the other hand, Pw1 to 3 have given evidence cogently and convincingly in support of borrowal of Rs.1,00,000/- by the Appellant on 31.03.2013 and execution of Ex.A.1 promissory note, in support of borrowal. Therefore, both the Courts have concurrently found the case of the Respondent acceptable and decreed the suit. This Court also after going through the evidence and submissions of the learned counsel for the Appellant found no reason to differ from the view taken by the Courts below. There is no substantial question(s) of law involved in this Second Appeal.

15.Therefore, this Court confirms the Decree and Judgment dated 26.02.2020 passed in A.S.No.28 of 2017 on the file of the learned I Additional District and Session Judge, Cuddalore, confirming the Decree and Judgment passed in O.S.No.72 of 2016 dated 07.03.2017 on the file of the learned Principal Subordinate Judge, Cuddalore. Accordingly, dismisses the Second Appeal with the costs to the Respondent.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

sai

To

1. The learned I Additional District and Session Judge,
   Cuddalore.

2. The Principal Subordinate Judge,
   Cuddalore.

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S.A.No.104 of 2021

GSM(CO)
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