IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.02.2021	Pronounced on: 23.02.2021

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

S.A.No. 750 of 2008

and

M.P.No. 1 of 2008

C. Palani ... Appellant/Appellant/Defendant

Versus

V.A. Gnanavel Mudaliar ... Respondent/Respondent/Plaintiff

This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 06.10.2007 passed in A.S.No.30 of 2006 on the file of the District Court, Thiruvannamalai, by confirming the judgment and decree dated 15.06.2006 passed in O.S.No. 59 of 2005 on the file of the Subordinate Court, Arni, Tiruvannamalai District.

For Appellant : Mr.K.S.Kumar

For Respondent : No Appearance

JUDGMENT

The Second Appeal has been filed by the Appellant/Defendant against the judgment and decree dated 06.10.2007 passed in A.S.No.30 of 2006 on the file of the District Court, Tiruvannamalai, by confirming the judgment and decree dated 15.06.2006 passed in O.S.No. 59 of 2005 on the file of the Subordinate Court, Arni, Tiruvannamalai District.

2. Brief facts set out in the plaint :

The Appellant who is the defendant in the suit has borrowed Rs.40,000/- on 05.03.2003 and Rs.60,000/- on 27.07.2003 from the respondent/Plaintiff and executed two promissory notes on those respective days. He agreed to repay the said amount together with interest at the rate of 24% p.a. on demand. The plaintiff requested the defendant to repay the amount but the defendant has failed to repay the said amount. Hence, the plaintiff issued a legal notice to the defendant on 29.06.2005. The defendant has received the said notice on 30.06.2005 and sent a reply notice containing false and frivolous allegations. Hence, the plaintiff has filed a suit before the Subordinate Court, Arni, Tiruvannamalai in O.S.No.59 of 2005 and the same was decreed on 15.06.2006. The defendant filed an Appeal in A.S.No.30 of 2006 before the District Court, Tiruvannamalai and the same was dismissed. Aggrieved by the said order, the Second Appeal has been filed by the Appellant/Defendant before this Court.

3. Brief facts set out in the written statement:

The suit is not maintainable. The defendant never received any amount from the plaintiff. All the above said promissory notes were forged by the plaintiff. Hence the above suit has to be dismissed with costs.

4. This Appellant is the Defendant in the original suit. The Respondent/Plaintiff has filed a suit against the Appellant/Defendant for recovery of a sum of Rs.1,53,240/- being the principal and interest at the rate of 24% p.a. for the loan amount availed by the Appellant from the Respondent by way of executing two promissory notes for a sum of Rs.40,000/- and Rs.60,000/- on 05.03.2003 and 27.07.2003 respectively. After the conclusion of trial, the Trial Court decreed the suit for the suit amount along with subsequent interest and costs. Aggrieved by the said order, the Appellant/Defendant has filed the first appeal and the same was also dismissed. Aggrieved over this, this appeal has been filed and it was admitted on the following substantial questions of law:-

(i) Whether a suit for money can be decreed based on presumptions under Section 118 of the Negotiable Instruments Act?

(ii) Whether the burden of proof is not on the plaintiffs to prove the amounts were lent to the defendant and that the plaintiff had the capacity do so?

(iii) Whether the suit can be decreed outside the scope of the pleadings?

(iv) Whether Ex.A2 - Pro note has been lawfully proved as per Section 4 of the Negotiable Instruments Act and Section 2 of the Indian Stamp Act?

5. The learned counsel for the Appellant submitted that he did not deny the execution of promissory notes. But his only contention before the Trial Court is that the promissory notes were not supported by consideration as alleged by the Respondent/Plaintiff.

6. The learned Trial Judge has framed the first issue whether the defendant did not execute any promissory note as alleged in the suit. On perusal of the written statement filed by the appellant, it is seen that in para number 3, the Appellant has alleged that he did not execute the promissory note. In para number 4 of the written statement the appellant has alleged that the suit promissory notes were not supported by consideration. During the course of arguments before this Court the learned counsel for the Appellant submitted that the Appellant never denied the execution of promissory notes but he denied only the consideration.

7. Since the Appellant/Defendant has admitted the execution of promissory notes but denied the consideration, the Trial Court ought to have framed an issue as to whether the suit promissory notes are not supported by consideration. Inspite of not framing an issue to that effect, the lower court has correctly taken the initial presumption in favour of the respondent by invoking the provisions of sec.118 N.I. Act. In a suit for recovery of money based on a pronote, if the defendant admits his signature and the execution of the promissory note, as per sec. 118 N.I. Act, it has to be presumed that the consideration as mentioned in the promissory note has been passed. Since the plaintiff gets the initial presumption in his favour due the above reason, the burden is on the Appellant only to prove that he has not received any consideration for the suit promissory notes Ex.A1 and Ex.A2.

8. The presumption under sec. 118 N.I. act is similar to the presumption under Section 114 of the Evidence Act. As per Section 114 of the Evidence Act, the Court has to presume certain facts as existing ones and it can be rebutted. Similarly, the presumption under Section 118 of N.I Act is also a rebuttable presumption. So it was opened to the Appellant to prove the contrary to the initial presumption through acceptable evidence. In this aspect, the Honourable Supreme Court of India in its judgment rendered in (Bharat Barrel & Drum Mfg. Co., v. Amin Chand Payrelal) and reported in 1999 (3) SCC 35 = 1999 3 L.W 237 has held as under:

> " 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 a consideration.

Such a presumption is rebuttable. The defendant can prove the non-existence of a 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 disentitle 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 defendant 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 the 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."

9. Even if the trial court has not framed a specific issue as stated above it has done due justification on that aspect by thoroughly appreciating the evidence on record and by applying the correct principles of law. The learned Trial Court appreciated the evidence available on record and arrived at a conclusion that the suit promissory notes are supported by consideration. When the evidence on record did not prove the contrary and rebut the initial presumption under sec.118 N.I Act, then the Trial Court has no other option except to allow

the initial presumption to be riped as a conclusive proof. Only after doing the said exercise, the Trial Court has recorded a finding that the suit promissory notes have been supported by valid considerations as how it was shown in the promissory notes. Having failed to rebut the initial presumption as prescribed under Section 118 of the N.I Act, the Appellant has claimed that the lower court has erred in applying sec.118 presumption and that sec. 118 should not have been invoked. Such an argument is not in accordance with the well established position of law and hence it is not acceptable. The first Appellate court has correctly evaluated the judgement of the trial court and sustained the decree of the trial court. So the substantial questions of law 1, 2 and 4 are answered against the Appellant.

10. The learned counsel for the Appellant submitted that the suit has been decreed outside the scope of the pleadings. This is a simple suit for recovery of money based on promissory notes, in which sufficient allegations have been made with regard to lending money, executing promissory notes and failure to repay the same on demand. The Trial Court has rightly appreciated the evidence on this aspects and decreed the suit. In such circumstances, I find no reason to raise the substantial question of law No.3 and hence it is also answered against the Appellant.

11. In the result, the Second Appeal is dismissed and the Judgement and the decree of the lower courts confirmed . No costs. In M.P.No 1 of 2008 this Hon'ble Court has passed a conditional order to deposit a sum of Rs.70,000/- as a condition precedent for the purpose of granting an order of interim stay. As per the notes put up by the Registry the Appellant seems to have deposited only a sum of Rs.20,000/- at the Trial Court (Sub Court, Arni) and it has been invested in a fixed deposit at Vijaya Bank, Arni Branch, Arni. The respondent did not make his appearance and has also not filed any application for attaching the same. Hence the said amount is ordered to be returned to the Appellant on application.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msm

To

1. The District Court,
   Tiruvannamalai.

2. The Subordinate Court,
   Arni, Tiruvannamalai District.

3. The Section Officer,
   V.R. Section, High Court,
   Madras - 104.

+1cc to Mr.K.S.Kumar, Advocate, S.R.No.11699

S.A.No.750 of 2008

AK(CO)
HS(14/09/2021)