IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.841 of 2012
and
M.P.No.2 of 2012

(Through Video Conferencing)

A.Sundaram ... Appellant/Appellant/Defendant

Vs.

J.N.Sethu ... Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 29.11.2005 in A.S.No.60 of 2005 on the file of the Principal District Judge, Erode District at Erode in confirming the judgment and decree dated 23.02.2004 made in O.S.No.254 of 2001 on the file of the Sub-Ordinate Judge, Bhavani.

For Appellant : Mr.N.Damodaran

For Respondent : Mr.T.Murugamanickam
Senior Counsel for
Ms.Zeenath Begum

JUDGMENT

This case was admitted on 06.09.2012 in presence of the learned counsel for the respondent after notice of admission was ordered. In this appeal, the following substantial questions of law was framed on 06.09.2012 for being answered:-

> ''Whether the Courts below rendered a perverse finding holding the suit promissory notes to be supported by consideration without even considering the evidence of DW2 in this regard''.

2.The unsuccessful defendant is the appellant in this second appeal. The respondent herein had filed O.S.No.254 of 2001 before the Sub-Court, Bhavani. The suit was filed by the respondent to recover a sum of Rs.2,31,850/- from the appellant on the strength of four promissory notes Exs.A1 to A4 each for a sum of Rs.50,000/- two promissory notes dated 18.06.2000 and others two dated 01.07.2000. The above suit was later re-numbered as O.S.No.1 of 2003 after it was transferred to Fast Track Court, Bhavani (Fast Court).

3.Before the Trial Court following issues were framed:-

i) Whether the suit promissory notes are true and valid?

ii) Whether the plaintiff is entitled for the amount as claimed?

iii) To what relief, the plaintiff is entitled to?

4. The Trial Court decreed the suit vide its judgment and decree dated 23.02.2004. The Appellate court dismissed the appeal filed by the appellant herein vide impugned judgment and decree dated 29.11.2005 in A.S.No.60 of 2005.

5. The appellant denied his liability in the written statement. The learned counsel for the appellant submits that the appellant had executed inchoate promissory notes vide Exs.A1 to A4 in favour of one K.Sampathkumar for certain money transaction. He submits that though the loan was discharged, the said K.Sampathkumar did not return the inchoate promissory notes to the appellant. It was stated that the above four inchoate promissory notes were misplaced. The appellant further submitted that the said Sampathkumar colluded with the respondent to mark it seem as if the appellant had executed Exs.A1 to A4 in favour of the respondent. Therefore, the respondent misused the above promissory notes.

6. It is submitted that the respondent filled up/altered the blanks in Exs.A1 to A4 promissory notes with a mala-fide intention.

7. On perusing the Judgment and decree passed by the Trial Court and that of the Appellate Court, what is discernible is that the appellant and the respondent have known each other since 1995 and a ''sale agreement'' in Ex.B1 dated 12.6.1995 was executed by the appellant in favour of the respondent to sell a property.

8. The case of the respondent before the Trial Court was that the appellant borrowed a sum of Rs.1,00,000/- on 18.6.2000 and on 01.07.2000 totaling to Rs.2,00,000/- but failed to pay the amount on demand. The appellant has admitted to execution of four demand promissory notes - Exs.A1 to A4.

9. Before the Trial Court, the appellant stated that Exs.A1 to A4 - promissory notes were given to one Sampath Kumar in blank for certain liability in a chit transaction between them and that these promissory notes were not returned to the appellant eventhough the appellant had discharged the liability he owed to the said Sampath Kumar.

10. It was further the case of the appellant that the respondent has misused Exs.A1 to A4 promissory notes with a malafide intention in collusion with the said Sampath Kumar.

11. The evidence of the respondent who examined himself as P.W.1 also confirms execution of Ex.B1. In his evidence, the respondent had deposed that the appellant had borrowed the aforesaid sum of Rs.2,00,000/- from the respondent to settle property with his brother and agreed to sell the property to the respondent.

12. The evidence of P.W.2 also confirms the execution of Ex.B1- Sale Agreement dated 12.06.1995. He has also stated that he affixed his signature as a witness in Ex.B1 - Sale Agreement dated 12.06.1995.

13. P.W.2 has also stated that he had filled up the details given by the respondent on the respective dates in Exs.A1 to A4 and had given photo copies of these demand promissory notes to the appellant. However, there are no records to substantiate that photo copies of Exs.A1 to A4 were given to the appellant.

14. Ex.A5 legal notice was issued on 29.05.2001 by the respondent to the appellant. It called upon the appellant to pay the amount and thereafter Ex.A.7 - notice dated 05.06.2001 was sent to the appellant enclosing xerox copies of Exs.A1 to A4.

15. The evidence of P.W.2 indicates that execution of Ex.B.1 dated 12.06.1995 Sale agreement coincided with loan and execution of Ex.A1 - 4 promissory note 18.06.2000 and on 01.07.2000. Thus, there is an apparent difference in the evidence of respondent as PW1 and PW2.

16. However, under Section 118 of the Negotiable Instruments Act, 1881, there is a presumption. It is however a rebuttable presumption. The appellant has not discharged the burden of proof cast on him under the Negotiable Instruments Act, 1881 to distance from the liability cost on him.

17. Further under Section 20 of the Negotiable Instruments Act, 1881, when a person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby prima facie gives authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp.

18. The signatory to such negotiable instrument is liable to any holder in due course for such amount that may be filled. The only exception provided is in the proviso to section 20 of the Negotiable Instruments Act, 1881 is in the case of a person other than a holder in due course. Thus, the appellant admits that the respondent was a holder in due

course.

19. The appellant has thus not discharged the burden of proof cast upon under proviso to section 20 of the Negotiable Instruments Act, 1881.

20. Either way whether as a holder i.e. person in whose favour the Ex. A1 to 4 were executed or as holder in due course, the respondent was entitled to demand payment from the appellant under Ex. A1 to 4. Further, in para 3 of the written submission, the appellant has admitted also having borrowed money and execution of two promissory notes.

21. Therefore, there is no merits in the present appeal. There, the questions of law raised by the appellant stand answered against the appellant.

22. In the light of the above, this second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

jas/kkd

To:

1.The Principal District Judge,
Erode District, Erode.

2.The Subordinate Judge,
Bhavani.

3. The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Ms.Zeenath Begum, Advocate SR.No.32240

+1cc to Mr.N.Damodaran, Advocate SR.No.31323

S.A.No.841 of 2012
and
M.P.No.2 of 2012

GMR(CO)
GMY(01/11/2021)