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A.S.(MD)No.156 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AS(MD)No.156 of 2010

and

M.P.(MD)No.1 of 2010

V.S.Sivashankari

... Appellant/Plaintiff

Vs.

1.Sri Sarada Finance,
A partnership firm represented
by its Partner M.P.Maniram,
No.42, Aarappalayam Main Road,
Madurai.

2.M.P.Maniam
Partner – Sri Sarada Finance,
No.42, Aarappalayam Main Road,
Maduri.

3.M.P.Akilandeswari

... Respondents /
Defendants

Prayer: Appeal suit filed under Section 96 of C.P.C., to set aside as against the judgment and decree dated 12.03.2010 passed in O.S.No.122 of 2004 on the file of the Additional District Judge, Fast Track Court No.I, Madurai.



For Appellant : Ms.J.Anandhavalli
For R-1 to R3 : Mr.S.Natesh Raja

J U D G M E N T

The unsuccessful plaintiff is the appellant. O.S No.122 of 2004 was filed for recovering the suit amount from the defendants. The suit was dismissed vide judgment and decree dated 12.03.2010. Aggrieved by the same, this appeal has been filed under section 96 of CPC. The appellant also filed MP(MD)No.1 of 2011 under Order 41 Rule 27 of CPC for reception of additional evidence.

2.The learned counsel for the appellant took me through the pleadings as well as the evidence on record and also the impugned judgment passed by the trial court and submitted that this appeal should be allowed as prayed for.

3.Per contra, the learned counsel appearing for the defendants/respondents submitted that the impugned judgment and decree do not warrant any interference.



4.I carefully considered the rival contentions and went through the evidence on record. The following points arise for determination :

1. Whether the defendants have rebutted the presumption raised against them under Section 118 of the Negotiable Instruments Act, 1881 ?
2. Whether the plaintiff is entitled to recover the suit amount from the defendants ?.
3. Whether the defence that the defendants did not receive any consideration from the plaintiff is true ?
4. Whether the transaction between the parties stood settled ?

5.The case of the plaintiff is as follows :

The defendants 2 and 3 are partners of the Sri Sarada Finance, a registered firm. The defendants borrowed a sum of Rs.4.00 lakhs from the plaintiff on 01.11.1998. Ex.A1, promissory note was executed by the second defendant. The defendants promised to repay the same with interest @ 24% p.a. The defendants committed default in paying interest from October 1999. The plaintiff issued Ex.2 legal notice dated 22.10.2001



calling upon the defendants to pay the amount covered by the promissory note. The defendants refused to receive the notice. Ex.A4 is the returned cover. Since the defendants did not make the payment, the suit for recovery came to be filed.

6.The defendants denied the receipt of consideration. According to them, the husband of the plaintiff Dr.S.V.Shanmugam had deposited a sum of Rs.5.00 lakhs in his name and in the name of his relatives. In connection with the deposit, the suit pro-note was given as security. In fact, five pro-notes had been issued. The defendants had settled the dues of the plaintiff's husband. Instead of returning the pro-notes, the suit was engineered in the name of the plaintiff. According to defendants, there was no cause of action for filing the suit. The cause of action projected in the suit was false.

7.Based on the rival pleadings, issues were framed by the trial court. The plaintiff examined herself as PW.1. The attesor of the pro-note Thiru.Sankar was examined as PW.2. The plaintiff's husband was examined as PW.3. Exs.A1 to A5 were marked. The second defendant examined himself as DW.1. FIR in



Crime No.14 of 2001 lodged by the plaintiff's husband was marked as Ex.B1.

8.After consideration of the evidence on record, the learned Trial Judge came to the conclusion that there was financial transaction between the plaintiff's husband and the first defendant firm. The trial Judge dismissed the suit by taking into account the answers given by PW.1 in her cross examination. The plaintiff had admitted that the suit amount of Rs.4.00 lakhs was deposited in the first defendant firm who issued receipt therefor and that thereafter, the suit pro-note was issued. PW.3 the husband of the plaintiff had admitted that he lodged complaint against the defendants before the Economic Offences Wing and that on 27.09.2002, he received a sum of Rs.5,20,000/- from the second defendant. The court below came to the conclusion that Ex.A1 promissory note was executed only for security purpose and that it was not issued towards any loan transaction. Since the plaintiff as well as her husband PW.3 had admitted that they received a sum of Rs.5,20,000/- during the compromise talks held under the aegis of EOW, the court below answered the primary issue against the plaintiff. The trial court declined to go into the



issue if acceptance of the aforesaid sum was towards full and final settlement of all outstanding claims.

9.I am not inclined to allow the petition filed by the plaintiff under Order 41 Rule 27 of CPC. The suit was filed on 31.10.2001. PW.1 examined herself on 16.11.2009. All the documents now sought to be marked as additional evidence are clearly prior in point of time. There is no convincing explanation as to why the documents were not marked or exhibited before the trial court itself. MP(MD)No.1 of 2011 in AS(MD)No.156 of 2010 is dismissed.

10.The defendants do not deny the execution of Ex.A1. The signature is admitted. Section 118 of the Negotiable Instruments Act, 1881 is as follows :

“118.Presumptions as to negotiable instruments.

- (a) of consideration;
- (b) as to date;
- (c) as to time of acceptance;
- (d) as to time of transfer;
- (e) as to order of indorsements;
- (f) as to stamp;
- (g) that holder is a holder in due course;”



Of course, the aforesaid presumption is rebuttable. Section 4 of the Negotiable Instruments Act, 1881 defines “promissory note” as follows :

“4.“Promissory note.”—A “Promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.”

Ex.A1 meets all the requirements set out in Section 4 of the Act. PW.2 signed as a witness in Ex.A1 and he has also clearly deposed in favour of the plaintiff. The testimony of PW.1 sounds natural and convincing. She states that she deposited a sum of Rs.4.00 lakhs with the first defendant firm and that the defendants not only received the same but also executed the suit pro-note. The issuance of Fixed Deposit receipt will not render the suit pro-note as one drawn without consideration. The only conclusion which the court can arrive at is that the plaintiff cannot seek to doubly enrich herself. The plaintiff has herself admitted that for the deposit of Rs.4.00 lakhs made by her, she was issued with receipt and also the pro-note. Even if there is no pro-note, still, the plaintiff can maintain the suit for recovery of money. The fair



admission made by the plaintiff cannot be held against her.

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11.The 2nd defendant himself admitted that the plaintiff's husband lodged Ex.B1 FIR against him and that in the compromise talks held under the aegis of the EOW, a sum of Rs. 5,20,000/- was given to PW.3. This indicates that the defendants have admitted their liability. In that event, the burden clearly shifted to them. They must have proved before the court below that a sum of Rs.5,20,000/- has been paid towards full and final settlement of all claims. No such document was marked by the defendants. The defendants admitted that the plaintiff is having an independent business. The plaintiff is an income tax assessee. The non-mentioning of the suit transaction in the plaintiff's income tax returns cannot be put against the plaintiff. That may be a cause of action for the tax authorities to take action against the plaintiff. The defendants cannot take advantage of the same. The plaintiff and her husband had initiated prosecution under Section 138 of the Negotiable Instruments Act. They had ended in acquittal. But that is beside the point. That cannot answer the plaintiff's claim. In law, the husband and wife are independent and separate personalities. While one can testify as a witness on



behalf of one's spouse, payment of Rs.5,20,000/- by the second defendant to P.W. 3 cannot be a defense in a suit for recovery of money. The defendants have not issued any notice calling upon PW.3 to return all the documents. When the plaintiff issued the suit notice, the defendants refused to receive the same. The returned cover had been marked as Ex.A4. It is quite possible that PW.3 had accepted the sum of Rs.5,20,000/- only for the purpose of not pursuing the criminal case (Ex.B1) and it was not towards full and final settlement of the entire claim. It is admitted by the defendants in the additional written statement that the criminal case registered against the plaintiff and her husband at the instance of the second defendant in Crime No.497 of 2002 on the file of the Keeraithurai Police Station was closed as Mistake of Fact.

12.The trial court after correctly framing the issue as to whether the acceptance of Rs.5,20,000/- by PW.3 was towards full and final settlement, did not answer the issue. This failure on the part of the trial court to answer the issue vitiates the impugned judgment. Since the first appeal is a continuation of the original proceedings, I have independently analyzed the entire evidence on



record. While acceptance of Rs.5,20,000/- by PW.3 is admitted, there is nothing on record to show that it was towards full and final settlement of all dues. Going by the plaintiff's case, a sum of Rs.4.00 lakhs was deposited on 01.11.1998. It carried 24% interest per annum. It is also admitted that there were other financial transactions between the parties. It is obvious that the sum of Rs.5,20,000/- given on 27.09.2002 would not have represented the entire liability of the defendants. Since according to the defendants, this sum was paid towards full and final settlement, the burden entirely lay on them. This burden has not at all been discharged. Nothing stopped the defendants from collecting all the documents from PW.3 or the plaintiff. Admittedly, the plaintiff did not sign in any document in favour of the defendants. The defendants have not issued any legal notice. On the other hand, they declined to accept the notice issued by the plaintiff. The trial court failed to consider these vital aspects. I am therefore constrained to interfere. The impugned judgment and decree are set aside.



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13.This first appeal is allowed. The suit is decreed as

prayed for. No costs. Connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes/ No

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To:

1.Additional District Judge, Fast Track Court No.I, Madurai.



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G.R.SWAMINATHAN,J.

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