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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.247 of 2008

and

M.P.(MD)No.1 of 2008

and

C.M.P.(MD)No.3934 of 2021

P.Vellaichamy

... Appellant/Appellant/Defendant

Vs.

Chokkalingam

... Respondent/Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.113 of 2006 on the file of the Subordinate Court, Sivagangai, dated 20.06.2007, confirming the judgment and decree passed in O.S.No.96 of 2004 dated 25.04.2005, on the file of the District Munsif, Thirupathur.

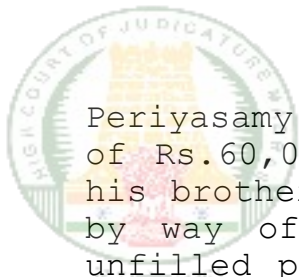
For Appellant : Mr.S.Natarajan

For Respondent : Mr.P.Rajagopalan,
For Mr.R.Devaraj.

JUDGMENT

The defendant in O.S.No.96 of 2004 on the file of the District Munsif Court, Thirupathur is the appellant in this second appeal. The case of the plaintiff is that the defendant approached the plaintiff on 18.02.2002 and borrowed a sum of Rs.75,000/- after executing Ex.A.1/promissory note. The defendant agreed to repay the said amount with interest at the rate of 12% per annum. When the plaintiff approached the defendant for repayment, the defendant evaded. Therefore, the plaintiff issued Ex.A.2/notice dated 29.01.2004. Even though the defendant received the notice as evidenced by Ex.A.3/acknowledgement card, he did not give any reply nor did he not repay the loan. Hence, the plaintiff filed the aforesaid suit.

2.The defendant filed his written statement denying the suit transaction. According to the defendant, he entered into a partnership agreement with one Subramanian S/o.Veluchamy for carrying out certain contract works. This was in June 2001. In the said business, the said Subramanian had invested Rs.1,20,000/-. By way of repaying the said amount, the defendant had paid a sum of Rs.70,000/- on 08.11.2001 and a further sum of Rs.30,000/-. The defendant had agreed to pay the balance amount of Rs.60,000/- later. While so, in January 2003, the said Subramanian as well as the plaintiff and the plaintiff's brother namely.,



Periyasamy put pressure on the defendant to settle the said amount of Rs.60,000/- immediately. The defendant told the plaintiff and his brother/Periyasamy to settle the said amount to Subramanian and by way of security gave a cheque for Rs.75,000/- and a signed unfilled promissory note. The defendant specifically pleaded that on 30.07.2003 the amount payable to Subramanian was directly settled. The defendant further alleged that without settling Subramanian, the plaintiff and his brother misused the cheque and the signed blank promissory note given as security. When the plaintiff issued the notice dated 29.01.2004 in this regard, the defendant lodged a complaint before the police authority on 02.02.2004. In the said police complaint, the defendant had named Subramanian as witness. The defendant would further claim that on 24.02.2004, he had given a suitable reply. The defendant categorically stated that no consideration passed under suit promissory note. He denied having borrowed any amount from the plaintiff.

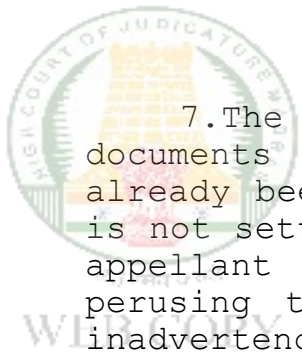
3.The learned Trial Munsif framed the necessary issues. The plaintiff examined himself as P.W.1 and the attesting witnesses were examined as P.W.2 and P.W.3 and marked Exs.A.1 to A.3. The defendant examined himself as D.W.1 and marked the agreement dated 18.06.2001 entered into between him and Subramanian as Ex.B.1. After considering the evidence on record, the learned Trial Munsif by judgment and decree dated 25.04.2005 decreed the suit and directed the defendant to pay the suit claim of Rs.93,000/- with interest at the rate of 6% on Rs.75,000/- from the date of suit till the date of realization. Aggrieved by the same, the defendant filed A.S.No.113 of 2006 before the Sub Court, Sivagangai. The First Appellate Court by judgment and decree 20.06.2007 dismissed the first appeal. Challenging the same, this second appeal came to be filed.

4.The second appeal was admitted on the following substantial question of law:-

"Whether the judgment and decree of the Court below is erroneous on account of its mis-construction of the pleadings and evidence adduced on either side in their proper perspective including the plea of non execution of the promissory note taken by the appellant?"

5.Heard the learned counsel on either side.

6.When the matter was taken up for final disposal, the appellant filed C.M.P.(MD)No.3934 of 2021 under Order 41 Rule 27 of C.P.C., for marking the documents listed in the petition as additional documents. The respondent/plaintiff had filed a detailed counter affidavit opposing the prayer made in the civil miscellaneous petition.



7.The learned counsel for the appellant submitted that the documents now sought to be marked as additional documents have already been referred to in the written statement. The appellant is not setting up a new case. In fact, the learned counsel for the appellant must have prepared the written statement only after perusing these documents namely., Document Nos.1 to 3. Due to inadvertence or over-sight, they have been omitted to be marked. He would draw my attention to Order 41 Rule 27 of C.P.C., to show that this Court can receive additional evidence for any substantial cause. Of course, this Court will bear in mind, the procedure to be followed for reception of the additional evidence.

8.The learned counsel would submit that the transaction was only between the appellant and Subramanian. The appellant had taken some contract works and in the said business, the said Subramanian had invested a sum of Rs.1,20,000/-. An agreement dated 18.06.2001 was entered between the appellant and the said Subramanian. On 08.11.2001, a sum of Rs.70,000/- was given. A further sum of Rs.30,000/- towards profit was also given. The defendant was liable to pay only a sum of Rs.60,000/- to the said Subramanian. Since pressure was brought on the appellant to settle the said liability in January 2003, the appellant had requested the respondent herein/plaintiff/Chokkalingam and his brother/Periyasamy to settle the amount to Subramanian. The appellant had given a cheque for a sum of Rs.75,000/- and an unfilled promissory note by way of security. The plaintiff contrary to his undertaking to settle the amount to Subramanian did not actually do so. So when Subramanian renewed his demand, the appellant paid the balance amount directly to Subramanian and got the agreement cancelled. The plaintiff's brother misusing the cheque given by the appellant initiated prosecution under Section 138 of Negotiable Instruments Act. However, C.C.No24 of 2006 instituted against the appellant ended in acquittal by judgment dated 11.02.2008 on the file of Principal District Munsif/Judicial Magistrate, Pudukkottai. The appellant had also lodged a complaint dated 02.02.2004 before the Deputy Superintendent of Police, Thirupathur, for taking action against the plaintiff and his brother for having misused the cheque and blank promissory note given by the appellant as security. The learned counsel for the appellant therefore submitted that if the additional evidence is received, this Court will be able to appreciate the case from an entirely new perspective. He would also submit that in the interest of justice, this Court can always receive the additional evidence.

9.Per contra, the learned counsel for the respondent submitted that the suit was instituted way back in the year 2004. The first appeal was also disposed of in the year 2007 itself. This second appeal has been pending before this Court for the last 13 years. The appellant had filed this civil miscellaneous petition for reception of additional evidence only on 17.04.2021. He relied on the on the

<https://hccases.court.gov.in/hccases> reported in **(2012) 8 SCC 148 (Union of India vs Ibrahim**



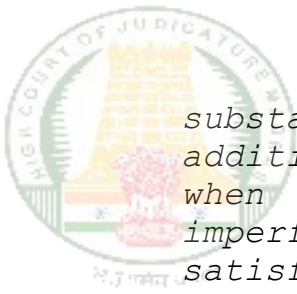
Uddin and Another), for the proposition that the negligence of a pleader would not represent a substantial cause within the meaning Order 41 Rule 27 of C.P.C. He placed particular stress on the following paragraphs of the said decision:-

"27. Under Order XLI , Rule 27 CPC, the appellate Court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate Court is empowered to admit additional evidence. [Vide: Lala Pancham & Ors. (supra)].

28. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. Hence, in the absence of satisfactory reasons for the non- production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide: State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912; and S. Rajagopal v. C.M. Armugam & Ors., AIR 1969 SC 101).

29. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

30. The words "for any other substantial cause" must be read with the word "requires" in the beginning of sentence, so that it is only where, for any other



substantial cause, the Appellate Court requires additional evidence, that this rule will apply, e.g., when evidence has been taken by the lower Court so imperfectly that the Appellate Court cannot pass a satisfactory judgment."

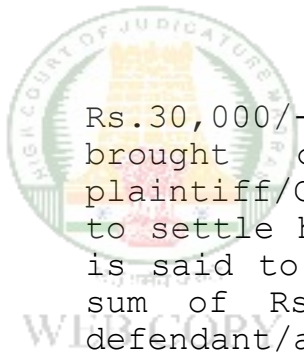
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10.The learned counsel for the respondent would contend that though the appellant would challenge due execution of the suit promissory note, the signature of the appellant in Ex.A.1/promissory note has been admitted. Therefore, coupled with the evidence adduced by the plaintiff, the courts below were justified in drawing the presumption under Section 118 of the Negotiable Instruments Act. Except marking Ex.B.1/agreement between himself and Subramanian, the defendant had not at all rebutted the presumption raised against him. He submitted that the Courts below have correctly approached the issue and the impugned judgments and decrees do not call for any interference and he pressed for dismissal of the second appeal.

11.I carefully considered the rival contentions and went through the evidence on record. Though the contentions advanced by the learned counsel for the appellant for reception of additional evidence are highly persuasive, I am squarely bound by the judgment relied on by the learned counsel for the respondent reported in **(2012) 8 SCC 148 (Uninon of India vs Ibrahim Uddin and Another)**. As rightly pointed out by the learned counsel for the respondent, it is not as if these documents could not be accessed by the appellant at the appropriate time. They were very much in his possession. In fact, without perusing them, the written statement could not have been prepared. These documents ought to have been filed before the Trial Court itself. The filing of the application under Order 41 Rule 27 of C.P.C., comes after a gap of more than a decade and half. I am not satisfied with the reasons set out in the affidavit filed in support of the civil miscellaneous petition. Therefore, I have no hesitation to dismiss C.M.P.(MD)No.3934 of 2021. It is accordingly dismissed.

12.Now the question that arises for my consideration is whether the Courts below have mis-constructed the pleadings and evidence adduced on either side. The substantial question of law framed in this appeal is whether the Courts below have mis-constructed the plea of non-execution of promissory note taken by the appellant.

13.It is beyond dispute that the appellant had admitted the signature attributed to him in Ex.A.1/promissory note. The defence of the appellant is that the suit promissory note was given as security to the plaintiff. The case of the appellant is that he had to pay a sum of Rs.1,50,000/- to Subramanian. This is because said Subramanian invested a sum of Rs.1,20,000/- in the contract work taken by the appellant. A sum of Rs.70,000/- was paid to the plaintiff on 08.11.2001. It is stated that a further sum of



Rs.30,000/- was also paid. Since in January 2003, pressure was brought on him to settle the balance liability, the plaintiff/Chokkalingam and his brother/Periyasamy were called upon to settle his liability and as a security, the suit promissory note is said to have been handed over to the plaintiff. A cheque for a sum of Rs.75,000/- was also given. It is the case of the defendant/appellant that the cheque for a sum of Rs.75,000/- was presented and that it was dis-honoured and that the prosecution initiated on the same against the appellant ended in acquittal. The case of the appellant is that he had directly paid the balance amount of Rs.55,000/- on 30.07.2003 to Subramanian. Even though the appellant would claim that Subramanian was shown as witness in his police complaint and the signature of Subramanian is there in Ex.B.1/agreement, the appellant did not examine the said Subramanian. If really the appellant had paid amount to Subramanian on 30.07.2003, he would have certainly insisted that the promissory note as well as cheque given by him as security in January 2003, should be returned. I refuse to believe that without taking back the suit promissory note as well as the cheque, which is said to have been given in January 2003, the appellant would have paid a sum of Rs.55,000/- directly to Subramanian. That apart, if really the appellant had settled his liability to Subramanian on 30.07.2003 as claimed by him, he would have definitely sent a notice or a communication both to the plaintiff as well as his brother/Periyasamy immediately thereafter. Even the additional documents are dated 06.10.2003, 02.02.2004 and 24.02.2004. These documents had come into existence after the plaintiff and his brother/Periyasamy took action. Therefore, I have no hesitation to reject the defence now putforth. The Courts below have correctly held that the appellant had proved the due execution of the promissory note by examining himself and also P.W.2 and P.W.3. Therefore, the presumption was rightly raised against the appellant. The appellant had not rebutted the same. The appellant had merely marked Ex.B.1 and done nothing else. In these circumstances, I do find any ground to interfere. The substantial question of law is answered against the appellant and the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

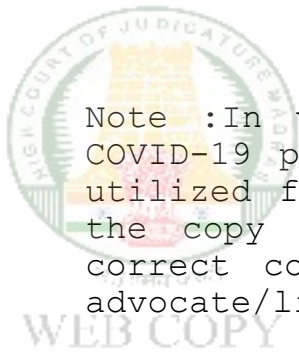
Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Sub Court,
Sivagangai.
- 2.The District Munsif Court,
Thirupathur.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.S.NATARAJAN, Advocate (SR-18168[F] dated 30/04/2021)

+1 CC to M/s.R.DEVARAJ, Advocate (SR-18190[F] dated 30/04/2021)

**S.A. (MD) No.247 of 2008
29.04.2021**

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