



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.702 of 2011

and

M.P.(MD)No.1 of 2011

and

M.P.(MD)No.1 of 2015

K.N.Parthasarathy

... Appellant/Respondent/Defendant

-Vs-

Natarajan

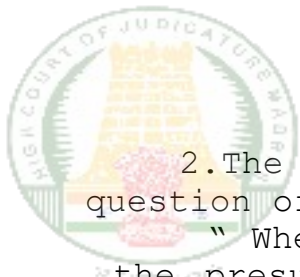
...Respondent/Appellant/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree of the Lower Appellate Court dated 03.03.2009 passed in A.S.No.36 of 2007 on the file of the Principal Sub Court, Kumbakonam, reversing the Judgment and decree of the trial Court dated 30.07.2004 passed in O.S.No.39 of 2004 on the file of the District Munsif cum Judicial Magistrate, Papanasam.

For Appellants	: Mr.Lakshmi Shankar for Mr.T.V.Sivakumar
For Respondent	: Mr.C.Padmaraj

JUDGMENT

The defendant in O.S.No.39 of 2004 on the file of the District Munsif cum Judicial Magistrate, Papanasam is the appellant in this second appeal. The respondent / Natarajan filed the said suit for recovering a sum of Rs.60,537/- with interest from the appellant herein. The suit was laid on the strength of Ex.A1-pro-note dated 02.01.2000. The respondent examined himself as P.W.1 and the attesting witnesses P.W.2 and P.W.3. Ex.A1 to Ex.A3 were marked. Ex.A2 is the suit notice issued by the respondent. Ex.A3 is the acknowledgement card signed by the appellant. The appellant examined himself as D.W.1. On the side of the appellant, no documentary evidence was adduced. The learned trial munsif, by Judgment dated 30.07.2004, dismissed the suit. Questioning the same, the respondent herein filed A.S.No.36 of 2007 before the Principal Sub Court, Kumbakonam. The First Appellate Court, by Judgment dated 03.03.2009 set aside the Judgment and decree passed by the trial Court and allowed the appeal. Aggrieved by the same, this second appeal came to be filed.



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

" Whether the First Appellate Court is justified in applying the presumption under Section 118 of the Negotiable Instrument Act in the light of the evidence of the plaintiff creating a reasonable doubt about the transaction?"

3.Heard the learned counsel on either side. The learned counsel appearing for the respondent would point out that the signature attributed to the appellant in Ex.A1-pro-note has been admitted and that therefore, the first Appellate Court was justified in drawing the presumption under Section 118 of the Negotiable Instruments Act in favour of the plaintiff. Since the defendant / appellant did not rebut the said presumption, the first Appellate Court rightly decreed the suit. His further contention is that since the question effectively turns on the appreciation of facts, this Court exercising its jurisdiction under Section 100 of C.P.C may not interfere with the same. He reminded this Court that the first Appellate Court is the last Court as far as the question of fact is concerned. He pressed for dismissal of the second appeal.

4.The learned counsel appearing for the appellant submitted that the plaintiff Natarajan was the defendant in O.S.No.237 of 1993 on the file of the District Munsif Court, Thanjavur. The said suit was instituted by one Kamala for recovering a sum of Rs.12,224/- with interest. The said suit was laid on the strength of the pro-note, in which, the appellant K.N.Parthasarathy figured as attesting witness. Parthasarathy deposed as P.W.2 in O.S.No.237 of 1993 on 16.02.2001. The suit eventually came to be decreed on 31.03.2001. Angered by the conduct of the appellant, the plaintiff decided to make use of the signed blank pro-note of the appellant that was lying in his custody. According to the learned counsel for the appellant, the respondent herein Natarajan was running a unregistered chit business and that the defendant had joined in one of the chit groups for a sum of Rs.10,000/- and when he had taken the prize money at the bidding of Natarajan, Parthasarathy had executed the signed blank pro-note. The chit transaction got over way back in the year 1990. Since Parthasarathy had testified against Natarajan in O.S.No.237 of 1993, Natarajan filled up the signed blank pro-note and issued Ex.A2-notice dated 09.03.2001. In response to the same, the appellant had issued a detailed reply dated 03.04.2001, in which, the entire defence has been projected at the earliest point of time. In fact, in the plaint itself, Natarajan had referred to the issuance of reply notice by the appellant herein. But the plaintiff did not choose to issue a rejoinder or even exhibit the said reply notice as Ex.A4 which in all fairness, he should have done.



5.The learned counsel for the appellant lamented that no documentary evidence was adduced on the side of the defendant also. The defendant should have marked reply notice, copy of his deposition in O.S.No.237 of 1993 and the deposition of Natarajan as D.W.1 in O.S.No.237 of 1993. The learned counsel for the appellant set out the sequence of events. While Parthasarathy was examined on 16.02.2001, Natarajan was examined on 22.06.2001. According to Natarajan, the present Ex-A1 was executed on 02.01.2000. If really, the present suit transaction had in fact taken place, when Parthasarathy was examined as P.W.2, he would have been questioned on these lines. Natarajan in the present plaint had claimed that even though he made several demands, Parthasarathy evaded to make repayment. That would have definitely furnished sufficient ammunition to cross examine Parthasarathy, when he was examined as P.W.2 in support of Kamala's claim. Natarajan did not make any reference to the suit transaction, when he examined himself as D.W.1 on 22.06.2001. The endeavour of the learned counsel for the appellant is to show that the present suit proceedings have been engineered as counter blast to wreck vengeance on Parthasarathy for having deposed in support of Kamala in the other suit. He also would strongly contend that it is improbable that cause of action could have taken place at Thanjavur. Both the parties are permanent residents of Mela Agraharam near Ammapettai. The case of the plaintiff is that the plaintiff had made it appear as if the transaction had taken place in the house of one Sridhar, son-in-law of Natarajan's elder brother, at Thanjavur. It is also stated that in the suit notice, it was nowhere projected by Natarajan that cause of action had taken place at Thanjavur. The learned counsel also raised a host of contentions to show that it is simply improbable that the transaction could have taken place at Thanjavur.

6.Even though the trial Court accepted the defence of the appellant herein, the first Appellate Court chose to differ and decreed the suit and came to the conclusion that the defendant Parthasarathy has miserably failed to establish his defence. The appellant's counsel submitted that if only the documents now projected as additional evidence had been available for consideration, the first Appellate Court would have definitely sustained the decision of the trial Court. It is for this reason the appellant had filed M.P.(MD)No.1 of 2015, under Order 41 Rule 27 of C.P.C. for reception of additional evidence.

7.The learned counsel for the respondent would oppose the said request primarily on the ground that when the appellant had enough and more opportunity to exhibit these documents, the appellant could have as well done the same before the trial Court. The appellant did not even file any application for reception of additional evidence before the first Appellate Court. Only in the second appeal, it has been done. Of-course, I must take note of the fact

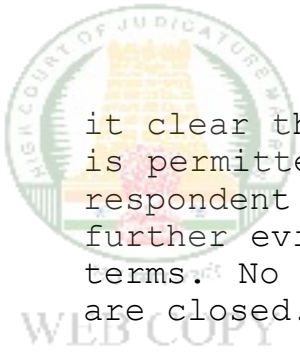


that this Miscellaneous Petition was filed way back in January 2015 itself.

8. Now the question that arises for my consideration is whether M.P.(MD)No.1 of 2015 filed for reception of additional evidence has to be allowed or not. If the said application is allowed, the matter will have to be necessarily remanded to the file of the trial Court. I am conscious that Order 41 Rule 24 of C.P.C., categorically states that where the evidence upon the record is sufficient to enable the appellate Court to pronounce Judgment, the Appellate Court may after resettling the issues, if necessary, finally determine the matter itself. But then, I take inspiration from the Judgment of the Hon'ble Supreme Court reported in **(2015) 1 SCC 677 (Wadi Vs. Amilal and others)**. The Supreme Court in the said decision had held as follows:-

"7. Now it is clear that Rule 27 deals with production of additional evidence in the appellate Court. The general principle incorporated in Sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate Court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in Clauses (a), (a) and (b). We are concerned here with Clause (b) which is an enabling provision. It says that if the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce Judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate Court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, Clause (b) enables it to adopt that course. Invocation of Clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of material on record it feels that admission of additional evidence is necessary to pronounce a satisfactory Judgment in the case."

9. I am satisfied that without receiving the additional evidence now projected before this Court, it is not possible to pronounce a satisfactory Judgment in this case. I consciously refrain from discussing them because that may prejudice the other side. The additional evidence are only evidence given by the parties in another case and the reply notice given by the appellant. Their authenticity is not in doubt. However, they have a direct bearing on the defence of the appellant. In the interest of justice, these documents deserve to be brought on record. It is for this reason I set aside the impugned Judgment and decree passed by the appellate court and remand the matter to the file of the trial Court. I make



it clear that the evidence already taken will remain. The appellant is permitted to adduce additional evidence. It will be open to the respondent herein to cross examine the appellant and also adduce further evidence on his side. The Second Appeal is allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Principal Sub Court, Kumbakonam.

2.The District Munsif cum Judicial Magistrate, Papanasam.

Copy to

The Record Keeper, (2C)

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.

+1 CC to M/s.T.V.SIVAKUMAR, Advocate (SR-17040[F] dated 22/04/2021)

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KB(02.07.2021) 5P 6C