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S.A.(MD)No.820 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.820 of 2012

and

M.P.(MD)No.1 of 2012

K.Gomathy Nayagam

... Appellant/Appellant/
Defendant

Vs.

R.Chandran

... Respondent/Respondent/
Plaintiff

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.79 of 2010 passed by the Sub Court, Ambasamuthiram, dated 17.07.2012, confirming the judgment and decree in O.S.No.238 of 2007 passed by the Additional District Munsif Court, Ambasamuthiram, dated 05.01.2010.

For Appellant : Mr.K.P.Narayana Kumar

For Respondent : Mr.RT.Arivu Kumar
For Mr.R.Manimaran.

JUDGMENT

The defendant in O.S.No.238 of 2007 on the file of the Additional District Munsif Court, Ambasamuthiram is the appellant in this second appeal.

2.The respondent/R.Chandran filed the said suit on the strength of Ex.A.1/promissory note dated 12.07.1999. The case of the respondent is that on 01.07.1999, the appellant herein borrowed a sum of Rs.47,000/- and executed the suit promissory note. The appellant had promised to repay the same on demand. Since the appellant evaded in making the payment, the plaintiff issued Ex.A.2/notice. The appellant received the same and gave a reply denying the stand taken by the plaintiff. Therefore, the said suit came to be instituted. The plaintiff examined himself as P.W.1 and one of the attesting witnesses as P.W.2. Exs.A.1 to A.4 were examined by the plaintiff. The defendant examined himself as D.W.1 and one Ramasamy as



D.W.2. No documentary evidence was adduced by the defendant.

3.The Trial Munsif by judgment and decree dated 05.01.2010 decreed the suit as prayed for and directed the defendant to repay the sum of Rs.47,000/- with interest at the rate of 9% from the date of plaint till the date of decree and at the rate of 6% from the date of decree till the date of realization. Questioning the same, the defendant filed A.S.No.79 of 2010 before the Sub Court, Ambasamuthiram. By judgment and decree dated 17.07.2012, the appeal was dismissed. Challenging the same, this second appeal came to be filed.

4.Though the second appeal was filed way back in November, 2012, only notice was ordered on 22.11.2012 and it has not been formally admitted. The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds and wanted this Court to admit the second appeal by framing appropriate substantial questions of law. He submitted that the defendant never borrowed the suit promissory note amount from the plaintiff. According to him, the parties had undertaken some joint venture and since the same did not fructify, the plaintiff obtained the promissory note under threat and coercion. He also stated that the defendant had given a police complaint in this regard. Since no consideration passed under Ex.A.1/promissory note, he wanted this Court to reverse the decisions of the Court below.

5.Per contra, the learned counsel for the respondent submitted that no substantial question of law has arisen for consideration and wanted this Court to dismiss the second appeal.

6.I carefully considered the rival contentions and went through evidence on record. It must be noted at the out side that the signature found in Ex.A.1/promissory note has been admitted by the appellant herein. The case of the appellant is that suit promissory note was obtained under threat and coercion. Even according to the defendant, the promissory note is dated 12.07.1999. The suit came to be filed only in March 2000. Nothing prevented the appellant/defendant to send a letter or communication demanding return of the promissory note. If the defendant had been subjected to threat and coercion, he could have given a police complaint. On the side of the defendant, no documentary evidence has been adduced. Only after the suit notice/Ex.A.2 was issued, Ex.A.3/reply notice was issued. The defendant had not taken any step in the first instance. On the other hand, the plaintiff had examined one of the attesting witnesses to prove the due execution of the promissory note. Since the signature found in Ex.A.1/promissory note has been admitted, the Court below rightly drew the presumption under Section 118 of the Negotiable Instruments Act. The appellant had not at all rebutted the said presumption. As rightly pointed out by the learned counsel for the respondent, no substantial question of law arises for determination in this second appeal. I do not find any



second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2021

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,
Ambasamuthiram.
- 2.The Additional District Munsif Court,
Ambasamuthiram.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

+1 CC to M/s.R.MANIMARAN, Advocate (SR-17652[F] dated 27/04/2021)

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-17856[F] dated 28/04/2021)

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