



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **13.12.2021**

CORAM

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.240 of 2020

and

C.M.P(MD)No.3064 of 2020

M.Arumugam ... Appellant/Appellant/1st Defendant

Vs.

1.M/s.Venkatachalapathy Banker,
Proprietor,
M.V.P.Mariappan.

... 1st Respondent/1stRespondent/Plaintiff

2.I.Shakthivel

... 2nd Respondent/2nd Respondent/
2nd Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 20.06.2019 passed in A.S.No.19 of 2018 on the file of the Principal District Court, Thoothukudi, confirming the judgment and decree, dated 21.09.2017 passed in O.S.No.232 of 2003 on the file of the Subordinate Court, Thoothukudi.

For Appellant : Mr.M.P.Senthil
For R - 1 : Mr.S.Senthil Sankaranathkumar

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.232 of 2003 on the file of the Subordinate Court, Thoothukudi and in A.S.No.19 of 2018 on the file of the Principal District Court, Thoothukudi, are being challenged in the present Second Appeal.

2.For the sake of convenience, the parties are referred to as, as described before the trial Court.

3.The first respondent / plaintiff has instituted a suit in O.S.No.232 of 2003, on the file of the trial Court for recovery of money directing the defendants to pay a sum of Rs.1,55,700/- and subsequent principal amount of Rs.1,50,000/- along with 12% per annum from the date of plaint till the date of realisation, wherein, the present appellant has been shown as the first defendant and the

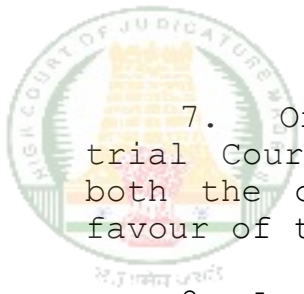


second respondent has been shown as the second defendant.

4. In the plaint, it is averred that the defendants borrowed a sum of Rs.1,50,000/- from the plaintiff on 04.04.2003 and agreed for payment of interest at the rate of Rs.1/- for Rs.100/- and executed a promissory note. From the date of borrowal, the defendants have not paid interest. Inspite of repeated demands made by the plaintiff, the defendants have failed to repay the amount. Further, without the knowledge of the plaintiff, the first defendant voluntarily retired from service from Cargo Handling Labour Pool. The first defendant planned to receive a sum of Rs.10,00,000/-, which come from the said administration and planned to leave from the station and thereby cheated the plaintiff. On knowing the same, the plaintiff has filed the suit to recover the principal amount with interest.

5. The first defendant filed a written statement, denying the allegations made in the plaint, stating that the first defendant had not executed any promissory note and not received any amount, as claimed by the plaintiff. The signature in the promissory note does not belong to him. The first defendant, after filing the written statement, has filed additional written statement, wherein, he had admitted that he had received a sum of Rs.30,000/- only on 10.09.2001 from the plaintiff and agreed to pay 18% interest for the same, for which, the plaintiff has taken cheque leaves from the first defendant and on 24 occasions, the plaintiff had withdrawn money from the first defendant's Bank account, through his agents namely Selvaraj, Maharaj, Namasivayam and Rajendraprasad. Further, on 20.06.2003, one Rajendrapasad had taken a sum of Rs.45,000/- from the account of the first defendant, for which, he has given a complaint against him before the Superintendent of Police, Thoothukudi, on 04.07.2003. Since no action has been taken by the Superintendent of Police, Thoothukudi, he has approached the High Court and the Supreme Court. The plaintiff has taken seven cheque leaves, bearing Nos.915553 to 915560 and immediately, the first defendant has sent 'stop payment' instruction to the Bank by way of telegram on 25.07.2003. The plaintiff issued notice under Section 138 of the Negotiable Instrument Act, to pay a sum of Rs.2,50,000/-, failing which, he will initiate legal action. The cheque leaf bearing No.915555, which is one of the cheque taken away by the plaintiff, by way of extortion. It is alleged that on 18.12.2003, the plaintiff had requested the first defendant not to appear before the Vigilance enquiry held by the High Court and if he do not appear as per request, he will withdraw the case suit in O.S.No.232 of 2003 and therefore, prayed for dismissal of the suit.

6. Before the trial Court, on the side of the plaintiff, the plaintiff himself was examined as P.W.1 and Exs.A1 to A5 were marked. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and Exs.B.1 to B.21 were marked.



7. On the basis of the rival pleadings on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit in favour of the first respondent / plaintiff.

8. Aggrieved by the Judgment and decree passed by the trial Court, the first defendant as appellant, had preferred an Appeal Suit in A.S.No.19 of 2018 on the file of the first Appellate Court and the first Appellate Court dismissed the appeal confirming the Judgment and Decree passed by the trial Court.

9. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the first defendant as appellant.

10. The learned counsel appearing for the appellant / first defendant would submit that the very execution of promissory note under Ex.A.1, the alleged pronote, has been disputed in the written statement and no tangible steps was taken by the plaintiff to prove the due execution of Ex.A.1, either for seeking expert opinion for comparing the signature. The Courts below erred in law in not advertng to the documentary evidence under Ex.B.10 to Ex.B.13, which is the reason and motive for filing the present suit by fraudulently creating the disputed pro-note under Ex.A.1. The Courts below failed to advert the other connected proceedings under Ex.B.1 to Ex.B.9 as well the first defendant in those proceedings. The Courts below erred in law in not advertng that the plea raised in the additional written statement has been substantiated on the basis of Ex.B.14 to Ex.B.21 and the Courts below have completely brushed aside those documents absolutely without considering the very purpose for which the documents were filed.

11. The learned counsel appearing for the first respondent / plaintiff would submit that on 04.04.2003, the defendants had obtained a sum of Rs.1,50,000/- from the plaintiff with interest at the rate of Rs.1/- for Rs.100/- and executed a promissory note to that effect. From the date of borrowal, the defendants have not paid interest. In spite of repeated demands made by the plaintiff, the defendants have failed to repay the amount and he dragged on the repayment and therefore, he filed the suit.

12. Heard the learned counsel appearing for the appellant / first defendant and the learned counsel for the first respondent / plaintiff and also perused the materials available on record.

13. It is an admitted case of the plaintiff that on 04.04.2003, the defendants had obtained a sum of Rs.1,50,000/- from the plaintiff with interest at the rate of Rs.1/- for Rs.100/- and executed a promissory note to that effect. From the date of borrowal, the defendants have not paid interest. In spite of the repeated demands made by the plaintiff, the defendants have failed



to repay the amount and he dragged on the repayment and therefore, he filed the suit. According to the first defendant, the first defendant had not executed any promissory note and signature in the pronote does not belong to him.

14. The first defendant, after filing the written statement, has filed additional written statement, wherein, he had admitted that he had received a sum of Rs.30,000/- only on 10.09.2001 from the plaintiff and agreed to pay 18% interest for the same, for which, the plaintiff has taken cheque leaves from the first defendant and on 24 occasions, the plaintiff had withdrawn money from the first defendant's Bank account, through his agents namely Selvaraj, Maharaj, Namasivayam and Rajendraprasad. Further, on 20.06.2003, one Rajendrapasad had taken a sum of Rs.45,000/- from the account of the first defendant, for which, he has given a complaint against him before the Superintendent of Police, Thoothukudi, on 04.07.2003. Since no action has been taken by the Superintendent of Police, Thoothukudi, he has approached the High Court and the Supreme Court. The plaintiff has taken seven cheque leaves, bearing Nos.915553 to 915560 and immediately, the first defendant has sent 'stop payment' instruction to the Bank by way of telegram on 25.07.2003. The plaintiff issued notice under Section 138 of the Negotiable Instrument Act, to pay a sum of Rs.2,50,000/-, failing which, he will initiate legal action. The cheque leaf bearing No.915555, which is one of the cheque taken away by the plaintiff, by way of extortion.

15. On a perusal of the materials available on record, it is seen that the trial Court, after taking note of the fact that the first defendant stand in not raising any disputes about those 24 cheques when encashed, came to the conclusion that the defendants have not come to the Court with clean hands and misrepresented the Court and thereby rightly decreed the suit. The first defendant having raised the plea of 24 cheques have been encashed, in order to establish the said fact, he ought to have produced his bank statement of account, but he has not produced his bank statement of account to prove encashment of 24 cheques. The first defendant has admitted the execution of pronote, but denied receiving a sum of Rs.1,50,000/- towards consideration. The trial Court also made comparison of the signature of the first defendant with the admitted signatures and decreed the suit.

16. The plaintiff has taken steps to examine the witness, who signed in Ex.A.1-pronote as witness, but as the whereabouts of that witness was not known, the attesting witness was not examined on the side of the plaintiff. The plaintiff also taken steps to send Ex.A.1-pronote to handwriting expert by filing I.A.No.986 of 2014 before the trial Court to prove the signature found in Ex.A1-pronote is the first defendant's signature. However, the trial Court has dismissed the said petition on the ground that as per the Indian Evidence Act, the Court has got power to compare the disputed



signature found in Ex.A.1-pronote with the admitted signature of the first defendant. Accordingly, the trial Court compared the signature found in Ex.A.1 with the admitted signature of the first defendant and came to proper conclusion. As noted earlier, the courts below, on appreciation of the oral and documentary evidence on record, accepted the case of the plaintiff and decreed the suit and I have no reason to interfere with the same.

17. There is no answer from the first defendant what was the further action taken after issuance of 'stop payment' to the bank. What is the action taken for allowing the agents to encash the cheques. When there is no answer, whether he has appeared before the High Court for enquiry or not and the results not known, this Court is not inclined to accept the case as projected by the defendants.

18. For the reasons aforesaid, this Court is of the considered view that no substantial questions of law has been made out by the appellant/first defendant to interfere with the well considered judgments and decrees rendered by the Courts below. Accordingly, the Second Appeal is dismissed, confirming the Judgment and Decree, passed in A.S.No.19 of 2018 by the Principal District Court, Thoothukudi, confirming the judgment and decree, dated 21.09.2017 passed in O.S.No.232 of 2003 by the Subordinate Court, Thoothukudi. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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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 Principal District Court,
Thoothukudi.

2.The Subordinate Court,
Thoothukudi.



3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.S.SENTHIL SANKARA NATHA KUMAR, Advocate (SR-38961[F]
dated 15/12/2021)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-38570[F] dated 14/12/2021)

**S.A(MD)No.240 of 2020
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RD(6.01.2022) 6P 7C