



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

A.S. (MD)No.151 of 2018

and

C.M.P. (MD)No.8666 of 2018

P.V.Karthikeyan

... Appellant/Defendant

Vs.

P.Singaram

... Respondent/Plaintiff

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code read with Order 41 and 41-A of Civil Procedure Code, against the judgment and decree dated 11.09.2015 in O.S.No.66 of 2012 on the file of the learned Principal District Judge, Pudukkottai.

For Appellant : Mr.RM.Sivakumar

For Respondent : Mr.N.Balakrishnan

JUDGEMENT

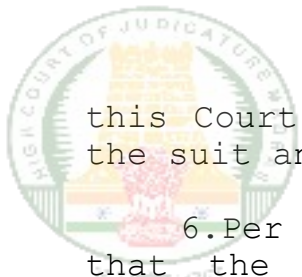
The defendant in O.S.No.66 of 2012 on the file of the Principal District Court, Pudukkottai is the appellant in this appeal suit. The case of the plaintiff is that the defendant borrowed a sum of Rs.11,00,000/- from him on 30.04.2010 and executed the suit promissory note. The defendant had agreed to repay the same at the rate of 12% per annum. Even though the plaintiff made several demands, the defendant did not honour his obligation. The plaintiff issued suit notice dated 25.06.2010. The said suit notice was returned unserved. Therefore, the plaintiff filed O.S.No.66 of 2012 on 03.10.2012. The defendant filed his written statement denying the plaint averments. The Court below framed the necessary issues.

2.The plaintiff examined himself as P.W.1 and the attestors namely., Shanmugam and Rajendran as P.W.2 and P.W.3 and the plaintiff marked Exs.A1 to A5. The defendant examined himself as D.W.1 and marked Ex.B1.

3.The learned Trial Judge after consideration of the evidence on record decreed the suit by the impugned judgment and decree dated 11.09.2015. Questioning the same, this appeal suit came to be filed.

4.The point for consideration is whether the plaintiff had proved the due execution of Ex.A1/promissory note and whether the impugned judgment and decree is liable to be interfered with.

5.The learned counsel for the appellant reiterated the contentions set out in the memorandum of grounds and called upon



this Court to reverse the impugned judgment and decree and dismiss the suit and allow this appeal suit.

6.Per contra, the learned counsel for the respondent submitted that the impugned judgment and decree does not call for any interference.

7.I carefully considered the rival contentions and went through the evidence on record.

8.The first contention urged by the learned counsel for the appellant is that on 30.04.2010, he was working in his office at Kulithalai in Karur District. The case of the plaintiff is that the borrowal took place at Thirukkokarnam at Pudukkottai District. The distance between the two places is fairly substantial and therefore, according to the appellant's counsel, the plaintiff's claim that on the said date, the defendant had borrowed the said amount is not probable. In support of his defence that he was working at Kulithalai on the said date, the defendant marked Ex.B1 certificate issued by his immediate superior. There is some merit in the contention of the appellant's counsel that the Court below ought not to have casually brushed it aside on the ground that the defendant could have maneuvered to obtain the same. Ex.B1 is a certificate issued by an official and therefore, it could not have been casually characterized as false. However, I have to reject this argument of the learned counsel for the appellant for the simple reason that in the cross examination of P.W.1/plaintiff, the time of borrowal had not been elicited. It is not in dispute that one can reach Pudukkottai from Kulithalai within about two and half hour. Therefore, based on Ex.B1, one cannot come to the conclusion that the plaintiff's version had been shown to be improbable. If during cross examination, the plaintiff had admitted that the transaction between the two had taken place during working hours, then Ex.B1 could have been pressed into to service to falsify the said claim. The cross examination of P.W.1 was not conducted on those lines. Therefore, this contention of the appellant's counsel is bereft of any merit.

9.The second contention urged by the learned counsel for the appellant is that there is serious discrepancy between the testimony of P.W.1 and the attesor/P.W.3. According to P.W.1, he had handed over the amount to the defendant in his marriage hall whereas the attesor had stated that the amount was handed over in the house of P.W.1. In my view, there is no discrepancy between the two testimonies. A reading of Ex.A1/promissory note shows that the plaintiff/Singaram was residing in the marriage hall campus. In fact in the plaint also the residential address of the plaintiff has been mentioned as Sumankali Thirumana Mandapam. Therefore, when the plaintiff is residing within the marriage hall campus, P.W.3 was perfectly right in stating that the transaction had taken place at the plaintiff's residence. Therefore, this contention of the



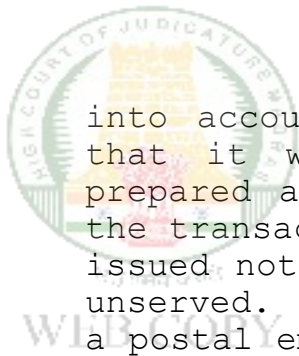
appellant's counsel is also lacking in merit.

10.The learned counsel for the appellant would point out that there are material alterations in the promissory note. In fact P.W.1 had also admitted the same. However, the Court below had noted that the alteration is found only in figures and not in words. Therefore not much turns on this contention also. This is because even according to the appellant, he had signed in blank promissory note. Section 20 of Negotiable Instruments Act gives authority to the holder of the negotiable instrument to fill up the body of the promissory note. There is only one restriction. The authority is given to fill up to the extent of liability of the person who had signed the promissory note. Since the Trial Court had correctly noted that in the body of the promissory note the figure has been correctly mentioned, I do not find any ground to accept this contention also.

11.The real issue is whether the defendant had shown on a balance of probabilities that the plaintiff could not have advanced a sum of Rs.11,00,000/- to him on 30.04.2010 as claimed by him.

12.Though the learned counsel for the appellant had seriously challenged the capacity of the plaintiff to lend this amount, it has been brought out in evidence that the plaintiff had retired as an employee of public transport corporation only a year back and that he was possessed of sufficient funds. There is also no dispute that the plaintiff is the owner of a marriage hall. He is also having a tyre sales business in Trichy as evidenced by Ex.A5. Even though these are strong circumstances in favour of the plaintiff that he had the wherewithal to lend a sum of Rs.11,00,000/-, the plaintiff in the cross examination had admitted that he borrowed from two or three persons as a hand loan and gave it to the plaintiff. The plaintiff had not stated that he was very much having the said funds with him and when the defendant asked for hand loan, he gave the same to him. The plaintiff stated that he did not withdraw it from his bank account. He categorically admitted that he had taken the said amount from two or three persons ten to fifteen days prior to 30.04.2010 and when the defendant approached him, he was able to give the amount.

13.The defendant is working as peon in postal department. He was virtually in the last grade of service and his monthly salary is also not substantial. Therefore, it is difficult to believe that a huge sum of Rs.11,00,000/- could have been advanced to the defendant even without taking any security. The plaintiff admits that he is an income tax assessee. However, this transaction has not been reflected in the tax returns. Of course as rightly pointed out by the learned counsel for the respondent that mere non-reflection in the tax returns cannot lead the Court to come to the conclusion that the transaction did not take place. However, that



into account. A mere look at the suit promissory note indicates that it was filled up later and it was not contemporaneously prepared at the time of transaction. According to the plaintiff, the transaction took place on 30.04.2010 but then he is said to have issued notice on 25.06.2012 (Ex.A2). The said notice was returned unserved. The stand of the plaintiff is that since the defendant is a postal employee, he managed to get the notice returned. The suit was filed immediately thereafter. It is improbable that for more than two years and two months, the plaintiff kept quiet. That is another reason to doubt the case of the plaintiff. I have to hold that on a balance of probabilities, the defendant had demonstrated that the suit transaction as claimed by the plaintiff did not take place. Therefore, I have to necessarily interfere with the judgment and decree passed by the Trial Court and it is accordingly set aside.

14. But that cannot be the end of the matter. The defendant had admitted that he borrowed a sum of Rs.1,00,000/- on 01.09.2007 and a further sum of Rs.1,00,000/- on 01.09.2008. He also admitted that he had given as many as 52 unsigned cheques to the plaintiff. The defendant is only aged about 48 years as on date. He appears to have some ten more years of service. The transactions had taken place way back in the years 2007 and 2008. Considering the long years of service, which the defendant would be having, the plaintiff might have been confident of recovering the same in due course, since a government employee cannot afford to have his cheque dishonored.

15. The learned counsel for the appellant informs the Court that a sum of Rs.2,40,000/- has been recovered from his salary so far. After getting instructions from the client, the learned counsel for the appellant made a statement that inclusive of the costs awarded by the Trial Court, he will pay a further sum of Rs.7,00,000/- to the defendant. In my view this would definitely meet the ends of justice. The judgment and decree passed by the trial Court is set aside. This appeal is partly allowed by directing the appellant to pay a further sum of Rs.7,00,000/- to the respondent/plaintiff. The time for such payment is twelve weeks. The said amount will carry interest at the rate of 12% per annum thereafter. The plaintiff is at liberty to withdraw the amount of Rs.2,40,000/- already recovered from the appellant's salary. No costs. Consequently, connected miscellaneous petition is closed.

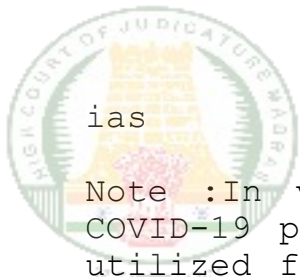
Sd/-

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:

The Principal District Court,
Pudukkottai.

Copy to:

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

+1 CC to M/s.R.M.Sivakumar Advocate (SR-21105[F] dated 02/07/2021)

A.S. (MD) No.151 of 2018
02.07.2021

VR(CO)
KB(30.07.2021) 5P 5C