



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

A.S.No.214 of 2019

and

C.M.P.(MD)No.11299 of 2019

WEB COPY

1.S.P.Panchavarnam

2.S.P.Senthil Nehru

... Appellants / 1 & 2 Defendants

-Vs-

R.Jawahar

... Respondent / Plaintiff

PRAYER: Appeal filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 13.09.2019 passed by the IV Additional District Judge, Madurai in O.S.No.129 of 2015.

For Appellants

: Mr.D.Rameshkumar

For Respondent

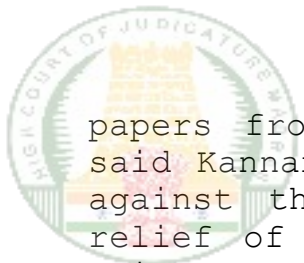
: Mrs.K.R.Shivashankari

JUDGMENT

The defendants in O.S.No.129 of 2015 on the file of the fourth Additional District Judge, Madurai, are the appellants in this appeal.

2. The respondent herein namely Thiru.R.Jawahar filed the said suit for recovering a sum of Rs.19,35,000/- from the appellants with interest at the rate of 6% per annum. The appellants are the mother and son. According to the respondent, they approached him on 02.02.2013 through one Murugan and borrowed a sum of Rs.15,00,000/-. They executed a promissory note in the presence of Maruthu Pandi, Murugan and Sathish Kumar. The appellants failed to make any repayment either towards principal or interest. When the respondent approached the appellants on 15.06.2015 and demanded the money back, the appellants refused to comply with the said demand. Left with no other option, he filed the said suit.

3. The appellants filed the written statement controverting the plaint averments. They pleaded that they never borrowed any money from the respondent. The respondent is an utter stranger to them. The appellants came out with a version that they had financial dealings with one Kannan and his wife Amuthu and that the said Kannan and Amuthu had taken several documents and also signed blank



papers from them. Dispute arose between the appellants and the said Kannan's family. The appellants even gave a police complaint against them. While so, O.S.No.894 of 2013 was filed for the relief of specific performance against the appellants. The said suit came to be dismissed on 02.07.2015. On the said date, Kannan is said to have challenged the appellants that he would not spare them and that he would file another case through a third party and see to it that the house property of the appellants is taken by him.

4.The defendants pleaded that the plaintiff had lent his name to oblige his friend Kannan and based on the signed blank pro-note given by the appellants to the said Kannan, the present suit had been instituted. Based on the divergent pleadings, the learned trial Judge framed the necessary issues. The plaintiff examined himself as P.W.1 and the attestors Murugan and Sathish Kumar as P.W.2 and P.W.3. Ex.A1 to Ex.A11 were marked. The first appellant Panchavarnam examined herself as D.W.1 and marked Ex.B1 to Ex.B8. After a consideration of the evidence on record, the learned trial Judge, by the impugned judgment and decree dated 13.09.2019 decreed the suit as prayed for. Challenging the same, this appeal has been filed.

5.The point that arises for consideration is whether the appellants had rebutted the presumption raised against them under Section 118 of the Negotiable Instruments Act and whether they have on a balance of probabilities shown that Ex.A1-pro-note dated 02.02.2013 was not executed in favour of the respondent and whether there was failure of consideration. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds. He also filed his written argument. He called upon this Court to reverse the impugned judgment and decree and dismiss the suit.

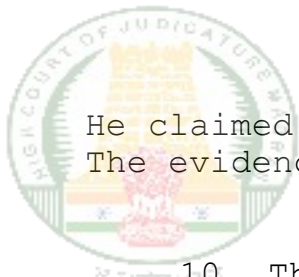
6. Per contra, the learned counsel appearing for the respondent submitted that the respondent / plaintiff had proved the due execution of Ex.A1-pro-note. The appellants have admitted the signature found on Ex.A1. The respondents herein examined not only himself as P.W.1, but also the attesting witnesses Murugan as P.W.2 and scribe Sathish Kumar as P.W.3. In view of the above, the trial Court rightly raised presumption under Section 118 of the Negotiable Instruments Act against the appellants. The defendants have miserably failed to rebut the said presumption. They had of-course come up with a fanciful theory that they had dealings with one Kannan and that they had handed over signed blank documents and that in view of the break down of the relationship between the appellants and the said Kannan, the said Kannan had engineered filing of the present suit through the plaintiff. Except making allegations of sweeping and general nature, the appellants have not at all proved their defence.



7. The respondent herein was working as District Employment Officer. He had retired from service. By marking Ex.A2 to Ex.A11, the respondent had convincingly established that he had the wherewithal to lend the suit amount. The financial capacity of the respondent is beyond question. According to the learned counsel appearing for the respondent, the Court below had correctly appreciated the evidence on record and applied the relevant legal principles and rightly decreed the suit. According to her, the impugned judgment and decree does not call for any interference. He pressed for dismissal of the appeal.

8. I carefully considered the rival contentions and went through the evidence on record. The point for consideration is whether the defendants have rebutted the presumption raised against them under Section 118 of the Negotiable Instruments Act and shown on a balance of probabilities that it was not executed in favour of the plaintiff? It must be stated at the very outset that signature found in Ex.A1-pro-note has not been disputed. The defence of the appellants is that this pro-note was given in a signed blank form to one Kannan and since the said Kannan had lost the suit for specific performance, he engineered the filling of the present suit through the respondent herein. This defence was taken by the appellants at the earliest point of time. The suit was filed on 14.07.2015. The written statement was filed in the very next month. The filing of the suit was not preceded by any notice from the respondent herein. In the plaint, it had been averred that the pro-note was executed by the appellants in the presence of Maruthu Pandi, Murugan and R.Sathish Kumar. There is nothing on record to indicate that the said Sathish Kumar had anything to do with Kannan. Yet, a firm defence had been taken in the written statement invoking Kannan. In the course of cross examination, it had been categorically brought out that while the respondent herein was employed as District Employment Officer, Kannan was working as an employee in the District Employment exchange. It had also been brought out that the said Sathish Kumar was none other than the son of Amutha/ Kanna's wife born through her first husband Ramasamy. In the cross examination of P.W.3, it had been elucidated that the address of P.W.3-Sathish Kumar as set out in the pro-note was false. Sathish Kumar is actually a resident of Goripalayam. But in the pro-note, he had mentioned that he was residing at Door No.81, Nehru Street, Jaihindpuram, Madurai-11. The appellants invoked the provisions of Right to Information Act and elucidated from Madurai Corporation that in the said address, one Muthukrishnan S/o. Chelliahpillai is residing. The reply given by the Madurai Corporation was marked as Ex.B7.

9. P.W.3 in his evidence admitted that the plaintiff was also employed in the employment exchange and that when he casually visited the plaintiff's house, he was asked to write Ex.A1-pro-note.



He claimed that he knew the respondent Jawahar through his son Raja. The evidence of P.W.3 does not inspire my confidence at all.

10. The respondent herein examined himself as P.W.1. When he was questioned, he denied any knowledge of Kannan initially. Only later, he conceded that he knew Kannan. When his financial capacity was questioned, he admitted that the retirement benefits would come to around 13 to 14 lakhs. It is improbable that the respondent herein could have advanced a sum of Rs.15,00,000/- in one lumpsum to the appellants herein. The appellants herein were not at all known to the respondent earlier. The respondent claims that one Murugan introduced them. Murugan was working only as lorry driver in the Madurai Corporation. When he was questioned further, the respondent was not aware of the details of the said Murugan also. Admittedly, no security was taken from the appellants. The plaintiff was a gazetted officer and he was obviously an IT assessee. The transaction in question is also not reflected in the IT returns. He also admitted that he was not a money lender. Even though according to the respondent the loan was given on 02.02.2013. But till the filing of the suit in July 2015, he had not issued a single notice calling upon the appellants to repay the amount. When the entire life time savings of the respondent had been given to the appellants, he would not have kept quiet. The suit was also not preceded by notice. All these circumstances have been elucidated by the appellants by cross examining the witnesses for the plaintiff. By eliciting the aforesaid answers, the presumption drawn against the appellants under Section 118 of the Negotiable Instrument Act had been on a balance of probabilities rebutted. The Court below had miserably failed to appreciate the defence projected by the appellants herein. When specific allegations had been made invoking the name of Kannan and when P.W.3 Sathish Kumar is none other than the son of Amutha/ Kanna's wife born through her first husband Ramasamy, the Court below ought to have subjected the plaintiff's case to a closer scrutiny. But the Court below had mechanically accepted the case of the plaintiff and taken his version as gospel truth. It is true that the suit has been filed on the strength of a pro-note. The defendants have not disowned the signatures found in the pro-note. The persons shown as attestors and scribe have been examined. That alone would not mean that the execution of Ex.A1-pro-note had been established. On this sole ground, the Court below had chosen to accept the case of the plaintiff and decreed the suit as prayed for without taking note of the defence version.

11. For the reasons set out above, I hold that the defendants have clearly rebutted the presumption raised under Section 118 of the Negotiable Instruments Act. The defendants have established that the suit pro-note was not executed by them in favour of the plaintiff. The judgment and decree passed by the Court below is set aside. The suit is dismissed. The appeal is allowed. No costs.



Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The IV Additional District Judge, Madurai.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.R.SHIVA SHANKARI, Advocate(SR-25560[F] dated
06/08/2021)

+1 CC to M/s.D.RAMESH KUMAR, Advocate(SR-25697[F] dated
09/08/2021)

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