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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1113 of 2010

and

M.P. No.1 of 2010

P. Sundareswar

...Appellant/Defendant

Vs.

Pinky Jain

... Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 16.11.2009 passed in A.S. No.251 of 2007 on the file of the Additional District & Sessions Court (Fast Track Court No.III), Chennai, reversing the decree and judgment dated 25.10.2006 passed in O.S. No.3107 of 2003, on the file of the XIII Assistant City Civil Court, Chennai.

For Appellant : Mr. P. Valliappan

For Respondent : Mr.Sandeep S. Sha
for M/s. Sha & Sha

JUDGMENT

The appellant is the defendant in O.S. No.3107 of 2003 on the file of the XIII Assistant Judge, City Civil Court, Chennai. The plaintiff filed the said suit for recovery of a sum of Rs.75,933/- due on a pro-note together with interest @ 30% per annum on the principal of Rs.40,000/- from the date of plaint till the date of realisation.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.



3.The case of the plaintiff is that the defendant borrowed a sum of Rs.40,000/- on 10.06.2000 from him and executed a pro-note (Ex.A2) promising to repay the principal together with interest at the rate of 30% per annum on his demand or to his order. His further contention is that though it was agreed between the parties that the interest for the loan amount should be paid in advance for every three months period, the defendant did not pay any amount either towards the principal or interest and all her efforts to get the money back from the defendant went in vein. The plaintiff, therefore, issued a notice dated 16.05.2003 (Ex.A3) to the defendant demanding him to pay the amount due under the pro-note Ex.A2. The defendant sent a reply dated 27.05.2003 (Ex.A4) which according to the plaintiff contained false allegations. The plaintiff also sent a rejoinder dated 02.06.2003 (Ex.A5) and requested the defendant to go over to the office of her counsel to inspect the pro-note. But the defendant did not turn up. He did not also come forward to make good the payment. She therefore, filed the suit for recovery of the amount due under Ex.A2.

4.The suit was resisted by the defendant on the following grounds:

- i. The defendant did not borrow any amount from the plaintiff.
- ii.The suit pro-note Ex.A2 is a forged document.
- iii.One Sha Sanjaykumar Changanlal who is a close relative of the plaintiff instigated the plaintiff to file the suit.
- iv.The defendant sent a reply dated 16.06.2003 to the rejoinder of the plaintiff demanding the plaintiff to send the pro-note to him so as to enable the latter to send the same to forensic lab for ascertaining the authenticity of the document. However, the plaintiff did not take any steps in this regard.

He therefore prayed for the dismissal of the suit.

5. On the basis of the above pleadings the trial court framed the following charges :

- i. Whether the plaintiff is entitled for the suit claim as prayed for?
- ii.To what relief is the plaintiff entitled?



6. In the trial court the plaintiff examined her husband as P.W.1 and marked Ex.A1 to Ex.A5. No oral / documentary evidence was adduced on the side of the defendant. The handwriting expert was examined as C.W.1 and his opinion was marked as Ex.C1.

7. The trial court after full contest dismissed the suit filed by the plaintiff vide its decree and judgment dated 25.10.2006 by observing that

- a) When the signature on the suit pro-note was denied by the defendant, the burden of proof lies on the plaintiff to prove the execution of the pro-note by the defendant and in this case the plaintiff had compared the signature through a person who is not authorised by the Government to compare the signatures.
- b) The handwriting expert's opinion is also only with regard to three letters, namely, "p", "s" and "u".
- c) The plaintiff did not examine herself but examined only her husband.
- d) When the signature found on Ex.A2 is compared with Ex.B2 series marked in O.S.No.60 of 2003 which was filed by one of the family members of the plaintiff against the defendant before the same Court (XIII Assistant Court, City Civil Court, Chennai), it is clear that the signature found on the suit pro-note is not that of the defendant.

The trial court, therefore, dismissed the suit.

8. In the appeal in A.S.No.251 of 2007 filed by the plaintiff, the first appellate court reversed the findings recorded by the trial court and decreed the suit filed by the plaintiff vide its decree and judgment dated 16.11.2009 with the following observations :

- i. The evidence of P.W.1 and C.W.1 compared with the suit pro-note (Ex.A2) clearly shows that the pro-note is true and valid.
- ii. The defendant did not get into the witness box to prove the contents of his written statement.
- iii. The defendant neither perused the suit pro-note as requested by the plaintiff in her rejoinder (Ex.A5) nor filed an application before the trial court to inspect the suit pro-note.
- iv. Under Order XXVI Rule 10 CPC expert's opinion is admissible and no law prohibits a private handwriting expert from comparing the signatures.



9. Now the present second appeal is filed on the following substantial questions of law:

1. When the handwriting expert was not authorised to give his report under Ex.C1 and when the report was in any event not conclusive evidence about the signature in question, whether the lower appellate court is correct in law in decreeing the suit on the said basis alone?
- ii. When as per the provisions of the Tamilnadu Money Lenders Act, 1957 r/w Section 3 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003, a money lender cannot charge more than 9% interest per annum on secured loans and 12% interest on unsecured loans, whether the respondent is entitled to claim 30% interest per annum and whether the lower appellate court is justified in granting decree with interest @ 30% per annum ?

10. Mr.P.Valliappan, learned counsel for the appellant contended that the defendant did not execute the suit pro-note and that the decision of the first appellate court, which is mainly based on the report of the handwriting expert (Ex.C1) is erroneous especially when the plaintiff has not proved the execution of the suit pro-note (Ex.A2). He would further contend that on similar facts between the two parties, this Court had dismissed the appeal in S.A.No.1156 of 2008 filed by the plaintiff and therefore, the present appeal should be allowed.

11. Per contra, Mr.Sandeep S. Sha, learned counsel appearing for the respondent contended that the trial court having sent the documents to a private handwriting expert, cannot subsequently hold that his report is not acceptable since the expert is not a Government authorised one. He further drew the attention of this Court to the signature of the defendant on the suit pro-note and contended that only three letters "p", "s" & "u" are visible and the handwriting expert (C.W.1) had given his opinion after comparing the signatures found on four pro-notes marked in O.S.No.60 of 2003 before the same Court. It is also his contention that the first Appellate Court had given cogent reasons before concluding that the suit pro-note is true and valid. According to him, the facts in S.A.No.1156 of 2008 are different from the present case since it was observed in that case that the plaintiff/appellant contradicted her own versions with regard to the execution of the pro-note. His contention is



also that the trial court after rejecting the expert's opinion, went ahead with the process of comparing the signature on its own and in this regard the decision of the Hon'ble Supreme Court in O.Bharathan Vs K.Sudhakaran reported in CDJ 1996 SC 397 was relied upon wherein it is held that it is not advisable for a Judge to take up the task of comparing the admitted handwriting with the disputed one to find out whether the two agree with each other and the prudent course is to obtain the opinion and assistance of an expert.

12.In the instant case P.W.1 is the husband of the plaintiff. He had deposed that the defendant borrowed a sum of Rs.40,000/- from the plaintiff and executed Ex.A2 in his presence. The plaintiff also filed a petition before the trial Court seeking the assistance of a handwriting expert and the same was allowed. It is pertinent to point out that the defendant did not file any appeal / revision against the said orders. Therefore, the defendant cannot be permitted to contend now that since Mr.Manonmanimaran (C.W.1) is a private handwriting expert his report Ex.C1 cannot be considered.

13. As rightly pointed out by the learned counsel for the respondent that only three letters namely "p", "s" & "u" are visible in the signature of the defendant. The handwriting expert (C.W.1) had compared the signature of the defendant with his admitted signatures and had come to a definite conclusion that Ex.A2 was signed by the defendant. It is also to be pointed out that the defendant did not get into the witness box to prove all the allegations mentioned in his written statement. It was the defendant who contended that his signature was forged on the suit pro-note and that the suit was filed at the instigation of one Sha Sanjaykumar Changanlal. He did not state the facts pleaded in the written statement on oath in the trial court and avoided the witness box so that he may not be cross examined. This, by itself, is enough to reject the claim of the defendant that his signature was forged on suit pro-note. Apart from this the defendant also did not go to the office of the plaintiff's counsel where he was permitted to peruse the suit pro-note as his seen from the rejoinder sent by the plaintiff. Even in the trial court the defendant did not file any application to inspect the suit pro-note before filing his written statement. It is also contended by the defendant that since he stopped having any money transaction with the plaintiff she had filed the suit against him by pressing into service a forged document. At the same breadth, it is contended by him in his written statement that the plaintiff is a total stranger to him and he had never met her before.



14. Once the plaintiff proves the execution of the pro-note by adducing acceptable evidence, the burden shifts on to the defendant to prove that the pro-note was not supported by consideration. As already observed, the defendant did not get into the witness box to prove his contentions in the written statement. The first appellate court, in fact, had analysed the entire evidence on record and had come to a conclusion that the suit pro-note is true, valid and supported by consideration. By no stretch of imagination, it can be said that the observations of the first appellate court are perverse. As far as S.A.No.1156 of 2008 is concerned, though the transaction was between the same parties and on the same date, the plaintiff did not prove the execution of the pro-note in that case. The transaction in the present case is altogether is different from the one in S.A.No.1156 of 2008. It was also a concurrent finding recorded by both the courts below after appreciating the evidence on record. It is trite law that Tamilnadu Money Lenders Act, 1957 and the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003, would not apply to money lenders, who advance loans on the basis of negotiable instruments exceeding Rs.10,000/-.

15. In view of the reasons stated above the substantial questions of law are answered against the appellant. The second appeal fails and deserves to be dismissed.

16. In the result,

- i. the second appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. the decree and judgment dated 16.11.2009 passed in A.S. No.251 of 2007 on the file of the Additional District & Sessions Judge (Fast Track Court No.III), Chennai, is upheld and
- iii. the decree and judgment dated 25.10.2006 passed in O.S. No.3107 of 2003, on the file of the XIII Assistant Judge, City Civil Court, Chennai, is set aside.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar



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To

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1.The Additional District & Sessions Court
(Fast Track Court No.III),
Chennai.

2. The XIII Assistant City Civil Court,Chennai,.

3. The Section Officer,
VR Section, High Court, Madras.

+lcc to M/s.Shah & Shah, Advocate SR.No.14686

S.A.No.1113 of 2010

SV I (CO)
CB(11/03/2022)