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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.165/2022 & CMP.No.3296/2022

Sathiyamoorthi .. Appellant/Appellant/Defendant

Vs.

Usha .. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal preferred under 100 of CPC against the judgment and decree dated 23.10.2021 passed in AS.No.05/2021 on the file of the learned Principal District Court, Tiruvannamalai in confirming the judgment and decree dated 30.04.2019 passed in OS.No.207/2011 on the file of the Principal Sub Court, Tiruvannamalai.

For Appellants : Mr.P.Mani

JUDGMENT

- (1) The unsuccessful defendant before the Courts below, is the appellant in this Second Appeal.
- (2) The respondent herein, as plaintiff, filed a suit in OS.No.207/2011 on the file of the learned Principal Subordinate Judge, Tiruvannamalai, for recovery of money on the basis of a Pronote stated to have been executed by the defendant in favour of the plaintiff for a sum of Rs.1,00,000/- on 24.11.2008. The suit is for recovery of a sum of Rs.1,35,800/-, being the principal sum of Rs.1,00,000/- with interest @ 12% per annum from the date of Pronote.
- (3) The suit was contested by the defendant by filing a written statement on the ground that the defendant borrowed a sum of Rs.50,000/- from the plaintiff's husband and executed a blank Pronote and that the plaintiff, after the death of



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- her husband, has fabricated the Pronote that was signed by the defendant as if a sum of Rs.1,00,000/- was borrowed by the defendant from the plaintiff. In the written statement, a specific stand was taken that the defendant had never met the plaintiff.
- (4) The Trial Court, after framing an issue whether the suit Pronote is true, valid and enforceable, found that the plaintiff has proved the execution of the document-Ex.A1 [Pronote] by examining herself as PW1 and two others as Pws.2 and 3. The Trial Court also found that the plaintiff has proved the passing of consideration through the evidence of PWs.2 and 3. An issue was also framed whether the suit Pronote was forged with the available signature given in the blank Pronote. It is to be noted that there is no specific denial in the written statement about the signature of the defendant found in the suit Pronote-Ex.A1. However, the defendant during the course of argument, developed the case that the said Pronote itself is a forged one. Therefore, the Trial Court went into the issue whether the Pronote is a forged one or not, as contended by the defendant and rendered a finding as against the defendant considering the entire evidence on record. The Trial Court has specifically held that there is a specific admission by the defendant with regard to the execution of the suit Pronote. After elaborately discussing all the issues, in the light of the pleadings and evidence adduced on either side, the suit was decreed by the Trial Court. Aggrieved by the judgment and decree of the Trial Court, the defendant preferred an appeal in AS.No.5/2021 on the file of the learned Principal District Judge, Tiruvannamalai.
- (5) The Lower Appellate Court also considered the issue independently and found that the plaintiff has proved not only the execution of Pronote, but also passing of Rs.1 lakh as consideration. The case of the defendant that the signed Pronote was fabricated by the plaintiff, was disbelieved by the Lower Appellate Court. The plaintiff has examined not only the attester, but also the scribe of the document. Both witnesses have spoken to the execution of Pronote and passing of consideration consistently.
- (6) It is to be noted that in the written statement, the defendant has specifically admitted his signature in the blank Pronote which according to him, was concocted by the plaintiff by showing a sum of Rs.1 lakh. The defendant admits borrowal of Rs.50,000/-. The defendant has pleaded and deposed that he had never met the plaintiff. However, from the evidence adduced on either side, the Courts below



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have recorded a finding that the defendant knew the plaintiff. A new case was set up by the defendant in the course of hearing quite contrary to the averments in the written statement. During the course of evidence, the defendant came forward with the case that he was not residing in the place which is referred to in the suit Pronote. The defendant went to the extent of denying the execution of the Pronote by producing some documents showing that he was on duty on the date of suit Pronote in some other place and the defendant could not have executed the Pronote on the date of Ex.A1. Stating that the defendant has come forward with a false case quite contrary to the pleadings in the written statement, the Lower Appellate Court found that the defendant's case is unreliable and confirmed the judgment and decree of the Trial Court. Challenging the concurrent findings of the Courts below, the defendant has preferred the above Second Appeal.

- (7) In the Memorandum of Grounds of Appeal, the following substantial questions of law are raised by the appellant/defendant:-

''[1]Whether the Courts below erred in law in decreeing the suit only on the basis of the oral evidence of PW2 and PW3 and in the absence of any documentary evidence to prove the passing of consideration of Rs.1,00,000/-?

[2]The Courts below erred in law holding that the defendant is estopped from denying the execution of Ex.A1 Promissory Note merely because he pleaded that he handed over blank promissory note to the plaintiff's husband after borrowing a sum of Rs.50,000/- from him.

[3]Whether in law the judgment and decree passed by the Courts below are liable to be set aside when they are perverse and rendered without properly appreciating the oral and the documentary evidence on record?''

- (8) The first question of law is on the assumption that there is no documentary evidence to prove the passing of consideration. As a matter of fact, Ex.A1 is the Pronote executed by the defendant. When it is admitted that the defendant had executed a Pronote for a sum of Rs.50,000/-, the Courts below is right in accepting the case of the plaintiff on the basis of Ex.A1 which was proved in the manner known to law. Hence, Ex.A1 itself is a valid proof to show that the entire consideration mentioned in the



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(9)

document was paid to the defendant.

As regards the second question of law, the defendant's case that he executed a blank Pronote was disbelieved by both the Courts below in the light of the oral evidence of PWs.2 and 3. When the defendant admits the receipt of a sum of Rs.50,000/- by executing a Pronote, it is for him to prove his case that he did not receive a sum of Rs.1 lakh under the suit Pronote. The plaintiff cannot adduce any more evidence than the Pronote and the two witnesses who are the attester and scribe of the document - Ex.A1 to corroborate his case. In the absence of any independent witness to support the case of the defendant, there is a presumption in favour of the plaintiff. In the absence of any rebuttal evidence, the Courts below are justified in holding that the suit Pronote is proved and that the plaintiff is entitled to recover the money, as the defendant had promised to repay under Ex.A1. This Court is unable to find any irregularity or illegality in the judgments of the Courts below. Since the learned counsel for the appellant has not brought to the notice of this Court any inconsistency or error of appreciation, this Court is of the view that none of the Grounds raised by the appellant are substantiated and there is no substance in any of the substantial questions of law raised.

- (10) Learned counsel appearing for the appellant also relied upon the judgment of the Hon'ble Supreme Court in the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and another, reported in 2006(3) CTC 730. The relevant paragraphs of the said judgment is extracted hereunder:

"...

31. Applying the said definitions of 'proved' or 'disproved' to principle behind Section 118(a) of the Act, the Court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.

32. A Division Bench of this Court in Bharat Barrel & Drum Manufacturing Company v.



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Amin Chand Payrelal, 1999 (1) CTC 497 : 1999 (3) SCC 35, albeit in a civil case laid down the law in the following terms:

"Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The Court may insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt."

33. This Court, therefore, clearly opined that it is not necessary for the defendant to disprove the existence of consideration by way of direct evidence.

34. The standard of proof evidently is pre-ponderance of probabilities. Inference of pre-ponderance of probabilities can be drawn not only from the materials on records but also by reference to the circumstances upon which he



relies."

(11) Even after considering the judgment of the Hon'ble Supreme Court, this Court is unable to find any irregularity in the judgment of the Courts below especially when the Courts below have gone into every piece of evidence and came to the conclusion that the execution of Pronote and passing of consideration as alleged in the plaint is proved. When the Courts below have rendered findings after considering the pleadings, oral and documentary evidence elaborately, this Court is of the view that the findings of fact based on standard proof considering every aspects of the case has come to the conclusion by following the principles reiterated by the Hon'ble Supreme Court. Hence, the above said judgment does not support the case of appellant in the present case.

(12) In the result, the Second Appeal is devoid of any merits and accordingly, the same is dismissed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

AP

To

1.The Principal District Judge,
Tiruvannamalai.

2.The Principal Subordinate Judge,
Tiruvannamalai.

Copy to:

The Section Officer
VR Section, High Court
Chennai.

+1cc to Mr.P.Mani, Advocate SR.No.18267

SA.No.165/2022

KV(CO)
CB(11/04/2022)