IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **22.09.2022**

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.795 of 2022

Mrs. U.Varalakshmi
... Plaintiff/Appellant/Appellant

Vs.

V.Muthukrishnan
... Defendant/ Respondent/Respondent.

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree on the file of the III Additional City Civil Court, Chennai A.S.No.451j of 2018 dated 22.11.2019 by confirming the judgement and Decree in O.S.No.1907 of 2017 dated 26.04.2018 on the file of XVIII Assistant City Civil Court, Chennai.

For Appellant : Mr.M.Tamilzavel.

JUDGMENT

The unsuccessful plaintiff in a suit for recovery of money has filed the above Second Appeal. The facts in brief necessary to dispose of the above Second Appeal is herein below narrated and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit OS.No.1907 of 2017 on the file of the XVIII Assistant City Civil Court, Chennai, seeking recovery of a sum of Rs.1,35,000/- together with interest at the rate of 12% per annum on the sum of Rs.1,00,000/- from the date of decree till the date of realization.

3. It is her case that on 24.03.2014, the defendant had borrowed a sum of Rs.1,00,000/- from her and executed a promissory note agreeing to repay the principal amount on demand together with interest at 12% per annum. Despite such a promise the defendant had not come forward to clear the dues. The plaintiff in the 2^{nd} week of February 2017 had issued a legal notice calling upon the defendant to repay the said sum. However, the defendant had chosen not to reply to the said notice nor repay the money. Therefore, the plaintiff had come forward with the suit in question.

4. The defendant had filed a written statement inter alia denying the very borrowal. It was his case that on 29.01.2006, he had borrowed a sum of Rs.25,000/- and another sum of Rs.10,000/- on 25.05.2006 from the husband of the plaintiff one Uma Maheshwaran who was working in the Integral Coach Factory. The defendant would submit that at the time of availing the loan, the said Uma Maheshwaran had insisted upon the defendant signing blank cheques, blank stamp papers and blank promissory note as security. It appears that this promissory note has been misused to create the present promissory note. The defendant further submitted that he had been repaying the amount to the said Uma Maheshwaran and due to certain family exigencies he was unable to repay the amounts due towards the promissory note dated 29.01.2006 and 25.05.2006 for the last few months.

5.The plaintiff had issued a legal notice dated 23.03.2009 demanding the defendant to repay the loan amount of Rs.60,000/- for which the defendant had sent a reply on 28.03.2009. Once again, a notice dated 16.04.2009 was issued by the plaintiff for which also a reply was sent by the defendant on 27.04.2009. This would clearly demonstrate that the borrowal was only in the year 2006 and the plaintiff had not borrowed any amounts in the year 2014 as alleged in the plaint. He, therefore, sought for a dismissal of the said suit.

6. The Trial Court had framed the following issues:-

"1) Whether the plaintiff is entitled to the suit claim ?

2) To what relief the parties are entitled to ?"

7. The plaintiff did not get into the box and it was only her husband Uma Maheshwaran who had examined himself as P.W.1 and marked Ex.A.1 to Ex.A.4. The defendant himself examined as D.W.1 and marked Ex.B.1 to Ex.B.5.

8. The learned Judge, after considering the defence taken by the defendant observed that the onus was on the plaintiff to prove the execution of Ex.A.2 the promissory note dated 24.03.2014 and the passing of consideration under the same. However, the plaintiff has not examined any third party to prove the same. The husband of the plaintiff has signed the promissory note as a witness and he has deposed on behalf of the plaintiff.

9. The Trial Court had further observed that a legal notice dated 23.03.2009, under Ex.B.1 was issued wherein the plaintiff had claimed that a sum of Rs.60,000/- was given as a loan on 24.04.2006. To this the defendant had sent a reply under Ex.B.2, dated 28.03.2009 refuting the plaintiff's claim and clarifying that only a sum of Rs.25,000/- was borrowed. The plaintiff had also contended that on 25.05.2006 a sum of Rs.10,000/- was repaid. The plaintiff had thereafter issued a rejoinder under Ex.B.3 denying that the defendants had borrowed amounts on 29.01.2006 and 25.05.2006, as alleged in the reply notice. Thereafter, another notice under Ex.B.4 dated 27.04.2009 had been issued. The defendant had produced Ex.B.5, payment schedule showing the loan availed in 2006 and its repayment. This document has been accepted by P.W.1. The learned Judge observed that when a specific stand has been taken by the defendant that the transaction between him and the plaintiff's husband was only in the year 2006 and there was no transaction with the plaintiff, the onus is cast on the plaintiff to prove the transaction in the year 2014. The learned Judge, therefore, dismissed the suit. Challenging the same the plaintiff had filed A.S.No.451 of 2018 on the file of the III Additional city Civil Judge, Chennai.

10. The learned Additional Judge also concurred with the findings of the Trial Court and dismissed the appeal. Challenging the same the plaintiff is before this Court.

11. The challenge to this concurrent judgement and decree is that despite a clear admission on the side of D.W.1 regarding the execution of the promissory note Ex.A.2, the Courts below have mis-directed themselves into non suiting the plaintiff.

12. The learned counsel for the plaintiff would submit that the plaintiff in his cross examination has admitted the execution of the document. While so, the onus is upon the defendant to prove that no consideration had passed under the deed. He would therefore submit that the judgement and decree requires re-consideration.

13. Heard the counsel and perused the papers.

14. The plaintiff has come forward with a case that on 24.03.2014 she

had extended a loan of a sum of Rs.1,00,000/- to the plaintiff who had thereupon executed a promissory note in her favour. The defendant on the other hand would submit that he had a transaction only with the plaintiff's husband in the year 2006 and as a security he was asked to sign some blank stamp papers and promissory notes. The documents so executed has now been used to create the suit promissory note Ex.A.2. The defendant had also produced Ex.B.1 to Ex.B.5 to substantiate the transactions that has taken place in the year 2006 and P.W.1, the husband of the plaintiff has also admitted to the said transaction. Once the defence has been established the onus shifts upon the plaintiff to prove the passing of consideration and the execution of the promissory note on 23.04.2014. The plaintiff has not examined any independent witness. The document in question has been witnessed only by the plaintiff's husband who is an interested witness. The plaintiff has deliberately kept herself away from the witness box and therefore, this Court has to draw an adverse inference for her non examination.

15. It is clear that the plaintiff’s husband has entered the box as the

plaintiff had no knowledge about the transactions. Both the Courts below have examined the evidence in great detail and I see no perversity in the appreciation of the same. The plaintiff has not been able to make out any substantial question of law warranting the interference of this Court. Consequently, the Second Appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed, if any.

22.09.2022

Index : Yes/No
Internet : Yes/No
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To

1.The III Additional City Civil Court, Chennai.

2.The XVIII Assistant City Civil Court, Chennai.

P.T. ASHA, J,

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