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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.NO.698 OF 2017
AND
C.M.P.NO.17973 OF 2017

[Physical Mode]

Chakravarthy

... Appellant/Plaintiff

.Vs.

Pachamuthu

... Respondent/Defendant

PRAYER:-

Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the Judgment and decree passed by the Principal District Judge, Villupuram in A.S.No.45 of 2013 dated 30.04.2014 in reversing the Judgment and Decree of the II Additional Subordinate Judge, Villupuram in O.S.No.108 of 2010 dated 05.11.2013.

For Appellant : Mr.T.Gandhi

JUDGEMENT

- (1) The Appellant in this second appeal is the plaintiff in the suit in OS.No.108/2010 on the file of the II Additional Sub Court, Villupuram. The appellant, as plaintiff, filed the suit for a recovery of sum of Rs.3,04,700/- with interest on the principal amount of Rs.2,40,000/- based on the two promissory notes executed by the defendant on 12.06.2007 (for a sum of Rs.1,20,000/-) and on 13.06.2007 (for a sum of Rs.1,20,000/-)
- (2) It is stated by the appellant that the defendant borrowed a sum of Rs.1,20,000/- on 12.06.2007 for his family expenses and again a further sum of Rs.1,20,000/- on



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13.06.2007 for the defendants expenses towards agricultural operations with 12% interest. The appellant further states that the defendant refused to settle the amount despite repeated requests. Thus the suit came to be filed by the appellant.

- (3) The suit was contested by the respondent/defendant mainly on the ground that the plaintiff used to get promissory notes for double the amounts and with regard to suit promissory note, it was contented that the plaintiff obtained two blank pronotes mentioning a sum of Rs.60,000/- under the pretext that some more amount is also due by calculating interest exorbitantly. It is the specific case of the defendant that the suit promissory notes have been materially altered by deleting the sum of Rs. 60,000/- and by inserting the figure 1,20,000/-.
- (4) The trial Court after framing necessary issues and after considering the fact that the defendant had admitted his signature in the suit promissory notes and also relying upon Sec.118 of the Negotiable Instruments Act, held that the plaintiff has proved the execution of promissory notes by the defendant and therefore, he is entitled to get the decree as prayed for.
- (5) Even though a specific issue was framed as to whether there is a material alteration in the suit promissory note as alleged in the written statement, the trial Court held that there is no material alteration in the pronote. Since the trial Court held that execution of pronote is proved passing of consideration should be presumed by invoking Sec.118 of the Negotiable Instruments Act and decreed the suit as prayed for. Aggrieved by the judgement and decree passed by the learned II Additional Sub Ordinate Judge, Villupuram in O.S.No.108/2010 on 05.11.2013 the defendant preferred an appeal in A.S.No.45/2013 before the Principal District Judge, Villupuram.
- (6) The Lower Appellate Court after framing points for consideration and independently considering the whole case, set aside the Judgement and decree of the trial Court in O.S.No.108/2010 on 05.11.2013 and allowed the appeal by accepting the case of the defendant. The Lower Appellate Court held that the plaintiff had materially altered the pronote by correcting the figures and therefore, he is not entitled to the suit claim. As a result the suit filed by the plaintiff came to be dismissed. Aggrieved by the judgement and decree of the Lower Appellate Court, in A.S.No.45/2013 dated 30.04.2014, reversing the judgement and decree of the trial Court in



OS.No.108/2010, the above second appeal is preferred by the plaintiff.

- (7) In the memorandum of grounds, the appellant has raised the following substantial questions of law:

" (1) Whether the first appellate court is right in dismissing the suit for recovery of money without considering the legal presumption under Sec.118 of the Negotiable Instruments Act, when it was considered by the trial Court?

(2) Whether the first appellate court is right to shift the burden of proof of payment of money under Ex.A.1 and Ex.A2 pronotes when the defendant/respondent admitted the execution of the said promotes and did not make any reply to the appellant's notice?

(3) Whether the first appellate court is right in dismissing the suit for recovery of money disbelieving the payment of consideration under Ex.A1 and Ex.A2 pronotes without any material evidence or documents?

(4) Whether the first appellate court is right in reversing the well considered judgement and decree of the trial court on the ground of material alteration in Ex. A1 and Ex.A2?"

- (8) The learned counsel appearing for the appellant submitted that the execution of pronote is admitted by the defendant and therefore, the Lower Appellate Court ought to have decreed the suit in view of the statutory presumption of Sec.118 of the Negotiable Instruments Act. The learned counsel further submitted that it is not the case of the defendant that no amount was borrowed by him. Since the defendant has not come to Court with regard to the actual amount received by him, and no specific averments found in the written statement with regard to the actual transaction, the Lower Appellate Court cannot dismiss the suit in entirety. The learned counsel further submitted that the Lower Appellate Court failed to consider the issue whether the alteration alleged is a material alteration to non suit the plaintiff for recovery of money due on the demand promissory note. The learned counsel also pointed out that the trial Court has given findings in favour of the plaintiff on all issues and that the



Appellate Court failed to consider the reasons given by the trial Court which reversing the findings of the trial Court.

(9) It is true that the execution of the pronote is admitted. However in the written statement the defendant specifically denied the passing of consideration as it was recited in the document. As a matter of fact the written statement specifically refers to the figure being shown in the suit promissory notes as Rs.60, 000/- However in the written statement a specific plea is raised by the defendant that the suit is not maintainable as there is material alteration of the suit promissory note. The Lower Appellate Court has given a categorical finding with regard to material alteration. From the evidence it is established that the figure has been altered even though the amount in words is consistent and there is no alteration. This would only probalise the case of the defendant that the suit promissory note was executed without filling the amounts in words and by mentioning the figure as Rs.60,000/-

(10) When the plaintiff came forward with the suit based on pronote, any material alteration in the promissory note will be fatal and the law is settled that the plaintiff cannot succeed in getting a decree on the basis of such pronote with material alteration.

(11) It is true that the statutory or legal presumption under Sec.118 of the Negotiable Instruments Act is important. However the plaintiff in a case of this nature cannot simply rely upon the statutory presumption when there is material alteration. In the present case, the defendant has come forward how the plaintiff used to get the signature in the promissory notes at the time of borrowing money and about previous transaction between the plaintiff and defendant. The lower Appellate Court has accepted the case of defendant and disbelieved the version of plaintiff with regard to consideration. Having regard to the finding of the Appellate Court which is the final Court of fact, this Court finds no substantial questions of law so as to interfere with the findings of the lower Appellate court. The Appellate Court has considered the pleadings, evidence both oral and documentary in detail. There is no perversity or irregularity in the findings which do not warrant any interference. As a result this second appeal is dismissed.

(12) Accordingly these Second Appeal is dismissed, confirming the judgement and decree passed by the Principal District



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Judge, Villupuram in A.S.No.45 of 2013 dated 30.04.2014 in reversing the judgement and Decree of the II Additional Subordinate Judge, Villurpuram in O.S.No.108/2010 dated 05.11.2013. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Principal District Judge,
Villupuram.
2. The II Additional Subordinate Judge,
Villupuram.

Copy To:-

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.T.Gandhi, Advocate, S.R.No.21910
+1cc to Mr.N.Suresh, Advocate, S.R.No.21540

S.A.NO.698 OF 2017 AND
C.M.P.NO.17973 OF 2017

NMI (CO)
PBS/25/05/2022