



S.A.(MD) No.221 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.221 of 2010

N.Nagalakshmi

... Appellant/Respondent/
defendant

Vs

P.Nagarajan

... Respondent/ Appellant/
Plaintiff

Prayer:- Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 13.04.2009 in A.S.No.250 of 2008 before the Principal District Judge, Trichy in reversing the decree and judgment dated 07.08.2008 in O.S.No.176 of 2005 of 1998 on the file of the I Additional Sub-Court, Trichy.

For Appellant : Mr.B.Prasanna Vinoth

For Respondent : Mr.Raghuvaran Gopalan
for Mrs.J.Maria Roseline



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JUDGMENT

The defendant in a money suit in O.S.No.176 of 2005, having succeeded before the trial Court, but suffered a reversal before the first appellate Court in A.S.No.250 of 2008, has come before this Court with this appeal.

2. The plaintiff has come up with a straight forward case. On 26.09.2002, the defendant had borrowed a sum of Rs.75,000/- from the plaintiff on a promissory note, promising to repay the same with interest at 24% per annum. The plaintiff subsequently made demands for the repayment of the loan, but the defendant evaded. This was followed by exchange of notices, and the suit was laid.

3. The defendant has filed her written statement and also an additional written statement. The substance of the defence taken by the defendant is that:

(a) the plaintiff's wife and the defendant were working as teachers, and were also colleagues in a certain school, that the plaintiff's



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wife conducted an unregistered chit in which the defendant joined as a subscriber, that the defendant successfully bid a chit-auction, and at the time when the money was disbursed to her she executed a blank promissory note as security.

- (b) That on the relevant date on which the plaintiff claims that the defendant had borrowed the amount, the defendant indeed was under treatment for her health issues at Bangalore.

4.1 The dispute went to trial, and before the trial Court the plaintiff examined himself as PW1, and also examined one of the scribes of the promissory note as PW2. For the defendant, she entered the witness box as DW1. While the plaintiff has produced as many as five documents, of which, Ext.A1 is the promissory note and Exs.A2 and Ext.A4 are the suit notice and the reply notice respectively, the defendant, on her part has produced Exs.B1 & Ext.B2, all of which are her medical documents.

4.2 On appreciating the evidences, the Trial Court disbelieved the case of the plaintiff on the following scores:



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- (a) That the stamp paper of which Ext.A-1 promissory note was written was procured on 08.01.1997, some 4 ½ years prior to the date of alleged promissory note;
- (b) That Exs.B1 & B2 together show that on the relevant date, the defendant was taking treatment at Bangalore.
- (c) That P.W.2 is none other than the brother of the plaintiff and he is an interested witness.
- (d) That the plaintiff, during his testimony, has deposed that he had obtained a loan from M/s LIC as a housing loan, that he diverted part of this loan amount for lending Rs.75,000/- to the defendant and according to him, the loan to the defendant was paid by way of demand draft. Now inasmuch as this is part of the loan amount obtained from M/s LIC, it is inconceivable that the money could have been utilized for lending Rs.75,000/- to the defendant, more so because M/s LIC has its monitoring mechanism to ensure that the loan it gives is not misapplied.



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5. Aggrieved by the judgement of the trial Court, the plaintiff preferred a first appeal in A.S.No.250 of 2008 before the Principal District Court, Trichy. On a reappraisal of evidence before it, the first appellate court chose to reverse the finding of the trial Court. Its reasons are:

- That the defendant has admitted the signature in Ext.A1 and when she admits the signature in a promissory note, the burden shifts on her to prove that there is no consideration had passed under the promissory note in terms of Section 18(a) of the Negotiable Instrument Act and this burden was not discharged.
- Section 87 of Negotiable Instrument Act deals with material alteration. In effect the material alteration of the instrument cannot be applied for distracting Ext. A1.
- Even assuming that promissory note was executed on a blank paper as was contended by the defendant, the same is under Section 20 of NI Act.

6. This appeal was admitted for considering the following substantial questions of law:



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- (a) Was not the First Appellate Court erred in presuming that Ext. A1 was executed by the defendant after it was fully returned?*
- (b) Was not the First Appellate Court erred in fixing the burden of proof on the defendant solely on the basis of her admission of her signature alone in Ext. A1.*

7.1 The learned counsel for the appellant submitted that though he is ready to argue, yet conveyed his hesitation to make his submissions as he could not obtain any instructions from the appellant. Since, this is a second appeal where the court will be principally concerned with substantial questions of law and not of facts (unless a case is made out that the appreciation of evidence on facts is shockingly perverse), he may not wait for the appellant's instructions and insisted that he argue the case, since this is an old appeal, now pending for 12 years. The learned counsel then proceeded to argue as below:

- The issue is not whether the plaintiff was authorised to fill up Ext.A-1, nor whether the defendant signed it, but whether she could at all have signed Ext.A-1 promissory note. According to her, she



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became a subscriber of an unregistered chit conducted by the plaintiff's wife, that she bid the price money for one of the objects and that she, at the time when she received money, signed in a blank stamp paper and that the same is utilised for preparing the promissory note.

- Secondly, the stamp paper in which Ext.A-1 was prepared, was purchased in the name of the plaintiff some 4 ½ of years prior to the date which Ext. A1 bears. For preparing a promissory note, one could have very easily obtained a current stamp paper.
- Thirdly, the only independent witness to the transaction is P.W.2, the brother cum scribe of the plaintiff and no other.

If the facts are taken together they show that Ext.A-1 is not beyond suspicion.

7.2 The learned counsel further contended that the first appellate Court has misaddressed the issue when it brought in Sec. 20 of Negotiable Instrument Act (NI Act) for application. Sec. 20 merely states that a promisee of an inchoate instrument is presumed to have *prima facie* authority to fill up the



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instrument and it does not secure an inchoate instrument beyond challenge.

Here, the first appellate court has ignored Ext.B-2 medical records which proves that the defendant could not have been physically present to execute A-1 promissory note as she was ailing then and was under treatment.

8. The counsel for the respondent submitted that:

- Ext.B-2 is unaccompanied by any case sheet as to make it a credible document for the court to act upon. And, this theory is put forward only in the additional written statement, more as an after thought.
- A writing on an old stamp paper can neither render Ext.A-1 invalid or suspicious. There is no law that prevents one from possessing and utilizing an old stamp paper for preparing a promissory note. Reliance was placed on the ratio in *Thiruvengadam Pillai Vs Navaneethammal & another* [(2008)4 SCC 530]. In this regard, neither of the two witnesses of the plaintiff, which included the plaintiff himself were not cross examined pointedly.
- Thirdly, it is not the case of the defendant that she had merely signed and delivered a blank stamp paper with no intent to create a



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promissory note out of it. She has conceded in her pleadings that she had delivered a signed blank promissory note, which implies that what she had delivered is an inchoate promissory note wholly unwritten. When once she has made this admission, Sec.20 of the N.I.Act invite itself automatically, and there will be a presumption that the promisee has a *prima facie* authority to fill it up. And, the burden will now be on the defendant to negate the effect of Sec.20 of the N.I.Act.

9. After carefully weighing the submissions on either side, this Court finds that there is considerable merit in the submissions of the counsel for the respondent, that outweigh the case put forward by the appellant's counsel. And, they do not require a repetition. First, the defendant did not dispute her signature in Ext.A-1. Therefore, the plaintiff starts with an advantage as he is now not required to prove the execution of the document. The only other point is whether it was written when signed. Here P.W.2, the scribe of the document speaks about it. On the face of it, there is hardly anything worthy on record available to discredit his testimony. The fact that P.W.2 is



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the brother of the plaintiff is too inadequate to negate the effect of his evidence. Now, turning to the defence offered, this is more an alternate aspect to the proof required. Here, the defendant had pleaded that she had signed a blank promissory note and not signed and delivered a blank paper. This would indicate that what she had delivered is a wholly unwritten inchoate promissory note and in terms of Sec.20, it should be construed that the defendant had granted the plaintiff an authority to fill it up. With the burden now on her to prove that she had not authorised the plaintiff to fill up, the defendant had done precious little to dislodge the effect of Sec.20 of the N.I.Act affecting the enforceability of Ext.A-1.

10. In conclusion this Court does not find it necessary to interfere with the judgement and decree of the first appellate court dated 13.04.2009 in A.S.No.250 of 2008 as they are in order and hence dismisses this appeal.

No costs.

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Internet: Yes
Index: Yes/No
vsg/CM



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To

1.The learned Principal District Judge,
Trichy.

2.The I Additional Sub-Court,
Trichy.



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N.SESHASAYEE, J.

CM

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