



S.A.(MD)No.5 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 24.03.2022

Delivered On : 20.07.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

S.A.(MD)No.5 of 2017

C.Sivakumar .. Appellant / Appellant /Plaintiff
Vs.

S.Raj ... Respondent / Respondent / Defendant

Prayer : This Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree, dated 14.12.2015, passed in A.S.No. 13 of 2015, on the file of the Principal District Court, Tirunelveli, confirming the judgment and decree, dated 25.09.2014 passed in O.S.No.71 of 2012, on the file of the Additional Sub Court, Tirunelveli.

For Appellant : Mr.T.Selvan

For Respondent : Mr.G.Venugopal

JUDGMENT

This Second Appeal has been filed against the judgment and decree, dated 14.12.2015, passed in A.S.No.13 of 2015, on the file of the Principal District Court, Tirunelveli, confirming the judgment and decree, dated 25.09.2014 passed in O.S.No.71 of 2012, on the file of the Additional



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Sub Court, Tirunelveli. The appellant herein is the plaintiff, the respondent herein is the defendant in the original suit. The appellant herein / plaintiff filed a suit for recovery of a sum of Rs.2,14,000/- with interest at the rate of 12% for the principal of Rs.2,000/- from the date of petition till the date of realization.

2. Brief substance of the plaint, in O.S.No.71 of 2012, is as follows:-

On 05.08.2011, the defendant borrowed a sum of Rs.,2,00,000/- from the plaintiff and agreed to repay the same with interest at the rate of 12% and executed a promissory note in the presence of witnesses. The defendant failed to pay either the interest or the principal amount. The plaintiff sent a legal notice. The defendant sent a reply notice with false particulars. There is no connection with the loan given by the plaintiff and the proceedings between one Gopalakrishnan and the defendant. Hence, the plaintiff filed a suit for recovery of money.

3. Brief substance of the written statement, in O.S.No.71 of 2012, is as follows:-



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by the trial Court:

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“ 1. Whether the plaintiff is entitled to get the plaint amount and also interest for the principal amount from the date of plaint?

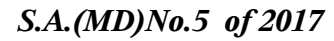
2. Whether the pronote was not executed by the defendant?

3. What are the other reliefs the plaintiff is entitled to ?

5. On the side of the plaintiff, 3 witnesses were examined and 3 documents were marked. On the side of the defendant, 3 witnesses were examined and 4 documents were marked. One document was marked as Court document. After considering the pleadings and evidence, the trial Court has dismissed the suit.

6. Against the decree and judgment, the plaintiff filed an appeal in A.S.No.13 of 2015, on the file of the Principal District Judge, Tirunelveli, on the following grounds:-

The trial Court failed to frame proper issues. The trial Court ought not to have clubbed issue Nos. 1 and 2 together and gave a common findings. The trial Court failed to invoke Sections 20 and 118 of the Negotiable Instruments Act. When there is no pleadings regarding the capacity of the appellant, the trial Court has given a findings that the appellant has no means



to pay the consideration. The trial Court is wrong in giving importance to the interest at the testimony of D.W.1. The evidence of D.W.2 and D.W.3 are not helpful to the case.

7. The first appellate Court has framed the following issues:-

1. Whether the defendant did not execute the alleged pronote in favour of the plaintiff?

2. Whether the plaintiff is entitled to the relief of recovery of amount as prayed for?

3. Whether the appeal has to be allowed?

8. After considering both sides, the first appellate Court dismissed the appeal. Against the order of the first appellate Court, the appellant / plaintiff has filed this second appeal on the following grounds:-

The Courts below failed to consider that the respondent has admitted the signature in Ex.A1 and burden of proof for non payment of consideration is on the defendant. Both the Courts below failed to consider that there is no connection between the case filed by the said Gopalakrishnan and that this is a different suit. The Courts below failed to consider that the respondent has not raised a plea that the appellant is not a man of means. Without pleadings, evidence cannot be adduced and the same cannot be



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considered. The courts below failed to apply Sections 118 and 139 of the Negotiable Instruments Act. The discrepancy in the evidence of P.W.1 to P.W.3 are insufficient to rebut the statutory presumption under Sections 118 and 139 of Negotiable Instruments Act.

9. On the above grounds, the second appeal was admitted on 23.03.2022, on the following substantial questions of law:-

“(i) Whether the respondent / defendant rebut the statutory presumption contemplated under Sections 118 and 139 of the Negotiable Instruments Act?

(ii) Whether the respondent / defendant is entitled to adduce evidence regarding the means of appellant to pay the amount of Rs.2,00,000/- without pleadings?

Issue No.I.

10. On the side of the appellant, it is stated that under Section 118 of the Negotiable Instruments Act, it is the duty of the defendant to prove that no consideration was passed on the pronote. There is a presumption under Section 118 of the Negotiable Instruments Act that every Negotiable Instrument is based on a consideration. The defendant failed to rebut the presumption. Except the oral testimony of DW1, there is no other evidence to prove non passing of consideration and both the trial Court and the first



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appellate Court failed to consider the admission of the signature in Ex.A1.

Pronote was proved through the examination of the attesting witness. The other witnesses examined on the side of the defendant were police officials, who depose regarding the receipt of the complaint and the closure of the same.

11. On the side of the Appellant it is stated that the defendant has to rebut the presumption regarding the passing of consideration. To substantiate this, a Judgment of this Court reported in [2017] – 5 - MLJ - 600 [P.Ethiraj V. M.Nowsath Seth] is cited, wherein, it is stated as follows-

15. Section 20 of the Negotiable Instruments Act reads as follows:

“Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments, then in force in India [substituted by Act 3 of 1951, Section 3 and Schedule, for #the States#], and either wholly blank or having written thereon an incomplete negotiable, instrument, he thereby, gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder-in-due course for such amount:-



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Provided that no person other than a holder-in-due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder”

16.In the light of Section 20 of the Negotiable Instruments Act, it can be safely presumed that the defendant who had admitted the execution of the promissory notes had done so for a valid consideration. An Hon'ble Division Bench of this Court in the judgment in Ramasami Moopar Vs. Ramaswami Moopanar and Karuppa Moopar reported in 2002 (4) LW 360, while dealing in this aspect has held as follows:

“7.The Supreme Court in Mohideenkutty Hajee vs. Pappu Manjooran , following a number of earlier pronouncements, held that when a suit is based on a promissory note and the promissory note is proved to have been executed, Section 118(a) raises a presumption, until the contrary is proved, that the promissory note was made for consideration. In the case of Kundan Lal vs. Custodian, Evacuee Property (AIR 1961 SC 1316), the Supreme Court has held that the presumption under Section 118 Negotiable Instrument Act is one of law and a Court shall presume, inter alia, that the Negotiable Instrument was made or endorsed for consideration. Therefore, the said Judgment of the learned Single Judge is not in conformity with the Judgment of the Supreme Court. Under Section-118 of the Negotiable Instruments Act, there is a valid presumption with respect to consideration also. Inasmuch as



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the learned Single Judge has held that there is no presumption for consideration, it is not a good law.”

12. On the side of the appellant, it is stated that the Respondent failed to disprove the presumption. A Judgement of this court reported in 2015(2) MWN(civil) 264 [R.Pandyan and another V. M.Palgani] is cited, wherein, it is stated as follows:-

“The defendants disproved the legal presumption, then the plaintiff has to reiterate the execution of promissory note. If the defendants fails to disprove, then the legal presumption arose under section 118 of the Negotiable Instruments Act will remain as it is. This is the gist of the dictum of the Hon'ble Apex Court in the said case. “

13. On the side of the respondent, it is stated that the plaintiff used the pronote given to some other person and that there is contradiction in the evidence of P.W.2 and that of the plaintiff regarding the place of transaction and that the plaintiff has no means to lend a sum of Rs.2,00,000/- to the defendant and that this plaintiff is the son-in-law of the plaintiff in O.S.No.16 of 2012, namely, Gopalakrishanan (S.A.(MD)No.77 of 2017)

14. On the side of the appellant, it is stated that P.W.1 has deposed



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that the transaction took place at the Tirunelveli Junction. P.W.3 has deposed that the transaction took place at Tirunelveli Santhippu and the lower Court has decided that both are different places and has failed to consider that both the names mentioned the same place.

15. The plaintiff was examined as P.W.1. Signature in Ex.A1 was admitted by the defendant. Attestors were examined as P.W.2 and P.W.3. The attestors deposed about the execution of the pronote and about the passing of consideration. Under Section 118 and 139 of the Negotiable Instruments Act, Ex.A1 presumed to be genuine. So, it is the duty of the defendant to rebut the same.

16. A perusal of the records reveals that the first appellate Court has dismissed the appeal only on the ground that the place of transaction was not mentioned in the chief examination of P.W.2 and only in the chief examination of P.W.3, the place of transaction was mentioned. The first appellate Court has dismissed the appeal on the ground that the plaintiff was not aware of the transfer of the case from one court to another Court and has held that the pronote was not issued to the plaintiff and that the pronote was issued only in favour of one Gopalakrishnan. The above stated grounds for



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deciding the case against the plaintiff is unreasonable.

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17. It is the duty of the defendant to prove that no consideration was passed on the pronote. Except the oral testimony, of the defendant there is no other evidence to prove that no consideration was passed on the pronote. The defendant's side documents were only police complaints and related papers and a copy of the plaint filed by one Gopalakrishnan. D.W.2 and D.W.3 were police officials. The documents filed on the side of the defendant were not sufficient to prove that no consideration was passed, on the pronote.

18. The signature in Ex.A1 was admitted by the defendant. Execution of Ex.A1 was proved through the evidence of the attesor. The attestors have deposed that consideration was passed on the basis of the pronote. The evidence of D.W.1 to D.W.4 are not sufficient to prove that no consideration was passed on the pronote. In the above circumstances, it is decided that the defendant failed to rebut the presumption under Sections 118 and 139 of the Negotiable Instruments Act.

Issue No.II:-

19. On the side of the appellant, it is stated that the trial Court and



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the first appellate Court has dismissed the suit on the ground that the appellant failed to prove the means. There is no pleadings in the written statement, regarding the means of the plaintiff. The first appellate Court has made an observation that P.W.1 was the only earning member in his family and P.W.1 failed to produce any document that he is having 3 ½ acres of agricultural land and that the plaintiff failed to produce Bank account details and held that the plaintiff is not having the means to lend a sum of Rs. 2,00,000/-. When there is no pleadings, the defendant has no right to adduce evidence on the particular point.

20. On the side of the appellant, it is stated that the omission to raise a pleading in the Written statement is fatal to the defendant. A Judgement of this court reported in 2014 (4)CTC 805 [M.Kokila V. A.Dhanalakshmi] is cited, where in, it is stated as follows:-

8. Yet another finding of the first appellate court is that the plaintiff has not proved her capacity to pay money under the promissory note. It is specifically pointed out that the evidence of PW1 is silent about the occupation of the plaintiff and the source of income. Whether this finding is justified when the presumption under [Section 118](#) of the Negotiable Instruments Act operates in favour of the plaintiff, after the execution is proved by the plaintiff.



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When there is an initial presumption in favour of the plaintiff and when there is specific evidence by the plaintiff herself regarding the capacity to pay, it is for the defendant to adduce rebuttal evidence. Excepting the evidence of defendant herself, there is no other evidence and there is not even an attempt to adduce rebuttal evidence.

8.1. Moreover, the necessity to borrow money for the defendant has been substantiated through the admission made by DW1 herself.

21. On the side of the Appellant it is stated that a matter not pleaded, amounts to admission. To substantiate this, a judgement of the Hon'ble Supreme court reported in 2017(5) MLJ 884 [Jaspal Kaur Cheema and another V. Industrial Trade Links and others] is cited, wherein, it is stated as follows:-

8. In terms of Order 8 Rule 3 of the Code of Civil Procedure, 1908 (for short 'the Code'), a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint. The failure to make specific denial amounts to an admission.

22. On the side of the appellant, it is stated that the even a holder



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of a promissory note can fill up the said pronote. A Judgement of this court reported in 2017(1) TNLR 193 [MAD] [Chandramohan V. T.P.Marimuthu] is cited, wherein, it is stated as follows:-

“9. ...As per Section 20 of the Negotiable Instruments Act, even if a blank promissory note or incomplete promissory note was handed over to a person, the holder of the said promissory note can fill up the said promissory note. Further, the learned Principal District Judge failed to consider the presumption under Section 118 of the Negotiable Instruments Act, since the respondent has admitted his signature in Ex.A.1. P.Ws.2 and 3, who witnessed the execution of Ex.A.1, have stated that consideration was paid to the respondent, but they did not know how much amount was paid to him. This cannot be the reason for rejecting Exs.A.1 to A.3. The learned Subordinate Judge compared the disputed signature of the respondent with the admitted signature as per power conferred under Section 73 of the Indian Evidence Act and held that there is no discrepancy between the disputed signature and admitted signature. The learned Principal District Judge, Karur, erred in not giving any reason for not accepting this finding. “

23. On the side of the appellant, it is stated that under section 20 of



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Negotiable Instruments Act burden is on the defendant. A Judgement of this Court reported in 2014-1-LW-316 [V.S.Veerasingam and another V. K.Subramaniam] is cited, wherein, it is stated as follows:-

9.... Under Section 20 of the Negotiable Instruments Act, when a blank Promissory Note was executed, the executant gives authority to the holder to fill the blank promissory note and therefore, when the signature in the Promissory Note is admitted, the execution of the Promissory note and passing of consideration can be presumed as admitted and it is for the defendants to prove that they did not receive any consideration for the Promissory Notes executed by them and the Promissory Notes were obtained for other reasons. In the judgment reported in 2002-3-L.W.692 and 2002-3-L.W.845, cited supra, the said principle has been reiterated.

24. Another judgment of this court reported in 2014-8-MLJ-413 [A.R.Mohammed Jalaludeen and another V. V.S.Dhakshinamoorthy] is cited, wherein, it is stated as follows:-

“Section 20 of the Negotiable Instruments Act, authorizes holder of instrument to fill up blanks with amount up to value of stamp, same validly taken advantage of by respondent to thrash down plead of appellants that they signed in blank promissory note. The appellants admitted their signatures in promissory



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note and evidence let in by the plaintiff prove the same. No independent evidence, except evidence of D.W.I, same not enough to rebut presumption arising under Section 118.”

25. When there is no pleadings, and when no issues were framed there is no necessity for the trial Court as well as the first appellate Court, to decide a particular point. When there is no pleadings, the decision of the trial Court and that the first appellate is wrong.

26. In Issue No.1, it is decided that the defendant failed to rebut the Presumption under Sections 118 & 139 of the Negotiable Instrument Act. In Issue No.2 it is decided that without a pleading as to the means & without framing an issue the trial Court and the 1st appellant Court are wrong in deciding that the plaintiff was having no means. The holder of a Negotiable Instruments is entitled to the amount mentioned in the Negotiable Instruments. The Law is well settled. A person who is giving a blank signed paper given to another person is giving him liberty to fill up the same as a Negotiable Instrument and hence, it is decided that the appeal is to be allowed.



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27. For the reasons discussed above, the judgment and decree, dated 14.12.2015, passed in A.S.No.13 of 2015, on the file of the Principal District Court, Tirunelveli, confirming the judgment and decree, dated 25.09.2014, passed in O.S.No.71 of 2012, on the file of the Additional Sub Court, Tirunelveli, is set aside. The suit is decreed as prayed for. The defendant is directed to pay Rs.2,00,000/- with interest from the date of suit till the date of judgment at the rate of 9% and with interest at the rate of 6% from the date of judgment till the date of realization. This Second Appeal is allowed. No costs.

20.07.2022

Index : Yes/No

Internet : Yes/No

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To

1.The Principal District Court,
Tirunelveli,

2.The Additional Sub Court,
Tirunelveli.

3.The V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
S.A.(MD)No.5 of 2017

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