IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2023

CORAM :

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.Nos.603 and 604 of 2010
and M.P.Nos.1,1 of 2010

Sri Shanthi General Finance,
rep. by its Managing Partner,
S.Swaminathan,
No.171, Lal Bahadur Shastri Street,
Pondicherry. .. Appellant in both second appeals

Vs.

1.V.Arumugam, ..First and second respondent in both second appeals respectively

2.V.Sandiny. ..Second and first respondent in both second appeals respectively

Common Prayer: Second Appeals filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 17.11.2009 passed in A.S.Nos.268 and 292 of 2006, respectively on the file of the Pricipal District Judge, Puducherry, reversing the judgment and decree dated 31.12.2003 in O.S.No.4 of 2000 on the file of the Additional Sub Judge, Puducherry.

For Appellant in both second appeals : Mr.Sai Srujan Jayi

For Respondents
For R1/R2 : M/s.R.Ramya
for Mr.T.V.Krishnamachari.
For R2/R1 : Mr.T.M.Naveen
for Mr.T.P.Manoharan.
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COMMON JUDGMENT

Both these Second Appeals have been filed at the instance of the plaintiff.

2. The parties will be referred to according to their litigative status as before the Trial Court.

3. Originally, the suit was filed by the plaintiff/finance against two defendants *viz.*, V.Arumugam and V.Sandiny. Wherein, the Trial Court decreed the suit. Against which, both the defendants filed two separate appeals. The first defendant/V.Arumugam has filed appeal in A.S.No.268 of 2006, and the second defendant/V.Sandiny has filed another appeal in A.S.No.292 of 2006. Both the appeals were heard together and a common judgment was passed. Against the common

judgment, the plaintiff has filed two separate second appeals in S.A.Nos.603 & 604 of 2010. In S.A.No.603 of 2010, the first defendant was arrayed as first respondent and in S.A.No.604 of 2010, the first defendant was arrayed as second respondent. Since both the second appeals are arising out of the same suit and common judgment of the Lower Appellate Court, both the second appeals taken together for disposal.

<u>The brief facts which give rise to the instant Second Appeals are that:</u>

4. The defendants borrowed a sum of Rs.1,50,000/- for their business purpose from the plaintiff. In evidence thereof, they had executed a promissory note on 25.04.1996, and agreed to pay the principal amount with interest at the rate of 24% p.a. Since the defendants have not chosen to pay either the interest or the principal, the plaintiff issued a legal notice to the defendants on 13.10.1997. The defendants, though received the notice, did not choose to repay the amount. However, the second defendant issued a reply on 24.11.1997. In

the reply, though she admitted the joint liability, denied the quantum. The plaintiff further submits that subsequently, on 27.01.1998, the defendants approached the plaintiff in person and requested to waive the interest component. Further, the defendants acknowledged their debt and promised in writing to pay the borrowed amount within six months. Since the defendants have acknowledged their debt on 27.01.1998, the suit is within the period of limitation. Hence, the plaintiff prayed to decree the suit.

5. Resisting the above contention, the first defendant has filed a written statement contending that he did not borrow any amount and he has also disputed the execution of the promissory note. The first defendant also disputed the reply issued by the second defendant. Similarly, this defendant disputed the alleged acknowledgment of the debt, dated 27.01.1998. Hence, he prayed to dismiss the suit.

6. The second defendant filed a separate written statement by disputing the letter of acknowledgment dated 27.01.1998 and contented

that the same is a fabricated one. This defendant further submits that the suit is hopelessly barred by limitation. This defendant further submits that there is no borrowal of Rs.1,50,000/- from the plaintiff/finance and has disputed the execution of promissory note in favour of the plaintiff for Rs.1,50,000/-. However, it is the contention of the second defendant that the first defendant is her brother-in-law *viz.*, elder sister's husband and the first defendant approached the second defendant to stand as surety for the borrowal of the loan of Rs.10,000/- from the plaintiff/finance and this defendant consented for the same and accordingly, the first defendant borrowed a sum of Rs.10,000/- from the plaintiff/finance on 25.04.1996. At that time, the plaintiff/finance obtained signature of both the defendants in a blank printed revenue stamp affixed promissory note, apart from that, obtained the signature of this defendant alone in a blank non-judicial stamp paper and in a blank paper by saying that it was their routine practice. This defendant further submits that the first defendant again asked to stand as surety for a similar second loan of Rs.10,000/- from the plaintiff/finance and this defendant has also consented for the same and accordingly, the first defendant borrowed the second loan of Rs.10,000/-. At the time of the second borrowal, the plaintiff/finance obtained similar signature from the defendants in a similar set of documents. Thus, according to the defendants, they have totally borrowed only Rs.20,000/-.

7. This defendant further submits that at the time of the second borrowal, the first defendant specifically promised to the plaintiff to pay and discharge the said loan amount of Rs.20,000/- within the first week of March 1997. This defendant further submits that the third borrowal which was made by the first defendant is not known to this defendant. Thus, this defendant submits that the very promissory note is not supported by consideration and the suit is barred by limitation. Hence, she prayed to dismiss the suit.

Evidence and documents:

8. Before the Trial Court, on behalf of the plaintiff/finance, its Managing Partner Swaminathan was examined as P.W.1. Apart from him, three more witnesses *viz.*, Prabhakaran, K.Siva and Kalyanasundaram

were examined as P.W.2 to P.W.4, respectively. Ten documents were marked as Exs.A1 to A10. On behalf of the defendants, the first and second defendants examined themselves as D.W.1 and D.W.2 and one Kathiravan was examined as D.W3. Six documents were marked as Exs.B1 to B6.

Findings of the both the Courts below:

9. After having considered the submissions made by both sides and on perusal of the oral and documentary evidence, the Trial Court, by invoking the provisions under Sections 20 and 118 of the Negotiable Instruments Act, 1881, decreed the suit as the defendants have admitted their signature in the promissory note. However, the Lower Appellate Court, being last Court of fact, has re-appreciated the evidence and gave a finding that even in spite of exercising the presumption under Sections 20 and 118 of the Negotiable Instruments Act, 1881, by way of rebuttal presumption the defendants, by letting in relevant documents, have discharged their burden that they did not borrow Rs.1,50,000/- from the plaintiff/finance. The Lower Appellate Court also found that the

acknowledgment of debt has not been proved in a manner known to law and ultimately, the Lower Appellate Court reversed the finding of the fact of the Trial Court and dismissed the suit. Aggrieved by the same, the plaintiff is now before this Court by filing these second appeals.

<u>Substantial questions of law:</u>

10. At the time of admitting these second appeals, the following common substantial questions of law have been formulated:

> *"(i) Whether the judgment of the First Appellate Court which has failed to raise a presumption in favour of the plaintiff that the pro-note under Ex.A3 was issued for consideration mentioned therein is sustainable, in view of the mandate under Section 118 of the Negotiable Instruments Act, 1881?*
>
> *(ii)Whether the judgment of the First Appellate Court shifting the burden of proof in entirety on the plaintiff is sustainable in view of the presumption available to the plaintiff under Section 118 of the Negotiable Instruments Act, 1881 and more particularly when the plaintiff has discharged the initial burden by positive evidence?*

(iii)Whether the judgment of the First Appellate Court setting aside the well-considered judgment of the Trial Court is sustainable in view of Section 20 of Negotiable Instruments Act, 1881, which confers authority to the plaintiff as a holder of the pro-note to make or complete contents of the said pro-note for the amount specified therein not exceeding the amount covered by the stamp affixed and which further provides that the person so signing shall be liable to such instrument in the capacity, in which, he signed the same?"

Submissions on both sides:

11. The learned counsel for the plaintiff would vehemently submit that since both the defendants have admitted their signature found in Ex.A3/promissory note, the finding rendered by the Trial Court by invoking Sections 20 and 118 of the Negotiable Instrument Act, 1881, has to be upheld. It is the further submission of the learned counsel for the plaintiff that the payment of Rs.1,50,000/- has further been proved by way of acknowledgment of debt viz., Exs.A8 and A9/letters executed by the first and second defendant respectively, and also would submit that the Income Tax Returns submitted by the plaintiff would further

vindicate the payment made by these defendants. It is the submission of the learned counsel for the plaintiff that they have proved the due execution of the promissory note and passing of consideration. Hence, he prayed to interfere with the judgment of the Lower Appellate Court and prayed to confirm the judgment of the Trial Court.

12. Per contra, the learned counsel for the respondents in both the appeals would contend that the suit is barred by limitation, and that the plaintiff did not challenge or propose any substantial question of law in respect of the limitation aspect. Therefore, it is the submission of the learned counsel for the respondents that the finding rendered by the First Appellate Court in respect of the limitation aspect has to be considered as final, and thus, the reversal finding rendered by the First Appellate Court is liable to be confirmed. It is the further submission of the learned counsel for the respondents that the judgment of the First Appellate Court has discussed various factual aspects in depth and has arrived at a right conclusion. Therefore, they prayed to dismiss these Second Appeals.

13. I have given my anxious consideration to the submissions made by either side.

Analysis of the submissions:

14. The main submission made by the learned counsel for the plaintiff is, that by virtue of Section 20 of the Negotiable Instruments Act, 1881, the holder of the Negotiable Instrument is competent to fill up the negotiable instrument, and that when the execution of the negotiable instrument was admitted by the borrower, there will be presumption under Section 118 of the Negotiable Instruments Act, 1881, for passing of consideration. Absolutely, this Court has no quarrel over the said proposition. However, the presumption under Section 118 of the Negotiable Instruments Act, 1881, is rebuttal presumption and would fade away if the contrary is proved.

15. Here, it is the specific contention of the defendants that they have borrowed only Rs.10,000/- each on two different occasions, and while doing so, there were asked to sign the blank stamped promissory notes. In order to prove the said aspect, the defendants rely upon Exs.B1

to B3, which are the letters sent by the plaintiff to the defendants on 02.02.1997, 02.02.1997 and 22.04.1997, respectively, requesting the defendants to pay a sum of Rs.20,000/-.

16. It is pertinent to mention here that the promissory note is dated 25.04.1996. If really the plaintiff had advanced a sum of Rs.1,50,000/- to the defendants, there would not have been any occasion for the plaintiff to send such letter demanding only a sum of Rs.20,000/-. Though it was contended by the plaintiff that the demand in the above letter only represents interest. But, the Lower Appellate Court, recorded a finding that when P.W.1/Swaminathan was cross-examined, in respect of Ex.B2/letter sent to the first defendant by the plaintiff, he has not given any explanation as to why the payment of Rs.20,000/- has been mentioned in Ex.B2/letter. Even if Ex.B2/letter was issued for demanding the interest for a period from 25.04.1996 till 25.01.1997, if we work out the same, the same would come at Rs.27,000/-. Therefore, it was found by the Lower Appellate Court that Exs.B1 to B3 would only probabilize the case of the defendants. This Court could not find any

perversity over the said finding and that the finding of fact recorded by the Lower Appellate Court is based on materials.

17. Further, the Lower Appellate Court has also drawn inference against the plaintiff for non-production of the account books. However, the learned counsel for the plaintiff would submit that, they have submitted Income Tax Returns of the relevant year under Ex.A10. But, while considering the said Ex.A10/Income Tax Returns, it was submitted before the Income Tax Authority on 04.03.2003, well after the institution of the suit. Therefore, this Court could not give any reliance to Ex.A10/Income Tax Return as it is subsequent to the filing of the suit.

18. Therefore, as rightly found by the Lower Appellate Court, though a presumption can be drawn under Sections 20 and 118 of the Negotiable Instruments Act, 1881, such a presumption can be a rebutted and in this case, the defendants, by filing Exs.B1 and B2, have rebutted the presumption. Further, the finding of fact recorded by the Lower Appellate Court that the plaintiff miserably failed to prove the quantum of loan amount of Rs.1,50,000/- to the defendants, is liable to be

confirmed.

19. Another defence put forth by the defendants is that the suit is barred by limitation. By getting over such defence, the plaintiff is relying Exs.A8 and A9, viz., the letter given to the first and second defendants by acknowledging the debt. It is the submission of the learned counsel for the defendants that the plaintiff has not raised any ground against the finding of fact recorded by the Lower Appellate Court in respect of the limitation. Hence, contended that the finding recorded regarding limitation becomes final. In support of his contention, he relied on the following precedents:

1. ***Rajni Tandon V. Dulal Ranjan Ghosh Dastidar and another*** reported in ***(2009) 14 SCC 782***,
2. ***Narinderjit Singh V. North Star Estate Promoters Ltd.,*** reported in ***(2012) 5 SCC 712***,
3. ***Nanjegowda @ Gowda and another V. Ramegowda*** reported in ***(2018) 1 SCC 574***,
4. ***State of Jharkhand V. Surendra Kumar Arivastava & others*** reported in ***(2019) 4 SCC 214***,
5. ***Manicka Poosali & others V. Anjalai Ammal & another*** reported in ***(2005) 10 SCC 38***,
6. ***Mehaboob-Ur-Rehman V. Ahsanul Ghani*** reported in ***(2019) 19 SCC 415***,

7. ***Raman Vs. R.Natarajan*** reported in ***(2022) 10 SCC 143***,
8. ***H.Siddiqui Vs. A.RAmalingam*** reported in ***(2011) 4 SCC 240***,
9. ***Shasidhar & others V. Ashwini Uma Mathad & others*** reported in ***(2015) 11 SCC 269***,
10. ***Malluru Mallappa V. Kuruvathappa & others*** reported in ***(2020) 4 SCC 313***,
11. ***Basalingappa V. Mudibasappa*** reported in ***(2020) 4 SCC 418***,
12. ***Bharat Barrel & Drum Manufacturing Company V. Amin Chand Payrelal*** reported in ***(1999) 3 SCC 35***,
13. ***Tatipamula Naga Raju V. Pattem Padmavathi*** reported in ***(2011) 4 SCC 726***,
14. ***Gopal Krishnaji Ketkar V. Mohamed Haji Latif & Ors*** reported in ***AIR 1968 SC 1413***,
15. ***Ajay Kumar D.Amin V. Air France*** reported in ***(2016) 12 SCC 566***,
16. ***A.S.Duraisami Chettiar Sons Vs. S.Rathnaswami Gounder*** reported in ***AIR 1992 Madras 132***,
17. ***Soma Nachiappa Chettiyar V. S.M. Muthuraman*** reported in ***2008 (5) CTC 802***,
18. ***S.P.Chengalvaraya Naidu V. Jagannath & Others*** reported in ***(1994) 1 SCC 1***,
19. ***Dalip Singh V. State of Uttar Pradesh & others*** reported in ***(2010) 2 SCC 114.***

20. It is true that the plaintiff has not raised any ground challenging the finding of fact recorded by the Lower Appellate Court and in respect of limitation. Therefore, as rightly contended by the

learned counsel for the defendants, the finding of fact recorded by the Lower Appellate Court in respect of the limitation is liable to be confirmed.

21. However, while looking at the discussions of the Lower Appellate Court in respect of the acknowledgment of debt, the Lower Appellate Court disbelieved both the documents on the ground that the alleged acknowledgment of debt executed by the first defendant, was on the stamp paper on 10.02.1996 and that too, in the stamp paper purchased in some other name *viz.*, Chithra. The case of the plaintiff is that the defendant approached the plaintiff/finance, after the receipt of the legal notice which was issued on 13.10.1997. Therefore, if really the defendant had approached subsequent to the legal notice, the stamp paper would have been purchased subsequent to such legal notice. Here again, the case pleaded by the defendants is that the plaintiff misused the signed blank stamped paper. Therefore, the Lower Appellate Court has rightly disbelieved the alleged acknowledgment of the debt, allegedly executed by the first defendant.

22. Apart from the above ground, while dismissing the suit, the Lower Appellate Court has disbelieved the said acknowledgment of debt based upon the evidence of P.W.3/Siva who was the attestor to both the documents. It was the finding of fact recorded by the Lower Appellate Court that he was a chance witness and during cross-examination, he has admitted that he borrowed loan on 25.04.1996, and that he went to the plaintiff firm to pay the interest for a period of three months. Based upon the said admission, the Lower Appellate Court found that if really P.W.3/Siva had borrowed the loan on 25.04.1996, as per the evidence of other witness P.W.2/Prabhakaran, the loan borrowed by P.W.3/Siva, was discharged after three months from the date of borrowal viz., August 1996, whereas the alleged acknowledgment of debt was in the year 1998. Therefore, the Lower Appellate Court has given a categorical finding that Exs.A8 and A9 cannot be believed. Here again, in respect of the limitation, the Lower Appellate Court has arrived at a right conclusion. Thus, the plaintiff could not substantiate any ground before this Court warranting any interference in the well merited findings of the Lower Appellate Court. Thus, all the substantial questions of law are answered

in favour of the defendant/respondent.

23. In the result, both these Second Appeals are dismissed by confirming the Judgment and Decree, dated 17.11.2009 passed by the Principal District Judge, Puducherry, in A.S.Nos.268 and 292 of 2006. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

22.11.2023

Internet : Yes/No
Index: Yes/No
apd

To

1. The Pricipal District Judge, Puducherry,
2. The Additional Sub Judge, Puducherry,
3. The Section Officer, V.R.Section, High Court, Madras.

C.KUMARAPPAN,J.

apd

S.A.Nos.603 and 604 of 2010
and M.P.Nos.1,1 of 2010

22.11.2023