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S.A.No. 644 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **19.04.2023**

CORAM

THE HONOURABLE **MR. JUSTICE V. LAKSHMINARAYANAN**

S.A.No. 644 of 2013

And

C.M.P.Nos. 1 of 2013 and 4248 of 2019

M/s. North Arcot District Vanniyakula Kshatriya Sangam
Represented by its General Secretary
M.Subramaniam
Hindu, aged about 67 years, having registered
Office functioning at No.2, Bharathiyar Salai, Vellore – 632 001.

... Appellant

Vs.

1. Radakrishnan

Shanmuga Reddiyar (died)

2. Chandran

... Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Decree and Judgment passed in A.S.No. 3 of 2012 dated 31.03.2013 on the file of I Additional District & Sessions Judge, Vellore, partly allowed the Decree and Judgment passed in O.S.No.136 of 2010 dated 21.09.2020 on the file of Sub Court, Vellore, Vellore District.



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For Appellants : Mr.N.Suresh
for Mr. T.R.Rajaraman

For Respondents : Mr. T.P.Prabhakaran

JUDGMENT

This is a simple case relating to recovery of money for a sum of Rs.5,00,000/-. The office bearers of North Arcot District, Vanniyakula Kshatriya Sangam, had executed a Pro-Note in favour of one Vardammal. The Pro-Note was executed on 9th June 2003. The amount paid under the Pro-Note was Rs.5,00,000/-. The rate of interest that was agreed upon was 24%. Vardammal is the wife of Munirathina Naicker, a former office bearer of the association. The plaintiff, M.Radhakrishnan is the son of Munirathina Naicker and Vardammal. The said Pro-Note was transferred in favour of Radhakrishnan by way of an endorsement dated 05.01.2004. As the amounts were not paid a notice was issued by the plaintiff on 19.05.2004. The Pro-Note having not been satisfactorily repaid, the plaintiff came forward with the suit for recovery of a sum of Rs.7,25,000/-.



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2. The defendants 1 to 4 alone had contested the suit. The fifth defendant, who is the father of the plaintiff, remained *ex-parte* throughout.

3. The first defendant society, who is the appellant before me, filed the written statement that it had decided to start a Teacher Training Institute and to obtain the requisite no objection certificate, it had a requirement for a sum of Rs.25,00,000/-. The aforesaid Munirathina Naicker had arranged for a loan of Rs.10,00,000/- on behalf of the association. The appellants required a further sum of Rs.5,00,000/- lakhs in order to pay one Palani as bribe to get the no objection certificate. So the second and third defendants requested the fifth defendant to arrange for Rs.10,00,000/. According to them, the money was arranged and a sum of Rs.10,00,000/- was also paid.

4. Similarly, to pay the bribe amount, the second and third defendants requested the fifth defendant to make arrangements for Rs.5,00,000/-. The defendants alleged that the fifth defendant made the payment and created the suit Pro-Note in favour of his wife Vardammal. The defendants have admitted to their signature on the Pronote.



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5. According to them, the said Palani received the sum of Rs.5,00,000/-, but he retained the same and did not make the bribe to anybody. They would also plead that this sum of Rs.5,00,000/- was also discharged and therefore, there was no question of payment to Vardammal and consequently to Radhakrishnan, the holder in due course.

6. The learned Trial Judge after detailed discussion and examination of the parties, decreed the suit. The appeal preferred therefrom in A.S.No. 3 of 2012 came to be partly allowed. The Appellate Court modified the decree dismissing the suit as against the defendants 2 to 5 but decreeing the suit against the first defendant. Aggrieved by the same, the first defendant is on appeal before me.

7. The narration of the aforesaid facts would show that the execution of the Pro-Note is not denied. Mr.N.Suresh, learned counsel appearing for the appellant would faintly argue that the Pro-Note had been executed by the defendants 2 to 5 in their individual capacity and not on behalf of the society. The stand taken in the written statement is that it was the society which required the money and for the requirements of the



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society, the Pro-Note had been executed. Therefore, this plea is not acceptable to me.

8. Expanding on the plea of discharge, the learned counsel would argue that under Ex.A-7, it is clearly stated that the amount was received from Vardammal and it was also repaid. He would draw my attention to Exs. B-3, B-6 & B-8, in order to argue that after the Pro-Note had been executed, it had been discharged the Society. Consequently, it had passed a resolution calling upon Munirathina Naicker, its former Treasurer, to secure the Pro-Note and bring it back to its records, as the amounts due had already been discharged. Mr.N.Suresh argued that as the fifth defendant, Vardammal and the plaintiff all belong to one family, I have to presume the facts pleaded against them.

9. Law presumes that father, son and mother are separate individuals. Merely because resolutions had been passed by the Society, I cannot presume that those resolutions demonstrate discharge of the loan. The resolutions passed by a Society are internal matters and the Society is free to pass any resolutions it wants to. I am not willing to read the



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resolutions to support the case of the appellant, for the reason that from the date of alleged discharge of the amounts to Munirathina Naicker, till the lawyers notice was issued by the plaintiff, there is not even a scrap of paper produced by the first defendant to show that a demand was made by calling upon Vardammal to return the Pro-Note. If the case as recorded in the resolutions are true, in the natural course of events, the first action that the society, who had allegedly repaid the loan, would have done is calling upon its former creditor to return the Pro-Note. Even if Pro-Note had not been returned, a demand would have raised a presumption that the Pro-Note had been discharged but the creditor for some reason was refusing to return the same. Unfortunately for the appellant, no such evidence is available before me.

10. Mr. N.Suresh, learned counsel would then argue that the purpose for which the money had been received was an illegal purpose. The parties are *in pari delicto* and hence, the suit should be dismissed.

11. The creditor is not concerned for what purpose the money is received by a debtor. The Pro-Note does not read as if it was received for



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the purpose of giving any “incentive” or “benefit” to a Government Official, so as to get a no objection certificate for the Teacher Training Institute. This is a simple loan transaction based on a Pro-Note regarding payment and borrower. There is no plea in the written statement that either Varadammal or Radhakrishnan were aware that the money was received for payment of bribe by the first defendant. Therefore, I reject the argument of *in pari delicto*.

12. Mr. N.Suresh, learned counsel would argue that the fifth defendant, plaintiff and Varadammal are residing in one roof and therefore, I have to presume that they are aware that the loan was received for the purpose of paying the bribe payment.

13. I have seen the age of the parties. All of them are of sound age and Judgment. The plaintiff is in his early fifty's and Vardammal is in her late seventies. It would be too much on my part to presume that the father would come and discussed the matters relating to the society because he was a former treasurer, with his wife and son. Law does not permit me to draw such presumption. Furthermore, as already pointed out, this plea has also not been taken in the written statement.



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14. The learned counsel draw my attention to Section 9 of the Negotiable Instrument Act in order to argue that the resolutions passed with society, the letter written under Ex.B-4 would point out that the plaintiff cannot be treated as a holder in due course.

15. Ex.B-4 is a hand bill said to have been circulated by the fifth defendant. I have gone through Ex.B-4 in detail. Ex.B-4 does not have the signature of the fifth defendant on the first and second pages which are crucial to the case. Apart from that, it does not state to whom it was written and for what purpose it was written and why a sort of confessional statement was written by the fifth defendant. Further, Ex.B-4 is undated. In any event, it has not even pleaded in the written statement.

16. Mr.N.Suresh would then refer to Ex.B-1. This letter had been written by the former treasurer to the current president. The letter had come into being after the presentation of the plaint. Therefore, it shows that some how or the other, the defendants have joined together in order to defeat the interest of a holder in due course. There is absolutely nothing on record to show that the plaintiff Radhakrishnan had any cause to disbelieve that the Pro-Note was not executed for due consideration.



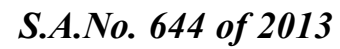
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17. On the contrary under Ex.A-7, the statement of accounts maintained by the Society, which has been marked in cross examination of the defendants, specifically reads that an amount of Rs.5,00,000/- was received from Varadammal. Mr.N.Suresh, learned counsel immediately pointed out that Ex.A-7 also contains a narration that the amount received from Varadammal had been discharged.

18. It is settled position that when a debt is shown in the books of accounts, it amounts to an admission. In this case, the debt on 10.06.2003 is admitted. The books of account reads that an amount of Rs.5,00,000/- was received from Varadammal of Arcot. The said amount is said to have been repaid on 31.03.2004. If the books of account has to be believed, as pleaded by Mr.N.Suresh, it goes against him. This is for the reason that once the payment to Varadammal is accepted and discharge is pleaded, it does not lie in the mouth of the defendants to say no amount was paid under the Pro-Note.

19. Here, he would want me to read the accounts as a full to say that since I accept the admission of payment of Rs.5,00,000/- on 10.06.2003



20. The plea of discharge itself denotes that the payment has been admitted. Once the payment has been admitted, the presumption under Section 118 of the Negotiable Instrument Act kicks in. Thereafter, it is the duty of the defendants to show to the satisfaction of the Court that the amount has been discharged. Unfortunately, in this case, I am not able to see any tangible evidence other than self serving resolutions in the form under Exs. B-3, B-6 and B-8. They do not satisfy the requirements of law that the amount paid to Varadammal was settled.



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21. In the light of the above, this Second Appeal stands dismissed.

The Judgment and Decree of the learned First Additional District and Sessions Judge, Vellore in A.S.No. 3 of 2012 dated 31.01.2013 in modifying the Judgment of the learned Sub-Court, Vellore, Vellore District in O.S.No. 136 of 2010 dated 21.09.2010 is confirmed. Consequently, connected Miscellaneous Petition are closed. Costs throughout.

19.04.2023

Index :Yes/No

Internet:Yes/No

vsg

To

1. First Additional District and Sessions Judge, Vellore.

2. Sub-Court, Vellore, Vellore District.



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V. LAKSHMINARAYANAN, J.

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