IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.527 of 2018
and
C.M.P.No.21429 of 2021

R.Srinivasan ..Appellant

Vs.

S.Srinivasan ..Respondent

Appeal filed under Order 41 Rule 1 read with Section 96 of C.P.C., praying to set aside the judgment and decree dated 18.12.2017 made in O.S.No.121 of 2015 on the file of the First Additional District Court, Coimbatore.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.P.Thiagarajan

JUDGMENT

The Appeal Suit has been filed to set aside the judgment and decree dated 18.12.2017 made in O.S.No.121 of 2015 on the file of the First Additional District Court, Coimbatore.

2. The defendant is the appellant and the respondent/plaintiff instituted a suit for Recovery of money based on the Promissory Note executed by the defendant.

3. The plaintiff has stated that he served as Executive Engineer in the Tamil Nadu Electricity Board and the defendant was a works contractor for Periyar Hydro Power Unit at Theni District during the relevant point of time. The defendant is known to the plaintiff. The defendant has borrowed a sum of Rs.10,00,000/- on 17.01.2012 for his business needs and executed a Promissory Note. He agreed to repay the amount on demand with interest at the rate of 12% per annum. The plaintiff made repeated demands and the defendant failed to pay the interest as well as the Principal amount to the plaintiff. The defendant has issued two cheques for a sum of Rs.2,50,000/- each to the plaintiff towards repayment of the amount and both the cheques

were dishonoured and consequently, the plaintiff has initiated criminal prosecution against the defendant. The plaintiff issued a notice on 26.07.2014, demanding repayment of the loan amount, but the defendant has not replied. Thus, the plaintiff instituted a suit.

4. The defendant filed written statement, denying the plaint averments. The defendant has stated that the tender was issued by the Tamil Nadu Electricity Board on 13.01.2007 for maintenance and supply of spares, repair works at Periyar Power House Unit No.II. The defendant participated in the tender and was successful on 09.04.2017. The plaintiff was working as Executive Engineer at the relevant point of time and under his control, the entire works had been carried on. The works done by the defendant had to be cleared by the plaintiff in his capacity as the Executive Engineer and he has to take a final decision in respect of the completion of works. The plaintiff bargained with the defendant to give commission of Rs.5,00,000/- to clear the work. The defendant also agreed to give the said amount. The defendant had initially paid a sum of Rs.22,500/- to the plaintiff's account on 21.07.2007. Since the payments from the Tamil Nadu Electricity Board had not been received by the defendant, he could not able

to pay the commission amount of Rs.5,00,000/- to the plaintiff as demanded by him. By the time, the plaintiff retired from service in July 2007. The defendant could not complete the works within the stipulated time. There was an outstanding due of Rs.35,00,000/- to the defendant as on July 2007. Before his retirement, the plaintiff demanded the commission amount and the defendant could not pay the amount, since he has not received any payment from the Tamil Nadu Electricity Board. Thus, the plaintiff asked the defendant to give security by signing blank Promissory Note. Due to the reason that he had to continue the work in the Tamil Nadu Electricity Board and has to receive the due to the tune of Rs.35,00,000/- from the Tamil Nadu Electricity Board, the defendant had signed the blank untyped stamp paper shown and given by the plaintiff in the Power house of the plaintiff. On the date of signing of the Pronote, nothing was typed and no witness had signed the same. The plaintiff after the retirement, asked the defendant to settle the commission amount. The defendant had paid a sum of Rs.25,000/- by way of Demand Draft on 08.05.2008. He could not pay the remaining amount. The defendant issued two cheques for a sum of Rs.2,50,000/- each as security. Blank cheques were given. There is no consideration passed for the said Promissory Note. The defendant had not borrowed any amount from the plaintiff. The plaintiff had obtained the signature of the attestor at later point of time. Thus, there is no cause of action for the suit and the suit is to be dismissed.

5. Considering the pleadings between the parties, the trial Court framed the following issues:

> "*01) Whether the suit promissory note is true, valid and executed for consideration?*
>
> *02) Whether the defendant is liable to pay the suit amount?*
>
> *03) to what other relief?"*

6. The plaintiff has examined himself as P.W.1 and marked Ex.A1 to Ex.A4 on his side. The defendant has examined himself as D.W.1 and marked Ex.B1 to Ex.B4.

7. Regarding Issue Nos.1 & 2, whether Promissory Note is true and valid and executed for consideration and whether the defendant is liable to pay the suit amount to the plaintiff, the trial Court considered the facts, documents and evidences. The plaintiff has stated that the defendant had

borrowed a sum of Rs.10,00,000/- on 17.01.2012 and executed a Promissory Note and the defendant agreed to repay the said amount with interest at the rate of 12% per annum. However, it is stated that two cheques for a sum of Rs.2,50,000/- each on 13.02.2014 and 05.07.2014 were issued by the defendant, which were dishonoured. Admittedly, the plaintiff was retired from the post of Executive Engineer, Tamil Nadu Electricity Board in July 2007 itself. At that point of time, the defendant had not completed the contract work.

8. The trial Court, while considering the above facts, formed an opinion that the plaintiff retired from service in July 2007 itself and therefore, there was no official connection between the plaintiff and the defendant after the retirement of the plaintiff. However, the plaintiff had issued notice only on 26.07.2014 and therefore, there is no connection between employment of the plaintiff as Executive Engineer and the execution of the suit Promissory Note. However, the trial Court failed to consider the fact that the passing on consideration of Rs.10,00,000/- and its mode between the parties were not proved through documents and evidences. The plaintiff states that the defendant borrowed a sum of

Rs.10,00,000/- on 17.01.2012, after a lapse of about 5 years from the date of retirement of the defendant from the post of Executive Engineer of the Tamil Nadu Electricity Board.

9. Cause title in the plaint would reveal that the plaintiff after his retirement, settled in his native place at Kovilpatti and the defendant/ contractor was carrying on his business at Coimbatore .Under those circumstances, the mode of passing on the borrowed sum of Rs.10,00,000/- was not proved by the plaintiff. Under what circumstances, and the mode of payment, whether through Demand Draft or through RTGS or any other method has not been established by the plaintiff. Thus, there is every reason to believe that the plaintiff obtained blank signature in the Promissory Note in lieu of commission by way of corruption for sanctioning and to clear the bills in respect of the works carried on by the respondent in his capacity as a contractor in Periyar Hydro Power Unit-II. The relationship of the parties has established as the plaintiff was holding the post of Executive Engineer and under his control, the defendant was performing the contract works at the time of retirement of the plaintiff. These mitigating factors play pivotal role in forming an opinion that there was a probability of demanding

commission and further passing on the borrowed sum of Rs.10,00,000/- and its mode were not proved by the plaintiff before the trial Court. Thus, the perception of the trial Court that the plaintiff retired from service in the year 2007 and the defendant borrowed the sum of Rs.10,00,000/- on 17.01.2012 and therefore, there is no connection between the employment of the plaintiff and the contract works of the defendant had not been established and therefore, presumption in this regard goes in favour of the defendant.

10. The defendant in his written statement, as well as in his deposition, categorically narrated the events and the circumstances, under which, the blank signature was obtained in the Promissory Note. No other circumstances are explained by the plaintiff that the defendant borrowed a sum of Rs.10,00,000/- on 17.01.2012. The place of borrowal, mode of passing on the consideration had not been proved through documents or through evidences. Thus, there is no ambiguity that in order to clear the bills through the Executive Engineer during the relevant point of time, when the plaintiff was holding the post of Executive Engineer, the defendant agreed to pay commission and he paid meagre amount of commission and the plaintiff obtained signature in the blank Promissory Note and subsequently, utilized

the same in the year 2012.

11. It is doubtful, whether the Government servant served in the rank of the Executive Engineer will simply pay a sum of Rs.10,00,000/- towards loan to a contractor without any evidence. In the present case, how the amount of Rs.10,00,000/- was passed on from the plaintiff to the defendant had not been proved. Whether the defendant, who is continuing his contract work at Coimbatore had gone to Kovilpatti and borrowed the amount from the plaintiff or the plaintiff had gone to Coimbatore and given the loan amount to the defendant had not been stated anywhere nor any evidence is made available to establish such circumstances, which all are vital and to be considered along with the statements made in the written statement by the defendant.

12. The trial Court proceeded with the facts only in the perspective of an ordinary loan transaction between two private persons. The previous relationship of the plaintiff and the defendant as an Executive Engineer and the contractor worked under him were not at all taken into consideration. The trial Court further failed to consider the facts and evidences cogently

narrated by the defendant in his written statement and deposition, which all are vital for the purpose of forming an opinion with reference to the documents and evidences.

13. Signing of the Promissory Note, no doubt, would favour the plaintiff to presume that the Promissory Note was executed and admitted. Such a presumption is in favour of the plaintiff. However it is rebutted and while rebutting the defense as narrated, various facts and circumstances and the relationship between the plaintiff and the defendant at the time of getting signature in the Promissory Note all together to be considered. When the plaintiff has not established regarding the payment of Rs.10,00,000/- in the year 2012 made to the defendant, there is every reason to believe that the signature was obtained in the blank Promissory Note in lieu of the commission, which was agreed between the parties.

14. The commission agreed between the parties in the present case is nothing but corruption. It is an illegal agreement and an offence under the provisions of the Prevention of Corruption Act. Giving and taking, both being an offence under the Prevention of Corruption Act, both the plaintiff

and the defendant are liable to be prosecuted in respect of such transactions. Since the defendant has stated that he agreed to pay commission to the plaintiff, while he was holding the post of an Executive Engineer, the very statement in the written statement is prosecutable. The plaintiff waited for about 5 years and thereafter, instituted a suit. When the plaintiff retired in the year 2007, and has stated that the defendant borrowed a sum of Rs.10,00,000/- on 17.01.2012, the burden heavily lies on the plaintiff to establish that the consideration of Rs.10,00,000/- was passed on to the defendant as a loan and the mode of payment must be established. However, there is no whisper about such mode of payment nor the trial Court considered these aspects. The trial Court simply proceeded as if it is a loan transaction based on the Promissory Note and the relationship between the appellant and the respondent in their official capacity and the commission agreed between the parties had not been taken into consideration by the trial Court.

15. Therefore, regarding Issue No.1, the Promissory Note though true and admittedly, signed by the defendant, passing on the consideration of Rs.10,00,000/- had not been established. More so, the agreement between

the plaintiff and the defendant is in the nature of a corrupt transaction as commission and thus, the said promissory note cannot be acted upon and thus, the said issue goes in favour of the defendant.

16. Since the loan amount paid to the defendant was not established, the defendant is not liable to pay the suit amount.

17. Accordingly, the judgment and decree dated 18.12.2017 made in O.S.No.121 of 2015 on the file of the First Additional District Court, Coimbatore is set aside and consequently, the Appeal Suit in A.S.No.527 of 2018 stands allowed. No costs. Connected miscellaneous petition is closed.

21.02.2023

Index : Yes
Speaking order
Neutral Citation:Yes
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To
The Judge,
First Additional District Court,
Coimbatore.

S.M.SUBRAMANIAM, J.

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