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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :26.09.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No.479 of 2022
and
C.M.P.No.17373 of 2022

Nagarajan .. Appellant / Defendan

Vs.

Kavipriya .. Respondent / Plaintiff

PRAYER : Appeal suit is filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, prayed to set aside the Judgement and Decree dated 12.08.2022 passed in O.S.No.16 of 2019 by the learned III Additional District Judge, Pondicherry.

For Appellant : Mr.P.Suresh Babu

For Respondent : Mr.P.Senthil Kumar

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J U D G M E N T

The appellant has preferred this appeal suit against the Judgment and Decree passed by the learned III Additional District Judge, Pondicherry in O.S.No.16 of 2019, dated 12.08.2022.

2. The appellant herein is the defendant in O.S.No.16 of 2019 on the file of III Additional District Judge, Pondicherry. The respondent herein / plaintiff has filed the suit for recovery of money based on the promissory note. The appellant herein / defendant contested the suit, stating that he has not borrowed any loan from the plaintiff. On hearing both sides as well as considering the evidence, the learned trial Judge finally held that the defendant / appellant is liable to pay the suit claim, and accordingly, decreed the suit. Aggrieved over the said Judgment and decree the appellant has preferred this appeal.

3. The fact reveals that the defendant had approached the plaintiff and her husband, as they known each other for a long time, and demanded a sum of Rs.5,00,000/- as loan in order to meet out his family expenses.

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Accordingly, the plaintiff's husband accepted such request, arranged the money and gave the said amount to the defendant on 28.01.2016. On receipt of the amount the defendant executed a promissory note with undertaking to repay the same with 24 % interest per annum on demand. But as he was irregular in payment of interest, he had paid only a sum of Rs.60,000/- as interest. Thereafter, he has not inclined to pay neither principal nor interest. But all of us sudden, the defendant issued notice on 13.12.2018 and made false allegation against the husband of the plaintiff. On 02.01.2019, the plaintiff gave a suitable reply to the plaintiff. On the same day, the plaintiff demanded him to re-pay the loan amount with interest and as he failed, the suit was filed.

4. As per the written statement, the defendant totally denied the execution of promissory note in favour of the plaintiff. Further, the defendant contended that he had no necessity for borrowing loan from the plaintiff or from her husband. After filing of the suit, he had verified the suit promissory note, found that his signature was forged and with a view to defraud and cheat him untenable claim was made by filling the present suit, without any legal basis. Further he also contended that the plaintiff's husband namely

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Kannan was doing money lending business, and insisted the defendant to borrow a loan as Thandal, for which he refused. He also insisted him to sign on unwritten stamp papers. So the defendant was constrained to issue notice to the husband of the plaintiff. Aggrieved by the same the present suit was filed at the instigation of her husband.

5. Before the trial Court to prove their case, on the side of the plaintiff P.W.1 and P.W.2 were examined and Ex.A1 to A7 documents were marked. On the side of the defendant D.W.1 and D.W.2 were examined. On hearing both sides, the learned III Additional District Judge, Puducherry, decreed the suit in O.S.No.16 of 2019 with costs directing the defendant to pay the plaintiff an amount of Rs.7,97,669/- with subsequent interest at 6% p.a., of Rs.5,00,000/- from the date of plaint till the realization of the amount. Aggrieved by the said Judgment, the defendant has preferred this first appeal.

6. The learned counsel for the appellant / defendant submitted that when the defendant pleaded that the suit promissory note was fraudulently created by the plaintiff, then the burden restored on the plaintiff to prove that the promissory note was executed by the defendant, then only the plaintiff is

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entitled to the benefit of presumption under Section 118 (A) of the Negotiable Instrument Act. For that this purpose he relied the following judgment reported in ***S.A.No.1800 of 1989, MANU/TN/0975/2002, K.Sethurathinam Vs. Subramanian,*** wherein it was held as follows:

6. The presumptions under Section 118 of the Negotiable Instruments Act would be binding rule of evidence in favour of the respondent / defendant, only if the revision petitioner / plaintiff proves the execution of the promissory note, as held by the Apex Court in KUNDAN LAL V. CUSTODIAN, EVACUEE PROPERTY reported in MANU/SC/0422/1961:AIR 1961 SC 1316 wherein, it is held as follows:

"5.This Section lays down a special rule of evidence applicable to negotiable instruments. The presumption is one of law and thereunder a Court shall presume, inter alia, that the negotiable instrument or the endorsement was made or endorsed for consideration. In effect it throws the burden of proof of failure of consideration on the maker of the note or the endorser, as the case may be. The question is, how the burden can be discharged? The rules of evidence pertaining to burden of proof are embodied in Chapter VII of the Evidence Act. The phrase :burden of proof" has two meanings-- one the burden of proof as a matter of law and pleading and the other the burden of establishing a case; the former is fixed as a question of law on the basis of the pleadings and is unchanged during the entire trial, whereas the latter is not constant but shifts as soon as a party adduces sufficient evidence to raise a presumption in his favour. The evidence required to shift the

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burden need not necessarily be direct evidence, i.e., oral or documentary evidence or admissions made by opposite party; it may comprise circumstantial evidence or presumption of law or fact. To illustrate how this doctrine works in practice, we may take a suit on a promissory note. under Section 101 of the Evidence Act, "whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist". Therefore, the burden initially rests on the plaintiff who has to prove that the promissory note was executed by the defendant. As soon as the execution of the promissory note is proved, the rule of presumption laid down in Section 118 of the Negotiable Instruments Act helps him to shift the burden to the other side. The burden of proof as a question of law rests, therefore, on the plaintiff; but as soon as the execution is proved, Section 118 of the Negotiable Instruments Act imposes a duty on the Court to raise a presumption in his favour that the said instrument was made for consideration. This presumption shifts the burden of proof in the second sense, that is , the burden of establishing a case shifts to the defendant. The defendant may adduce direct evidence to prove that the promissory note was not supported by considering, and, if he adduced acceptable evidence, the burden again shifts to the plaintiff, and so on. The defendant may also rely upon circumstantial evidence and , if the circumstances so relied upon are compelling, the burden may likewise shift again to the plaintiff."

7. Per contra the learned counsel for the plaintiff submitted that she proved the execution of promissory note, as well as the borrowal of loan and the same was rightly appreciated by the learned trial Judge, which needs no interference by this Court.

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8. The learned counsel for the respondent / plaintiff also argues that the plaintiff has proved the execution of the promissory note by examining one of the witnesses as P.W.2. Once the initial burden is proved then the burden shifts upon the defendant to prove that the promissory note was created fraudulently by the plaintiff. The learned counsel relied on the Judgment of this Court reported in ***S.A.154/2002 in Ramasamy Vs.Chinnammal dated 12.11.2010***, wherein it has been held as follows:

> *"Burden of proving that the promissory note was executed by the defendant, initially lies on the plaintiff- As soon as execution of promissory note is proved, it shifts to the defendant - If the defendant adduces direct evidence to prove that the promissory note was not supported by considering, burden shifts back to the plaintiff. Trial Court has wrongly thrown the burden of proof on the plaintiff, after the execution was proved. Defendants have not adduced any evidence to prove that the documents was not supported by any consideration. Trial Court has wrongly dismissed the suit".*

9. Considering both side submissions, it is settled proportion that

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the initial burden is upon the plaintiff to prove the execution of promissory note by the defendant. As per the evidence of P.W.1 her husband was known to the defendant through one Anbazhagan and the defendant approached him for borrowing money. She further deposed that her husband was not having money at that time, but the plaintiff had the money with her so, at the request of her husband she paid the loan amount to the defendant. As a security, defendant executed the suit promissory note which was marked as Ex.A1 on the side of the plaintiff. Admittedly, the husband of the plaintiff namely Kannan stood as attester of the said document, and he was examined as P.W.2. As per the evidence of the defendant he has not signed in Ex.A1 -promissory note and also totally denied the borrowal of the loan as claimed by the plaintiff. Besides he also denied that the promissory note was fraudulently created by fabricating his signature. Moreover in the written statement a specific defence was raised by the defendant in Paragraph 9, stating that after "filing of the suit, the defendant verified the alleged suit promissory note and found that his signature was forged, as if he borrowed money and executed the suit promissory note. Therefore, the specific contention of the defendant is that his signature was forged by the plaintiff. In such circumstances the law requires that the defendant ought to have taken

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steps to prove that the signature was fabricated by the plaintiff for unlawfull gain. In the written statement, the defendant also mentioned that he would take steps to send the promissory note for forensic expert to get opinion about the said forgery. But, before the trial Court, the defendant has not taken any steps to send the promissory note to the forensic expert, inorder to get the expert opinion about the said fabrication, which was rightly pointed out by the plaintiff's counsels. In fact, the defendant is employed as a staff of PWD department and was not an illiterate person. Therefore, if really the plaintiff forged his signature he ought to have taken steps to prove the said forgery, but he failed. The learned trial Judge rightly appreciated this aspect which needs no interference by this Court.

10. Before filing the Suit, notice was issue by the plaintiff on 02.01.2019, prior to that, defendant has issued notice on 13.12.2018 to the husband of the plaintiff stating that he had borrowed Rs.10,000/- from him as Thandal and repaid the same within 100 days upon payment of Rs.100 per day. Thereafter, her husband insisted him to borrow higher loan and also forced him to sign in the unwritten stamp papers. If really any such instance happened, the defendant ought to have given complaint to the police about the

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alleged threat made by the plaintiff's husband, but he has not given any such complaint, nor he convened any Panchayat and the same was admitted by him during cross-examination. Therefore, the said allegation leveled by the defendant against the husband of the plaintiff has not been established through material evidence. It is also un-believable that he was insisted by the plaintiff's husband to receive more loan as stated in the notice. When there is no concrete evidence to support the defendant's claim the same is deemed to be un-proved.

11. The evidence of P.W.1 and P.W.2 were strongly objected by the defendants stating that with regard to the execution of promissory note there was a contradictions. But on considering the entire evidence of D.W.1 and D.W.2, it clearly reveals that the defendant borrowed a loan from the plaintiff at the instance of her husband / P.W.2 and executed the suit promissory note. One Anbazhagan was examined on the side of the defendant as D.W.2, stated that, he knows both Kannan as well as the defendant, but he did not know about the other loan transactions.

12. Furthermore, in reply notice issued by the defendant before filing

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the suit, he reserved his right to verify the suit promissory note and its genuinity, and to take necessary legal action against him. But after filing the suit promissory note the defendant has not taken any legal action against the plaintiff nor her husband. Therefore the defendant fails to establish that the suit promissory note was fraudulently created by the plaintiff and her husband and the evidence of the plaintiff established that the defendant borrowed a loan from her and executed the suit promissory note thereby she discharged her initial burden, but the defendant failed to establish that the signature found in the suit promissory note is not of him. Therefore, the authority relied by the plaintiff is support of her case but the authority relied by the defendant is not supporting the case of his defence. However, both the authorities were rightly appreciated by the learned trial Judge, which needs no interference by this Court.

13. With regard to the payment of interest, the plaintiff was not certain up to which date the defendant had paid the interest. Her contention is, the defendant had paid a sum of Rs.60,000/- as interest before filing of the suit but she failed to mention the specific date on which the said interest was paid. When the plaintiff failed to explain the payment of interest from the date

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onwards the interest was paid, this Court is unable to calculate the rate of interest from the date of the suit. But the learned trial Judge has rightly decreed the suit for a sum of Rs.5,00,000/- with interest at the rate of 6 % from the date of the plaint, till the date of realization amount, which needs no interference by this Court.

14. Accordingly, the Appeal Suit is dismissed as devoid of merits and the Judgment and decree passed in O.S.No.16 of 2019 dated 12.08.2022 on the file of the III Additional District Judge, Puducherry is confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

26.09.2023

Index : Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No

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To,

1. The III Additional District Judge, Pondicherry.

2. The Section Officer, VR-Section,
   High Court of Madras, Chennai.

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T.V.THAMILSELVI,J.
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