

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.03.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.156 of 2023
and
C.M.P.(MD)No.3260 of 2023

Sakthivel

... Appellant

/Vs./

Sekar

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree passed in A.S.No.21 of 2021, on the file of the Additional District Court, Pudukkottai, dated 14.07.2022 by confirming the judgment and decree passed in O.S.No.352 of 2013 on the file of the Additional Subordinate Court, Pudukkottai, dated 10.09.2020.

For Appellant : Mr.K.C.Maniyarasu

JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below. The defendant is the appellant herein. The

suit was filed by the respondent / plaintiff for recovery of money before the Additional Sub Court, Pudukkottai, in O.S.No.352 of 2013, based on a promissory note (Ex.A1).

2. The case of the respondent / plaintiff was that the appellant / defendant borrowed a sum of Rs.1,50,000/- by executing a promissory note (Ex.A1) in favour of the respondent / plaintiff and he did not repay the loan together with interest. However, as seen from the written statement filed by the appellant / defendant, he borrowed only a sum of Rs.10,000/- and not Rs.1,50,000/- as claimed by the respondent / plaintiff.

3. Before the trial Court on the side of the respondent / plaintiff, four documents were marked as exhibits, which included the promissory note for a sum of Rs.1,50,000/- namely Ex.A1. Three witnesses were also examined on the side of the respondent / plaintiff, namely, the respondent / plaintiff himself as P.W.1, the scribe to the promissory note, namely, Vinothkumar as P.W.2 and the attesting witness to the promissory note namely Adaikalam as P.W.3. On the side of the

appellant / defendant, only one witness was examined, namely, the appellant / defendant himself as D.W.1. No documents were filed on the side of the appellant / defendant before the trial Court.

4. Admittedly, as seen from the written statement as well as the oral evidence of D.W.1 (appellant / defendant), the signature in the promissory note (Ex.A1) has not been disputed by the appellant / defendant. He has also admitted that he borrowed a sum of Rs.10,000/- from the respondent / plaintiff. But, he has denied that he borrowed a sum of Rs.1,50,000/- as claimed by the respondent / plaintiff in the suit. It is also not in dispute that the appellant / defendant is working as a Clerk in a Court.

5. The trial Court, by applying Section 118 of the Negotiable Instruments Act, 1881 and based on the oral and documentary evidence available on record has held that the suit claim has been proved, as there is a presumption that the promissory note (Ex.A1) was infact executed by the appellant / defendant in favour of the respondent / plaintiff for a sum of Rs.1,50,000/-. The following factors were taken into consideration by

the trial Court for coming to the aforesaid conclusion:

(a) The appellant / defendant has not disputed the signature in the promissory note (Ex.A1);

(b) The appellant / defendant has not explained as to how he has signed a blank promissory note for a sum of Rs.10,000/- as claimed by him;

(c) When the appellant / defendant had executed a blank promissory note for such a small amount of Rs.10,000/-, an ordinary prudent man would expect that after receipt of Ex.A2 notice, the appellant / defendant would have discharged the loan and received back the blank promissory note (Ex.A1);

(d) Even though the appellant / defendant had contended that the respondent / plaintiff had no means to lend the amount of Rs.1,50,000/- to the appellant / defendant, the appellant / defendant had specifically in his pleadings and evidence, admitted that he obtained a loan for a sum of Rs.10,000/- from the respondent / plaintiff; and

(e) The respondent / plaintiff having proved the execution of Ex.A1, onus is on the appellant / defendant to prove that the respondent / plaintiff had no financial capacity to give the loan amount. But the

appellant / defendant has failed to prove the same by letting in any tangible and positive evidence.

6. The learned counsel appearing for the appellant / defendant would rely upon the oral evidence of the scribe (P.W.2) to substantiate his contention that there is a contradiction in the evidence of the respondent / plaintiff. In particular, he would refer to the deposition of P.W.2, wherein P.W.2, during the course of his cross examination, has deposed that the appellant / defendant was not present, when he prepared the promissory note (Ex.A1) and the same was not signed in his presence. A categorical stand has been taken by the respondent / plaintiff both in the plaint as well as in his oral evidence (P.W.1) that the appellant / defendant had borrowed a sum of Rs.1,50,000/- from him, based on the promissory note (Ex.A1).

7. The appellant / defendant cannot pick up stray references in the deposition of P.W.2 to claim that there are contradictions in the evidence of the respondent / plaintiff, when he has admitted his signature in the promissory note (Ex.A1) and he has also admitted that he has borrowed

money from the respondent / plaintiff though not a sum of Rs.1,50,000/- as claimed by the respondent / plaintiff in the plaint. The appellant / defendant has not let in any documentary evidence before the trial Court to substantiate his contention that he borrowed only Rs.10,000/- and not Rs.1,50,000/- as claimed by the respondent / plaintiff in the plaint.

8. As rightly observed by the trial Court, when the respondent / plaintiff has discharged his initial burden of proving his case that the appellant / defendant had borrowed a sum of Rs.1,50,000/-, the onus for disproving such a contention shifts to the appellant / defendant, who has miserably failed to disprove the contention of the respondent / plaintiff by letting in oral and documentary evidence to that effect. This Court does not find any infirmity in the findings of the trial Court and the trial Court has rightly decreed the suit as prayed for by the respondent / plaintiff. The lower appellate Court has also rightly confirmed the findings of the trial Court by dismissing the first appeal filed by the appellant / defendant in A.S.No.21 of 2021 on the file of the Additional District Court, Pudukkottai.

9. There are no substantial questions of law involved in this second appeal, as the Courts below have considered each and every issue raised by the appellant / defendant and have rightly come to the conclusion that based on the oral and documentary evidence available on record, the respondent / plaintiff has proved his case by virtue of Section 118 of the Negotiable Instruments Act, 1881. This Court does not find any contradictions in the evidence of the respondent / plaintiff as claimed by the appellant / defendant in this Second Appeal and if at all there was any contraction, it was for the appellant / defendant to substantiate the same through oral and documentary evidence, which he has miserably failed to do so.

10. For the foregoing reasons, this Court is of the considered view that there are no merits in this Second Appeal and accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

21.03.2023

Index : Yes / No
NCC : Yes / No
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S.A.(MD)No.156 of 2023

ABDUL QUDDHOSE, J.

Sm

TO:

- 1.The Additional District Court, Pudukkottai.
- 2.The Additional Subordinate Court, Pudukkottai.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.

Judgment made in
S.A.(MD)No.156 of 2023

Dated:
21.03.2023