



S.A.(MD)No.167 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.167 of 2023

and

C.M.P.(MD)No.3496 of 2023

M.Murali

... Appellant

/Vs./

S.Latha

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 20.10.2022 made in A.S.No.43 of 2021 on the file of the II Additional Sub Court, Tiruchirappalli, confirming the judgment and decree dated 01.09.2021 made in O.S.No.258 of 2016 on the file of the Principal Sub Court, Tiruchirappalli, and to allow this appeal.

For Appellant : Mr.C.Jeyaprakash

For Respondent : Mr.H.Arumugam



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JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The defendant in the suit in O.S.No.258 of 2016 on the file of the Principal Sub Court, Tiruchirappalli is the appellant herein. The respondent is the plaintiff in the said suit. The suit was filed by the respondent / plaintiff for recovery of a sum of Rs.2,62,000/- together with interest and costs from the appellant / defendant.

2. According to the respondent / plaintiff, the appellant / defendant borrowed a sum of Rs.2,00,000/- on 18.07.2013 by executing a demand promissory note dated 18.07.2013, which was marked as Ex.A1. The appellant / defendant did not repay the loan with interest as per the demand promissory note (Ex.A1) and hence, the respondent / plaintiff had also issued a legal notice on 19.10.2015 (Ex.A2) prior to the institution of the suit. The appellant / defendant has sent a reply dated 27.10.2015 (Ex.A3). Since the loan amount was not repaid, despite the legal notice dated 19.10.2015 (Ex.A2), the respondent / plaintiff filed the



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suit for recovery of money. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. Originally before the trial Court, the defendant was set exparte and an exparte decree dated 31.08.2016 came to be passed in favour of the plaintiff as prayed for in the plaint in O.S.No.258 of 2016. Thereafter, the defendant filed an application to set aside the exparte decree. The trial Court allowed the said application on payment of costs within the stipulated time. Admittedly, the defendant paid the costs as directed by the trial Court and the suit was restored to file and thereafter, the defendant had also filed his written statement.

4. On the side of the plaintiff, three documents were filed and marked as Exs.A1 to A3 and the details are as follows:

Ex.A1	18.07.2013	Pronote	Original
Ex.A2	19.10.2015	Advocate Notice	Office Copy
Ex.A3	27.10.2015	Reply Notice	Copy

The plaintiff herself was examined as a witness (P.W.1). However, on the side of the defendant, neither any document was filed nor any witness



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was examined. Even though the defendant had filed his written statement denying that he had borrowed a sum of Rs.2,00,000/- under the promissory note dated 18.07.2013 (Ex.A1), the defendant had not let in any oral and documentary evidence to disprove the claim of the plaintiff.

5. There is always a presumption of debt in favour of the plaintiff as per the provisions of Section 118 of the Negotiable Instruments Act, 1881, as she has produced the promissory note duly signed by the defendant (Ex.A1) to prove that the defendant had borrowed a sum of Rs.2,00,000/- on 18.07.2013 from the plaintiff and had agreed to repay the same with interest at 12% per annum.

6. Since no oral or documentary evidence was produced by the defendant to disprove the claim of the plaintiff and the plaintiff having discharged his initial burden of proving the debt as per the provisions of Section 101 of the Indian Evidence Act, 1872, this Court is of the considered view that the trial Court has rightly decreed the suit in O.S.No.258 of 2016 in favour of the plaintiff by its judgment and decree dated 01.09.2021. The lower appellate Court, namely, II Additional



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District Court, Tiruchirappalli, in A.S.No.43 of 2021, which was filed by the defendant aggrieved by the judgment and decree of the trial Court in O.S.No.258 of 2016 dated 01.09.2021, has rightly confirmed the findings of the trial Court, by dismissing the appeal filed by the defendant. Aggrieved by the concurrent findings of the Courts below, this second appeal has been filed.

7. This Court is of the considered view that only based on the oral and documentary evidence available on record and considering the fact that the plaintiff having proved her claim by filing the documentary evidence in the form of demand promissory note (Ex.A1) and her notice (Ex.A2), which have not been disproved by the defendant through any oral or documentary evidence, the Courts below have rightly rejected the contentions of the defendant. The issues raised by the appellant / defendant in this second appeal have all been rightly considered by the Courts below and there are no debatable questions of fact or law involved for further consideration by this Court under Section 100 of CPC.



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8. For the foregoing reasons, there is no merit in this second appeal. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
NCC : Yes / No
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TO:

- 1.The II Additional Sub Court, Tiruchirappalli.
- 2.The Principal Sub Court, Tiruchirappalli,
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.167 of 2023

Dated:
21.06.2023