



S.A.(MD)No.453 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.03.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.453 of 2022

and

C.M.P.(MD)No.5593 of 2022

1.K.Tamilselvam

2.T.Devi

... Appellants

/Vs./

Fernadshaw

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 29.01.2019 passed in A.S.No.33 of 2015 on the file of the learned Principal District Judge, Tiruchirapalli, whereby confirmed the Final Decree and Judgment dated 15.07.2014 passed in O.S.No.484 of 2010 by the learned Principal Subordinate Judge, Tiruchirappalli.

For Appellants : Mr.M.Dinesh Hari Sudarasan

For Respondent : Mr.V.George Raja



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JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The defendants in the suit in O.S.No.484 of 2010 on the file of the Principal Sub Court, Tiruchirappalli, are the appellants herein. The respondent is the plaintiff in the suit. The suit was filed for recovery of money, based on a bond executed by the appellants / defendants in favour of the respondent / plaintiff, under which the appellants / defendants had borrowed a sum of Rs.90,000/- from the respondent / plaintiff. Since the appellants / defendants failed to repay the loan amount, the suit was filed by the respondent / plaintiff.

2. As seen from the written statement filed by the appellants / defendants, they had taken a stand that they did not borrow a sum of Rs.90,000/- as claimed by the respondent / plaintiff, but had borrowed only a sum of Rs.50,000/-. However, they have admitted the signature and the date in the bond, which was marked as Ex.A1, but the loan amount was alone disputed.



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3. Before the trial Court, the respondent / plaintiff filed ten documents, which were marked as Exs.A1 to A10. Three witnesses were also examined on the side of the respondent / plaintiff, namely P.W.1 to P.W.3. On the side of the appellants / defendants, seven documents were filed which were marked as Exs.B1 to B7 and one witness was examined, namely the first appellant as D.W.1.

4. Apart from the bond (Ex.A1) dated 01.09.2007, executed by the appellants / defendants, in favour of the respondent / plaintiff, the respondent / plaintiff has also filed pre suit notices, which were marked as exhibits. On the side of the appellants / defendants, they have filed counterfoils relating to certain cheques issued by them in favour of the respondent / plaintiff, which was marked as Ex.B1 and they have also filed their bank passbooks, which were marked as exhibits on their side.

5. Having admitted the signature in the bond dated 01.09.2007 (Ex.A1) and having admitted that they had borrowed money from the respondent / plaintiff, the trial Court, based on the documents filed by the respondent / plaintiff, which were marked as exhibits on their side, has



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rightly come to the conclusion that the respondent / plaintiff has discharged his initial burden, as per the provisions of Section 101 of the Indian Evidence Act, 1872, for proving the suit claim. Certainly, the onus to disprove the claim of the respondent / plaintiff has been shifted to the appellants / defendants.

6. However, as seen from the documentary evidence placed on record by the appellants / defendants, which were marked as Exs.B1 to B7, they have been unable to disprove the suit claim of the respondent / plaintiff. The documents filed by the appellants / defendants will not in any way make the Court to believe the contentions of the appellants / defendants that they had borrowed only a sum of Rs.50000/- and date and the amount mentioned in the bond (Ex.A1) was not filled by them.

7. As seen from the oral and documentary evidence available on record, there is no evidence available on record to prove the contentions of the appellants / defendants that they never borrowed a sum of Rs.90,000/-, but borrowed only a sum of Rs.50,000/- and that they did not fill up the date and the amount in the bond (Ex.A1).



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8. Section 118 of the Negotiable Instruments Act, 1881, makes it clear that there is a presumption in favour of the respondent / plaintiff, as he has produced sufficient evidence in the form of exhibits to prove that he is entitled for the suit claim, which has not been rebutted by the appellants / defendants by producing any contra evidence to support their contentions as raised in their written statement.

9. The trial Court has rightly applied the presumption theory as per Section 118 of the Negotiable Instruments Act, 1881, by decreeing the suit in favour of the respondent / plaintiff. The lower appellate Court, namely the Principal District Judge, Tiruchirappalli, in the appeal filed by the appellants / defendants, in Appeal Suit No.33 of 2015 has also rightly confirmed the findings of the trial Court by dismissing the first appeal.

10. The issues raised in the grounds of this second appeal have been rightly considered by the Courts below, based on the oral and documentary evidence available on record. There are no substantial



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questions of law involved in this second appeal and there is no merit in this Second Appeal. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

31.03.2023

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

- 1.The Principal District Judge, Tiruchirapalli.
- 2.The Principal Subordinate Judge, 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.453 of 2022

Dated:
31.03.2023