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AS. No.382 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM:

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

AS. No. 382 of 2020

R.Thangavelu

...Appellant

Vs.

K.Eswari

...Respondent

PRAYER : This first appeal is filed under Section 96 of CPC r/w Order 41 of CPC, against the judgement and decree passed in O.S No. 155 of 2016 by the I Additional District Judge, Coimbatore, dated 04.11.2019.

For Appellant : Mr.M.Kalyanasundaram, Senior counsel.

For Respondents : Mr.C.Jagadish

JUDGMENT

This first appeal has been filed against the judgement and decree passed in O.S No. 155 of 2016 by the I Additional District Judge, Coimbatore, dated 04.11.2019.



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2. The plaintiff filed a suit that the defendant borrowed a sum of Rs.7,00,000/- from the plaintiff for her imperative disbursements, promising to repay the above amount along with interest at the rate of 24% per annum to the plaintiff on demand and in evidence thereof the defendant has executed an on demand promissory note. After several request to the defendant to repay the amounts, but she has not taken any steps to repay the same. Thereafter, the plaintiff issued legal demand notice on 11.04.2015 calling upon the defendant to repay the amount due under the promissory note, but she has not replied to the notice nor has repaid the amount due. Hence, the plaintiff filed the suit. On the other side, the defendant denied the entire loan transactions and also stated that she no necessity to borrow the amount from the plaintiff. After considering the submissions on either side, the Court below dismissed the said suit. Challenging the same the plaintiff filed this suit.

3. For the sake of convenience, the parties are denoted as per suit.

4. Heard the learned counsel for the plaintiff and the learned counsel for defendant.

5. The point to be decided is whether the signature found in the



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promissory note is belongs to the defendant or not ?

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6. The main contention of the plaintiff is that the defendant borrowed a sum of Rs7,00,000/- from the plaintiff and executed a promissory note in favour of the plaintiff. On the other side, the defendant completely denied the plaintiff's contention and also her signature in the promissory note. it is necessary to mention the recitals in D.W.1/defendant:

.....என்னிடம் காட்டப்படும் எதிர்வழக்குரையில் உள்ள கையெழுத்து என்னுடைய கையெழுத்து அல்ல. என்னிடம் காட்டப்படும் எனது சாட்சிய நிரூபண வாக்குமூலத்தில் உள்ள கையெழுத்து என்னுடைய கையெழுத்து அல்ல.....

7. Considering the above evidence it reveals that she not only denied the signature in Ex.A1/promissory note but also denied her signature found in the affidavit as well as written statement it should have been appreciated by the Trial court. Having appeared before the Court through her counsel and submitted her written statement thereafter she totally denied the signature in the written statement as well as proof affidavit, which shows that the defendant is not trustworthy person and she would go to any extent more particularly with regard to mend the signature in the documents. Admittedly, both parties not sent the document to expert opinion under Section 73 of the Evidence Act for comparing the signature. Accordingly,



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the signature found in Ex.A1 as well as in proof affidavits are vary from each other. Therefore, signature found in Ex.A1 is belongs to the defendant can be verified only by comparing the signature in the written documents and vakalat filed by her, if at all she is not signed in Vakalat and written statement she should have taken steps to prove the same but she failed. As observed above, her evidence is not trustworthy and in order to avoid her liability she placed her allegations before the Court that she is not signed in the document but the trial court failed to take note of the evidence and erroneously concluded that plaintiff not proved the pronote and signature which is erroneous. Accordingly issue 1 is answered.

8. The next issue to be decided is whether the Court can compare the signature of document in Ex.A1 with other documents by invoking Section 73 of evidence Act?

9. The learned counsel for the appellant relied the judgement reported in the case of *Indian Overseas Bank and others Vs. Om Prakash Srivastave*:

15. 13. It was further submitted that charges 4 & 5 were also not proved and sought to refer to the judgment of this Court in Lalit Popli v. Canara Bank



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more specifically para 13, which reads as under: “13. It is to be noted that under Sections 45 and 47 of the Evidence Act, the Court has to take a view on the opinion of others, whereas under Section 73 of the said Act, the Court by its own comparison of writings can form its opinion. Evidence of the identity of handwriting is dealt with in three Sections of the Evidence Act. They are Sections 45, 47 and 73. Both under Sections 45 and 47 the evidence is an opinion. In the former case it is by a scientific comparison and in the latter on the 1 (2003) 3 SCC 583 9 2022 LiveLaw (SC) 66 basis of familiarity resulting from frequent observations and experiences. In both the cases, the Court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the Handwriting Expert, the Court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence Act. Ordinarily, Sections 45 and 73 are complementary to each other. Evidence of Handwriting Expert need not be invariably corroborated. It is for the Court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when experts' evidence is not there, Court has power to compare the writings and decide the matter. [See Murari Lal vs. State of Madhya Pradesh (1980) 1 SCC 704]”

10 The ratio laid down in the referred authority relied by the



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appellant is squarely applicable to the facts of the present case.

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11. Admittedly, both counsels has not taken steps to get expert opinion and the court is empowered to compare the signature but the Trial court failed thereby findings rendered by the Trial Court is set aside.

12. Another foremost point raised by the defendant is that while giving complaint before the consumer forum the plaintiff has not mentioned pro note. Admittedly, as rightly pointed out by the plaintiff's counsel the relief claimed before the consumer forum is totally defer since because he approached the forum with regard to chit funds which is totally differ from the suit claim therefore non mentioning of the pro note in the consumer forum is fatal to the case in hand but the Court below erroneously dismissed the suit as such is liable to be set aside. As per the defence taken by the defendants her husband running Siva Selvi Finance after his demise all his liability settled with the partners. Even as per the evidence of PW.2 he signed as witness in the said pro note the from above evidence the due execution of pronote was proved through P.W.2 and P.W.3 witnessed that the pronote given to the defendant already but the trial court made observation that disbursement of the said loan amount was not known to the witnesses but the execution of the pro note was established and signature



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found in the A1 is belongs to the defendant presumption adopted with which instrument it was executed for the value consideration. Further it was settled proposition of law that burden shift on the defendant to adduce rebuttal evidence to disprove the said legal presumption attached with Ex.A1 but the Trial Court failed to taken into consideration of the above aspects and dismissed the suit as such is unjust and liable to be set aside. Further. She has failed to take steps to issue reply notice to the defendants. If at all her signature is forged in pronote she should have given police complaint against the plaintiff but she has not done so. Denial of signature is not been established by through material evidence.

13. Thereby pro note is valid one. Initial burden casted upon the plaintiff is discharged by proving execution of pronote issue No.1 is answered. Now, the comparing signature as per the Section 73 of the evidence Act is belated one. Accordingly, issue No. 2 is answered thereby appeal is allowed by set aside the findings of the Trial court. Suit is decreed as follows suit claim is Rs. 11,92,525. Hence defendant directed to pay a sum of Rs. 11,92,525 with 12% interest till filing suit and thereafter 6% till realisation.



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14. In the result, Appeal is allowed. No Cost. Consequentially connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The I Additional District Judge, Coimbatore.
2. The Section Officer,
V.R Section.

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