



S.A.No.200 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.01.2024

Pronounced on: 31.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.200 of 2018

R.Ravi

...Appellant

Vs.

A.M.Thirunavukkarasu

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree of the Principal District Judge of Kancheepuram District at Chengalpattu dated 06.10.2017 and passed in A.S. No.19 of 2014 reversing the Decree and Judgment passed by the learned Subordinate Judge, Madurantagam dated 29.11.2013 passed in O.S. No.162 of 2010.

For Appellant : Mr.K.Bijai Sundar

For Respondent : No Appearance

JUDGMENT

The unsuccessful plaintiff in a suit for recovery of a sum of Rs.9,72,650/- based on a promissory note executed by the defendant is the



appellant.

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2. The parties are described as per their litigative status before the Trial Court.

3. The case of the plaintiff is that the defendant approached him and borrowed a sum of Rs.7,00,000/- to meet his domestic and business needs. On 09.10.2008, the plaintiff lent the said sum of Rs.7,00,000/-, borrowing from his wife and evidencing the borrowing, the defendant executed the suit promissory note on 09.10.2008, promising to repay the said amount of Rs.7,00,000/-, together with interest at 18% per annum.

4. The case of the plaintiff is that the defendant did not come forward to pay even the interest, much less the principal amount and therefore the plaintiff was constrained to issue a notice on 07.10.2010. However, the defendant did not even chose to send a reply to the said notice. It is the further case of the plaintiff that after receipt of the said notice, the defendant approached the plaintiff and issued a cheque dated 25.10.2010 for Rs.9,57,250/-, being the outstanding amount as on 25.10.2010. The said cheque was dishonoured on presentation and on the said facts, the plaintiff



presented the suit.

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5. The defendant filed a written statement stating that the plaintiff was carrying on a chit business and the defendant has joined in 5 chit transactions in respect of which he has issued a blank cheque and further in order to secure the amounts payable to the plaintiff, the defendant's wife executed a registered mortgage for Rs.2,00,000/- in favour of the plaintiff, which was for discharge of the chit and loan amounts. Thereafter, differences arose between the plaintiff and the defendant and the case of the defendant is that the plaintiff forged the defendant's signature in the promissory note and misused the cheque given as security for the chit transactions and thereafter proceeded to file the suit.

6. Before the Trial Court, the plaintiff examined himself as P.W.1 and one Umapathy as P.W.2. The plaintiff exhibited Exs.A1 to A6. On the side of the defendant, he examined himself as D.W.1 and K.S.Subramaniam and Senthil as D.W.2 and D.W.3. On the side of the defendant, Ex.B1 to B6 were marked.

7. The Trial Court decreed the suit as prayed for by the plaintiff. The



defendant preferred an Appeal in A.S.No.19 of 2014 and the First Appellate Court reversed the findings of the Trial Court and allowed the appeal, holding that the Trial Court had decreed the suit on presumptions alone and considering the evidence on record that there were earlier transactions between the parties, there was every possibility that the cheque in Ex.A4 was relating to an earlier transaction and not the suit transaction.

8. The plaintiff, aggrieved by the reversing finding rendered by the First Appellate Court, has preferred the Second Appeal on 15.03.2018, this Court has framed the following substantial questions of law:-

“ a) Whether the appellate Court is right in allowing the appeal even after the defendant had admitted the fact that he had signed the promissory note in his cross examination which gives statutory presumption under Section 118 of the Negotiable Instruments Act in favour of the appellant who is the plaintiff before the trial Court?

b) Whether the appellate Court is right in allowing the appeal without appreciating the evidence in proper perspective especially when the defendant has taken conflicting stand in the written statement and at the time of adducing the evidence?

c) Whether the appellate Court is right in allowing the appeal in absence of the defendant not sending the



promissory note for opinion of the handwriting expert for the comparison thereof with his admitted signatures? ”

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9. Heard Mr.K.Bijai Sundar, learned counsel for the appellant/plaintiff. There is no appearance on the side of the respondent/defendant. I have also gone through the judgments of the Courts below.

10. Learned counsel for the appellant would draw my attention to the pleadings and also the evidence of the parties before the Trial Court. He would contend that, by examining P.W.2, the plaintiff has discharged the initial burden with regard to the execution of the promissory note and the passing of consideration and thereupon it was incumbent on the defendant alone to establish that the promissory note was without consideration and represented earlier chit transactions. In this regard, he would also take me through the oral evidence of D.W.1.

11. Learned counsel for the appellant would also place reliance on the following decisions:

i) ***K.Chinnasamy Vs. Sivagamiammal*** reported in **2007 (4) CTC 122**,

where, this Court relying on Sec.118 of the Negotiable Instruments Act, 1881, held that the burden is on the defendant to disprove the plaintiff's case by taking steps to send the suit promissory note to an handwriting expert.

ii) In ***R.Kamaiam Vs. K.K.Kumarasamy*** reported in **2001 (2) CTC 177**, this Court has held, placing reliance on Sec.118 of the Negotiable Instruments Act, that when the execution of the promissory note is not denied and passing of consideration alone is denied by the defendant, the defendant has to establish the said factum and the said defence that promissory note was not supported by consideration.

iii) In ***R.Pandyan and another vs. M.palgani***, reported in **2015 (2) MWN (Civil) 264**, this Court has held that though burden of proving due execution is permanently on the plaintiff, once due execution is proved, burden of disproving the same was permanently fixed on the defendant.

iv) In ***Union Bank of India, Ennore Branch Vs. S.Liakat Ali and two Ors***, reported in **2012 (5) CTC 322**, this Court has held that once execution of promissory note is admitted, presumption that the said promissory note was drawn for consideration would automatically arise and unless the contrary was proved by the defendant that the promissory note was not supported by any consideration, the plaintiff was entitled to a



presumption that the promissory note was only for consideration.

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12. I find from the evidence of the parties that the plaintiff as P.W.1 has categorically stated that he is doing finance business and the defendant was known to him for about six years and that the defendant's wife had also executed a mortgage deed for Rs.2,00,000/- in his favour. Infact, the plaintiff had also admitted to Exs.B1 to B5 which were marked by the defendant.

13. P.W.2 has been examined on the side of the plaintiff. He is a witness to the promissory note, Ex.A1. He has stated that the defendant signed the promissory note on receiving Rs.7,00,000/- from the plaintiff and that the amount was paid by way of 14 bundles of Rs.500/- notes. However, strangely to a suggestion put to the defendant in cross examination that the signature found in suit promissory note Ex.A1 was only that of the defendant and he is giving false evidence that it is not his signature, the defendant has answered that the said suggestion is correct. However, merely because there has been an admission of such a nature, the same cannot be read in isolation. The entire evidence of D.W.1 has to be read as a whole. To the very next suggestion that in order to prove that the signature in Ex.A1 promissory note was not that of the defendant, the defendant could have



taken steps to send the document to the Forensic department and he has not done so only because truth will come out, the defendant has denied the same. Therefore, much cannot be made out from the isolated admission of D.W.1 that the signature found in Ex.A1 promissory note is only his.

14. However, at the same time, the plaintiff has examined the witness to Ex.A1 promissory note and he has specifically spoken about the execution of the promissory note by the defendant and also the factum of receipt of Rs.7,00,000/- in cash from the plaintiff. The evidence of P.W.2 corroborates the evidence of P.W.1, the plaintiff. The initial burden of proof of the plaintiff thus stood discharged and the burden of proving the contra was thereafter shifted to the defendant. The defendant has not been able to discharge the burden of proof which was wholly on him, that the promissory note was not executed by the defendant and that the same was without consideration. Unfortunately, the First Appellate Court has reversed the well considered finding of the Trial Court merely on the ground that there were several money transaction between the parties and the cheque in Ex.A4 would have properly been given by the defendant in respect of earlier cheque transactions. The said findings are not based on any legal evidence, but



merely on surmises and conjectures of the First Appellate Court and therefore the same cannot be sustained, especially when the moot point before the Court was existence of the suit promissory note and passing of consideration and not the issuance of the cheque by the defendant, thereafter.

15. In view of the above, I am inclined to allow the Second Appeal. In so far as the 1st and 2nd substantial questions of law, in view of the admission of the defendant in cross examination being not unilateral or unequivocal which would bind him, the said questions of law are answered against the Appellant. However, in so far as the 3rd substantial question of law, the plaintiff having established the truth and genuineness of execution of Ex.A1 suit promissory note and also passing of consideration by examining himself and the witness P.W.2 to the suit promissory note Ex.A1, the burden of the plaintiff stood discharged and thereafter shifted to the defendant. However, the defendant has admittedly not taken any steps either to prove that the signature found in Ex.A1 was not his signature or the suit promissory note was without consideration. Infact, the defendant admits that he has known the plaintiff for several years and that he has had occasions to borrow



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monies from the plaintiff.

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16. In view of the above the Second Appeal is allowed on the third substantial question of law viz., the defendant has not discharged his burden by seeking opinion from the handwriting expert with regard to the disputed Ex.A1 promissory note with his admitted signatures.

17. In fine, the Second Appeal is allowed and the judgment and decree in A.S. No.19 of 2014 dated 06.10.2017 on the file of the Principal District Judge of Kancheepuram District at Chengalpattu is set aside and the judgment and decree passed by the learned Subordinate Judge, Madurantagam dated 29.11.2013 passed in O.S. No.162 of 2010 is restored.

31.01.2024

Index : Yes/No

Internet : Yes/No

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To

1. The Principal District Judge,

Kancheepuram District at Chengalpattu.

2. The Subordinate Judge, Madurantagam



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P.B.BALAJI, J,

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Pre-delivery Judgment
in
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