



S.A.No.1054 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM

THE HON'BLE MR. JUSTICE **G.ARUL MURUGAN**

S.A.No.1054 of 2012

Paramasivam

... Appellant

Vs.

Marimuthu

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 30.07.2012 made in AS.No.1 of 2012 on the file of the Principal District Court, Namakkal reversing the judgment and decree dated 30.09.2011 made in O.S. No.568 of 2008 on the file of the Sub Court, Tiruchengode by allowing this Second Appeal before this Hon'ble Court.

For Appellant : Ms.M. Adhishree for
Mr.N.Manokaran

For Respondent : Mr.P.Valliappan, Senior counsel
for S.M.S. Shriram Narayanan



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JUDGMENT

The appellant herein is the defendant in the suit. This second appeal is filed against the judgment and decree dated 30.07.2012 made in AS.No.1 of 2012 on the file of the Principal District Court, Namakkal, reversing the judgment and decree dated 30.09.2011 made in OS.No.568 of 2008 on the file of the Sub Court, Tiruchengode.

2. For the sake of convenience, the parties are referred to as per the ranking before the trial court.

The brief facts, which give rise to the instant second appeal, are as follows:

3. According to the plaintiff, the defendant had borrowed a sum of Rs.1,00,000/- for his urgent family and business expenses and promised to repay the said sum with interest at Rs.1.50 per month per hundred on demand by executing the suit promissory note on 27.06.2006 in favour of plaintiff. In spite of repeated personal demands made by the plaintiff to the defendant and also through advocate notice dated 05.06.2008, he has neither paid the



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amount nor given any reply. As such, the plaintiff has filed the suit

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for recovery of money based on Ex.A.1, promissory note for Rs.1,21,000/- with subsequent interest.

4. The defendant has resisted the suit by filing a written statement. Admitting the signature in the promissory note, the defendant stated that the promissory note was executed in the year 1993 and the same has been struck out and written as 2006. It is the case of the defendant that in the year 1993-1994, a textile business called SPS Tex was conducted by the defendant along with one Ayyavoo @ Subramaniam who was running Sri Balamurugan finance at Vaiyappamalai.

5. It is the further case of the defendant that for the said textile business, he had availed a loan of Rs.1,00,000/- from Indian Overseas Bank and Rs.60,000/- from Sri Balamurugan Finance, apart from investing Rs.1,00,000/- by the defendant and started the business. The said Ayyavoo stood as a guarantor for the loan amount borrowed by the defendant. In order to carry on the business separately, it was agreed that the remaining sum of Rs.20,000/- out of Rs.60,000/- borrowed from Sri Balamurugan Finance has to be paid by Ayyavoo @ Subramaniam and the defendant has



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to pay the loan amount borrowed in Indian Overseas Bank and pursuant to the same, Ayyavoo @ Subramaniyam discharged the loan amount and received three blank promissory notes signed by him.

6. It is the further case of the defendant that there was misunderstanding between the defendant and Ayyavoo @ Subramaniyam in respect of finance amount for which the criminal case also pending. The said Ayyavoo @ Subramaniyam, who had collected the promissory notes from the finance and held a grudge against the defendant, filed the present suit with the help of the plaintiff. It is the further case of the defendant that the promissory notes were not supported by consideration and that the plaintiff colluded together to fraudulently obtain unlawful enrichment.

Evidence and documents:

7. During Trial, the plaintiff examined himself as PW.1, the attesor as PW.2 and the scribe as PW-3 and marked Ex.A.1 to Ex.A.3. On the side of the defendant, DW.1 and DW.2 were examined and Ex.B1 to B3 were marked.



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Findings of the Courts below:

8. The Trial court after considering the documents and evidences dismissed the suit. The trial court held that PW.2, the attesor turned hostile and has not supported the case of the plaintiff. Similarly, the trial court held that the evidence of PW.3, manager of the Amman finance cannot be accepted. The Trial court mainly relied on the admission of PW.2 and held that the defendant has not borrowed money from the plaintiff and dismissed the suit.

9. Aggrieved by the same, the plaintiff filed the appeal in AS.No.1 of 2012 before the Principal District Judge, Namakkal. The Lower Appellate Court, after reappraising the evidence and documents allowed the appeal vide judgment dated 30.07.2012 and decreed the suit. Aggrieved by the judgment and decree, the defendant is before this Court on an appeal.

10. This court by order dated 20.11.2012 framed the following substantial questions of law.

1. Whether the first Appellate Court has committed an error in decreeing the suit on promissory note by



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drawing a presumption under Section 118 of the Negotiable Instruments Act, 1881 particularly when the execution and passing of consideration have been seriously disputed by the defendant?

2. Whether the first Appellate Court is right in invoking the presumption under Section 118 of the Negotiable Instruments Act, 1881 against the appellant especially when it was the specific contention of the defendant that the pronote was never issued to the plaintiff and it might have emerged in the year 1993-1994 in a different transaction with one Ayyavoo @ Subramaniam?

3. Whether the judgment of first Appellate Court is vitiated for the non compliance of Order 41 Rule 31 CPC and for not advertng to the reasons given by the trial Court for reversing the findings on facts?

Submissions on both sides:

11. The learned counsel for the appellant submitted that though the defendant admitted the signature in Ex.A1 promissory note, it is the specific case of the defendant that the promissory note has been given to the finance company in respect of the business transaction between the defendant and his partner Ayyavoo and, pursuant to the understanding, the loan amount was



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settled by Ayyavoo. However, the promissory note which was returned by finance company was retained by said Ayyavoo. Due to misunderstanding and grudge over the defendant, the suit is filed with the help of the plaintiff.

12. The learned counsel for the appellant further contended that the evidence of PW.2 has not supported the case of the plaintiff. The Trial court has rightly dismissed the suit, as the plaintiff has failed to prove that due consideration was passed on to Ex.A.1 promissory note. Further, the learned counsel for the appellant contended that Ex.A.2 legal notice was issued giving three days time which was not enough to give a proper reply. The non-giving of reply cannot be put against the defendant. Therefore, the learned counsel for the appellant contended that through the evidence of PW.2 and PW.3, the defendant had executed pronote and also put the signature and thumb impression, but later PW.2 gave a different version about the execution. PW.3 who is the scribe of EX.A.1 stated that he wrote the document and the defendant put signature and thumb impression. In view of the contradiction in the evidence of PW.2 and PW.3, the plaintiff has failed to establish the presumption for passing of consideration. Therefore sought for interfere of this Court in the judgment and decree and sought for



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allow this second appeal.

13. Per contra, the learned counsel for the respondent submitted that when the amount covered in the promissory note was paid and demanding the said amount, the plaintiff issued legal notice in Ex.A2 and the defendant even though received the legal notice, did not chose to reply, as the defendant did not have any defence in the suit. Only after filing of the suit, he has introduced a new story.

14. The learned counsel for the respondent further contended that apart from the plaintiff examining himself as PW.1, he has also examined the attestor as PW.2 and the scribe as PW.3 who have all spoken about the execution of the promissory note.

15. The learned counsel of the respondent further contended that the defendant has admitted the signature in Ex.A.1 promissory note and the execution of Ex.A1 pronote stands duly proved and automatically the presumption under Section 118 of the Negotiable Instruments Act arises. It is for the defendant to rebut the presumption, but the defendant has failed to



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prove the presumption by way of any oral or material evidence or in the manner known to law. The lower appellate court has rightly decreed the suit based on the documents and there is no perversity in the judgment of the lower appellate court and therefore, sought for dismissal of the second appeal.

Analysis of the submission on both sides:

16. It is the admitted case that Ex.A.1 promissory note has been executed by the defendant. The plaintiff has contended that the defendant has availed the loan for a sum of Rs.1,00,000/- and have executed the promissory note on 27.06.2006. As the loan amount was not repaid by the plaintiff issued a legal notice in Ex.A.2 to the defendant on 05.06.2008. The defendant has received the notice and acknowledged the same on 10.07.2008 in Ex.A.3. Even in the legal notice it is stated that the defendant has executed Ex.A.1 promissory note in favour of the plaintiff and through Ex.A.2, legal notice, defendant was called upon to repay the amount borrowed from the plaintiff. In spite of receipt of Ex.A.2 legal notice, the defendant did not chose to reply. Even though, it is contended by the learned counsel for the appellant that only three days time was given in the legal



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notice and that the defendant had no sufficient time to reply, the fact remains that after the legal notice is acknowledged through Ex.A.3 on 10.07.2008, the suit has been filed on 29.10.2008, that is after the period of 3 ½ months and though the defendant have sufficient time, the defendant without any reason did not chose to reply to the notice Ex.A.2.

17. As stated supra, the plaintiff has marked the promissory note as Ex.A.1 and legal notice as Ex.A.2 and the acknowledged card as Ex.A.3 and examined himself as PW.1. The attesor of Ex.A.1 was examined as PW.2 and the scribe as PW.3. PW.1 has given the evidence with respect to loan availed by the defendant and the execution of the promissory note in his favour. In his chief examination, PW.2 stated that the defendant has signed the promissory note after due consideration, but in the later part of evidence PW.2 has stated that he has left the place and therefore he is not aware of the further transaction in respect of the payment of loan. However, PW.3 scribe, who has written the promissory note categorically given the evidence in respect of signature put by the defendant and has spoken about the execution of Ex.A.1 In this case, the defendant himself admitted his signature in Ex.A.1 the promissory note and therefore the execution of the Ex.A.1



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promissory note stands proved.

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18. In a suit filed for recovery of money based on the promissory note, once the plaintiff established the execution of the promissory note, presumption under Section 118 of N.I.Act, arises. Section 118 of N.I. Act reads as under:



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“118. Presumptions as to negotiable instruments:- Until the contrary is proved, the following presumptions shall be made:-

(a) of consideration:- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date : that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance: that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer: that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements: that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamp: that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course: that the holder of a negotiable instrument is a holder in due course.”



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19. As such it has to be presumed that Ex.A.1 promissory note has been executed for consideration on the date mentioned therein. Once the presumption arises, the onus is cast on the defendant to rebut the presumption by producing a probable defence to prove that the instrument is not supported by consideration.

20. It is the specific case of the defendant that even though he has admitted the signature in the promissory note, it is his defence that they carried on the business in the name of SPS Tex along with one Ayyavoo and the defendant has availed the loan from the finance and later pursuant to the understanding and settlement between Ayyavoo and defendant, the business was closed and as per understanding, the defendant requested the partner Ayyavoo to repay the loan. As per the understanding, even though Ayyavoo discharged the loan amount and has received the promissory note from the finance company had retained it with him and later when the dispute arose between the plaintiff and the Ayyavoo in respect of the land transaction, he has altered the date in Ex.A.1 promissory note and with the help of the plaintiff has filed the suit for recovery of money. But, however the



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defendant failed to produce any oral and documentary evidence to show the existence of the transaction between the defendant and Ayyavoo and there had been a settlement based on understanding between them. Further, the defendant failed to produce any evidence to show that pursuant to such settlement, the loan amount was settled by Ayyavoo to the finance company. The defendant has failed to examine anyone to show that after the loan amount was settled, the promissory note was handed over to said Ayyavoo. The onus is on the defendant to rebut the presumption that Ex.A.1 pronote is not supported by consideration. The fact remains that the legal notice was issued to the defendant calling upon him to repay the amount covered in Ex.A.1 through Ex.A.2 legal notice and the defendant has not chosen to reply the same. But as an after thought, the defendant has come up with the defence that promissory note was given to finance company and pursuant to the settlement and understanding with Ayyavoo, the promissory note was returned by the finance company to the partner Ayyavoo. The said fact has not been proved by the defendant by producing evidence.

21. The learned counsel for the appellant relied on the judgment in

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Payrelal reported in (1993) 3 SCC 35 and argued that the Court should not rely on the technicalities in rejecting the defence of the defendants. In the judgment relied on by the appellant, it has been held that “initial burden lies on defendant to prove non-existence of consideration by bringing on record such facts and circumstances which may lead the court to believe non-existence of consideration or non-existence so probable that a prudent man would act upon the plea that it did not exist”. Holding so, the Hon'ble Supreme Court held the faith of the business community dealing in mercantile and trade cannot be permitted to be shaken by resort to technicalities of law and the procedural wrangles as appears to have been done in the instant case.

22. Even in the present case, the only defence taken by the defendant is that there was a business transaction with one Ayyavoo and pursuant to the understanding and settlement the promissory note was returned by the finance company to the partner Ayyavoo and the same has been misused by the plaintiff with the help of Ayyavoo, but the same has not been substantiated by producing any material or oral evidence. In the absence of the same, the defendant has failed to rebut the presumption.



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23. By taking note of the legal aspects and the documents available on the record, the lower appellate court has arrived at a finding that Ex.A.1 promissory note stands proved and has rightly decreed the suit. This Court is of the considered view that the findings arrived by the lower appellate court is based on the material available on record and there is no perversity or illegality. Under such circumstances, substantial questions of law are answered against the appellant and in favour of the respondent. In the result, the second appeal is dismissed. However, there is no order as to costs.

05.02.2024

drl

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To Principal District Court, Namakkal.

2.The Sub Court, Tiruchengode.



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