



S.A.No.655 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 22.02.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.655 of 2013

Nambikkai Marie (Died)

The Administrator General,

High Court.

... Appellant

(Sole Appellant died without any legal heirs. The Administrator General, High Court, impleaded to represent the estate of the deceased vide this order dated 22.02.2024)

Vs.

Kaniakannan

... Respondent

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree dated 07.08.2012 made in A.S.No.1 of 2011 on the file of the II Additional District Judge at Pondicherry, reversing the decree and judgment dated 10.12.2010 made in O.S.No.121 of 2004 on the file of the Principal Sub Judge, Pondicherry.

For Appellant

: Mr.M.R.Jothimanian
for AG & OT

For Respondent

: Mr.A.K.Rajaraman



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JUDGMENT

The present Second Appeal arises out of the judgment and decree of the learned II Additional District Judge, at Pondicherry in A.S.No.1 of 2011 dated 07.08.2012 in reversing the judgment and decree of the court of Subordinate Judge at Pondicherry in O.S.No.121 of 2004.

2. For the sake of convenience, the parties will be referred to as their ranks in the suit.

3. O.S.No.121 of 2004 is a suit filed for recovery of a sum of Rs.2,21,304/- together with interest at the rate of 12% per annum. The claim of the plaintiff is that on 26.04.2003, the defendant borrowed a sum of Rs.2,00,000/- on the foot of two promissory notes and had issued two cheques drawn on ICICI Bank, Pondicherry. When the cheques were presented for collection, the same were returned. Being left with no other option, the plaintiff issued notice to the defendant on 18.02.2004. Though notice was served on the defendant, he did not issue any reply. Since the



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demand remained unsatisfied, the plaintiff preferred the suit for recovery of money.

4. The defendant entered appearance and filed a written statement.

He pleaded that he had borrowed only a sum of Rs.1,70,000/- from the plaintiff which he had repaid. He admitted to the execution of the two promissory notes, but attempted to put up a plea of set-off claiming that he purchased (i) BPL colour T.V. (ii) two wheeler motor cycle and (iii) fridge for the plaintiff out of his funds and therefore, he pleaded that whatever amount he owed to the plaintiff, had been discharged by virtue of purchasing these three articles for the plaintiff.

5. Learned trial judge came to a conclusion that the defendant having admitted the promissory notes and issuance of cheques, a presumption under Section 118 of Negotiable Instruments Act has to be drawn. Since the defendant did not produce any record for the plea of set-off, he rejected the



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case of the defendant and decreed the suit for the amount of the promissory

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notes at the rate of 6% per annum.

6. On appeal, the learned II Additional District Judge took the appeal in A.S.No.1 of 2011. He allowed the appeal on three grounds viz., the first ground being that filling up of the promissory notes by the plaintiff is a material alteration and second, he came to the conclusion that the promissory note which does not contain the amount, date or rate of interest is not a complete one. Finally, relying upon the set-off that had been pleaded by the defendant, he allowed the appeal and dismissed the suit. Aggrieved by the same, the present second appeal has come before this Court.

7. In this second appeal, notice regarding admission was ordered on 20.08.2013. Notice has been served. Mr.A.K.Rajaraman, learned counsel entered appearance for the respondent/defendant.



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8. Pending the appeal, the appellant/plaintiff passed away without any legal heirs. Therefore, in exercise of powers vested under Order XXII Rule 4A, I impleaded the Administrator General of this Court to represent the estate of the deceased plaintiff and requested the learned counsel who was representing the deceased plaintiff to handover the papers to the Administrator General. Accordingly, Mr.G.Prabakaran, learned counsel handed over the papers to the Administrator General, who engaged Mr.M.R.Jothimanian to represent the estate of the deceased.

9. I heard Mr.M.R.Jothimanan and A.K.Rajaraman in respect of the appeal. The appeal is heard on the following substantial questions of law:

“A. Whether the lower appellate court is right in holding that the defendant rebutted the presumption under 118 of NI Act in respect of Ex.No.A1 and A.2, suit pronotes despite that the execution of the promissory notes are admitted by the



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defendant?

B. Whether the lower appellate court is right in reversing the well-considered judgment of the trial court specifically, without complying the mandatory procedure under Order XLI Rule 26 of CPC

C. Whether the lower appellate court correct in holding that the pronotes are void under Section 87 of the Negotiable Instruments Act without any specific and material evidences for material alterations?

D. Whether the defendant can be permitted to rebut the presumption specifically when he has not issued any reply notice for the suit claim and adverse inference could be drawn against the defendant?

E. Whether the finding of the lower appellate court is correct in holding that the suit promissory notes are not supported by consideration, despite of that admission of the defendant in the written statement and deposition regarding borrowal



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*of money from the plaintiff and in consonance with
Section 20 of N.I.Act?*

10. For the sake of convenience, all the substantial questions of law are taken up together and answered in this appeal.

11. Mr.M.R.Jothimanian would argue that the findings of the lower appellate court that there has been a material alteration on account of the fact that the plaintiff had filled up the promissory note, is contrary to the Negotiable Instruments Act and secondly, he would plead that the promissory note having been admitted, the burden shifted to the defendant to discharge his liability and since the defendant failed to do so, the lower appellate court fell in error in allowing the appeal.

12. Mr.A.K.Rajaraman would argue, from the evidence of the plaintiff especially during the cross examination dated 04.02.2010 that she



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admitted that she had received a BPL colour TV, a “Bajaj Spirit” two wheeler and Voltas Fridge and therefore, the defendant has discharged his burden and the finding of the lower appellate court does not require interference from the hands of this court.

13. Insofar as the first issue is concerned, whether in case of a blank promissory note, the same can be filled up, the issue is directly covered by Section 20 of the Negotiable Instruments Act. As per Section 20, where a person hands over an inchoate document to his creditor, he gives *prima facie* authority to the holder thereof, the plaintiff in the present case, to make or complete the negotiable instrument and for filling up of the amount not exceeding the amount covered under by the Stamp Act.

14. “Material alteration” is also dealt with under Section 87 of the Negotiable Instruments Act. Under Section 87 where insertions are made in a promissory note, without the consent of the debtor, then it is treated as



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material alteration. In the case on hand, the statute itself gives authority to the plaintiff to fill up the promissory note as seen from Section 20. Therefore, the view taken by the learned II Additional District Judge that if a blank promissory note is filled up by the creditor, it amounts to material alteration, runs contrary to the statute and hence, it is perverse.

15. Now I shall examine the plea of set-off. Under Order VIII Rule 6 of the Code of Civil Procedure, the defendant pleading set-off in the suit for recovery of money has to necessarily give the details of the “legally recoverable amounts” that the plaintiff owes to the defendant. Fortunately for me, the defendant has not troubled the trial court with any evidence to show that the plaintiff was duty bound to pay the amount for the aforesaid articles.

16. The argument of Mr.A.K.Rajaraman is that the evidence given by the plaintiff during her cross examination amounts to admission.



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17. I have carefully gone through the cross examination. I do not find any such admission stating that the plaintiff had received the entire amount of Rs.2,00,000/- from the defendant by way of supply of goods or other services rendered by the defendant. Therefore, had the defendant been serious about the plea of set-off, he would have at least produced some documents to show that he purchased the TV, Fridge and Scooter in his name and would have given some evidence of handing over the same to the plaintiff.

18. Insofar as movable property is concerned, it is covered under the Sale of Goods Act and transfer of possession itself in certain cases will amount to transfer of title. Unfortunately for the defendant, he has not discharged his burden as required under the plea of set-off in order for this court to come to a conclusion that out of Rs.2,00,000/-, he is entitled to set-off of Rs.13,000/- (Rs.6000 towards Fridge and Rs.7,000/- towards TV).



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19. Therefore, I am of the view that the findings of the lower appellate court both on the question of set-off as well as on the issue of Section 20 of Negotiable Instruments Act reek of non application of mind and are contrary to the respective statutes. Hence, the judgment and decree of the court of II Additional District Judge at Pondicherry in A.S.No.1 of 2011 dated 07.08.2012 is set aside and the judgment of the learned Principal Subordinate Judge, Pondicherry in O.S.No.121 of 2004 dated 10.12.2010 is restored.

20. As regards costs, the Administrator General will be entitled to the costs in the second appeal. The costs in the trial court and the lower appellate court will go to the benefit of the estate. I make it clear that as I exercised the power under Order XXII Rule 4A, the Administrator General will be entitled to execute the decree and recover the amount, which shall be credited to the estate of the deceased appellant.



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21. In fine, the second appeal is allowed. Costs throughout.

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

To

1.The II Additional District Judge at Pondicherry,

2.The Principal Sub Judge, Pondicherry.



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V.LAKSHMINARAYANAN, J.

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