IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 10 / 01 / 2024

JUDGMENT DELIVERED ON: 13 / 02 / 2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL (CAD) NO.8 OF 2023
AND
CMP NO.10524 OF 2023

T.Santhi ... Appellant / Defendant

Vs.

P.Vijayakkumar ... Respondent / Plaintiff

PRAYER: First Appeal filed under Section 13 of Commercial Courts Act, 2015 read with Section 96 of C.P.C., to set aside the judgment and decree passed in O.S.No.298 of 2018 dated 08.04.2019 on the file of the Commercial Court cum Principal District Court, Namakkal.

For Appellant / Defendant	:	Mr.G.Purushothaman
For Respondent / Plaintiff	:	Mr.R.Sharath

JUDGMENT

R.SAKTHIVEL, J.

The appellant herein is the defendant in O.S.No.298 of 2018 on the file of 'Commercial Court cum Principal District Court, Namakkal' (henceforth 'Trial Court' for the sake of brevity).

2.For the sake of convenience, the parties will be referred to as per their array in the suit i.e. appellant herein and the respondent herein will be referred to as defendant and plaintiff respectively.

3.Feeling aggrieved with the judgment and decree dated April 8th, 2019, passed by the Trial Court in O.S.No.298 of 2018, the defendant has preferred this Appeal under Section 96 of Code of Civil Procedure, 1908 read with Section 13 of Commercial Courts Act, 2015, praying to set aside the judgment and decree passed therein.

4.The case of the plaintiff is that the defendant had borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) on December 7th, 2013 from the plaintiff to meet some urgent business expenses and thereby, the defendant had executed a promissory note in favour of the plaintiff agreeing to repay the said principal amount with interest at the rate of Rs.1.50 per Rs.100/- per month i.e. 18% either to the plaintiff or to his order, on demand. Thereafter, the plaintiff had demanded the defendant to repay the loan amount several times but the defendant did not repay the loan. Since the defendant paid neither the principal amount nor the interest, the plaintiff had filed the suit in O.S.No.298 of 2018 for recovery of money.

4.1.The defendant filed written statement wherein she has stated that she never executed the suit promissory note in favour of the plaintiff and never obtained any amount as loan from the plaintiff; that the defendant had pledged her Car bearing Registration No.'TCJ 5132' with one PVK Finance Company on July 8th, 1992 and at that time, the above said Finance Company got signatures and thumb impressions of the defendant and her husband namely M.M.K.Dinakaran in empty promissory notes and green concur sheets; and that the defendant has repaid the above said loan amount along with interest in time. It is further stated that when the defendant and her husband requested the above said Finance Company to return the empty promissory notes and conquer sheets bearing their signatures and thumb impressions, the Finance Company did not return the said documents by stating that they got mixed with other files and they would be returned after due search; that further they gave an assurance that they would not misuse the same; and that believing their words, the defendant and her husband kept silent. Further stated that the said Finance Company, foisted false case against the defendant in O.S.No.2 of 2007 before the Additional District Munsif Court, Namakkal, with the connivance of one S.Kanagarathinam and also filed another false case against the husband of the defendant in O.S.No.1 of 2007 before the Additional District Munsif Court, Namakkal with connivance of one P.Selvam for recovery of money; that however, both the suits were dismissed after full-fledged trial; that feeling aggrieved with the judgment and decree, the plaintiff therein filed Appeals in A.S.Nos.91 of 2012 and 92 of 2012 before the Sub Court, Namakkal and the same were dismissed; that in fact, the Second Appeals preferred before this Court in S.A.Nos.243 and 244 of 2015 were pending; and that the said Finance Company filed another Suit in O.S.No.11 of 2014 before the Sub Court, Valliyur, with the connivance of one Sadhasivam of Tirunelveli and the same is pending. Further stated that the defendant and her husband do not even know the plaintiff and they never obtained any loan from the plaintiff; that the suit promissory note is a fabricated document and is not supported by consideration; and that the suit has no cause of action. Accordingly, the defendant had prayed to dismiss the Suit.

4.2.Upon consideration of the plaint and other materials, the Trial Court framed the following issues:

"1.Whether the suit promissory note is forged and concocted one or not.

2.Whether it is true that at the time of borrowal of the loan by the defendant at Namakkal PVK Finance he obtained the defendant's signature in the blank promissory note or not.

3.Whether the plaintiff is entitled for suit claim amount as prayed for or not.

4.What other relief the plaintiff is entitled for."

4.3.Before the Trial Court, on the side of the plaintiff, the plaintiff himself was examined as P.W.1 and Ex-A.1 Promissory Note was marked through him and one Mr.Murugesan was examined as P.W.2. On the side of the defendant, three witnesses were examined and Ex-B.1 to Ex-B.6 were marked. The defendant himself was examined as D.W.1; one Mr.P.Vellappan was examined as D.W.2; and one Mr.M.M.K.Dhinakaran was examined as D.W.3.

4.4.The Trial Court, after hearing both sides, found that the plaintiff has proved his case and the defendant failed to rebut the presumption stated under Section 118 of the Negotiable Instruments Act, 1881. Accordingly, the learned Trial Judge decreed the Suit with costs. Feeling aggrieved with the judgment and decree, the defendant has preferred this appeal.

5.This Court has heard Mr.G.Purushothaman, learned counsel for the appellant and Mr.R.Sharath, learned counsel for the respondent.

6.Mr.G.Purushothaman, learned counsel for the appellant / defendant has submitted that the defendant is a lady and she is not involved in any business; that the defendant did not borrow any amount from the plaintiff as alleged; that the defendant and her husband borrowed money from one PVK Finance Company and at the time of borrowal, they had signed un-filled promissory notes and other papers; that the said Finance Company filed two suits with the connivance of its men by misusing the said papers against the husband of the defendant and the same ended in dismissal at the High Court level; that another suit filed by the said Finance Company with the connivance of one Sadhasivam is pending. The learned counsel further submitted that the Trial Court miserably failed to consider the said facts and wrongly decreed the suit. Accordingly, he prayed to allow the appeal by setting aside the judgment and decree passed by the Trial Court.

7.Per contra, Mr.R.Sharath, learned counsel for the respondent/plaintiff herein has submitted that the defendant did not deny the signatures found in the promissory note (Ex-A.1); that the plaintiff has proved the execution of the promissory note by examining the witness; that in such circumstances, the suit promissory note attracts the presumption under Section 118 of the Negotiable Instruments Act, 1881; that the defendant did not rebut the said presumption; that the Trial Court, after considering the evidence and documents, decreed the suit; and that there is no warrant to interfere with the said findings. Accordingly, he prayed to dismiss the appeal.

8.This Court has considered the rival submissions.

9.The following points arise for consideration in this appeal:

(i)Whether the plaintiff has proved the execution of the promissory note?

(ii)Whether the assertion of the defendant that the suit has been filed with the connivance of PVK Finance Company is proved?

(iii)Is there any reason to interfere with the Trial Court's judgment and decree?

Discussion and Decision for Point Nos.(i) to (iii)

10.The plaintiff was examined as P.W.1 and marked Ex-A.1 promissory note. One Mr.Murugesan was examined as P.W.2. P.W.1 in his chief examination deposed that on December 7th, 2013, the defendant came to his house and borrowed a sum of Rs.5,00,000/- from him as loan to meet her urgent business expenses and executed Ex-A.1 promissory note.

In his cross examination, he deposed that he knew the defendant's husband and that he neither knows about the loan obtained by defendant's husband in PVK Finance Company nor the Manager of PVK Finance Company. He further deposed that Ex-A.1 promissory note was written by one Kandasamy. It is to be noted that defendant side has not pleaded that the plaintiff has no wherewithal to lend the sum of Rs.5,00,000/-. P.W.1 in his cross examination has deposed that he is cultivating his father-in-law's land and he owns 100 Coconut trees. As stated supra, the defendant has not pleaded that plaintiff has no source of income to lend a loan amount of Rs.5,00,000/-. In the absence of such plea, the above line of cross examination, does not help the case of the defendant.

11.The plaintiff examined one P.Murugesan as P.W.2 who had signed as a witness in Ex-A.1 promissory note. P.W.2 deposed that on 07.12.2013, the defendant borrowed a sum of Rs.5,00,000/- from the plaintiff in cash and executed Ex-A.1 promissory note in favour of the plaintiff. He further deposed that the defendant agreed to pay interest at the rate of 18% for the said loan amount. P.W.2 was cross examined by defendant side. Despite cross examination, defendant was not able to shake his evidence. Conjoint reading of the evidence of P.W.1 and P.W.2 would prove the execution of Ex-A.1 promissory note. As alluded to *supra*, the defendant did not take a stand that plaintiff has no source to lend a huge sum i.e., Rs.5,00,000/- in cash. Though the defendant in her chief examination denied the signature found in the promissory note, in her cross examination, she admitted that the signature found in the promissory note to be hers. In view of the evidence of P.W.1, P.W.2 and the admission made by the defendant in her cross examination, the plaintiff clearly has proved the execution of Ex-A.1 promissory note. Once the execution of the promissory note is proved, the suit promissory note attracts the presumption under Section 118 of the Negotiable Instruments Act, 1881.

12.It is settled law that presumption under Section 118 of the Negotiable Instruments Act, 1881, is a rebuttable presumption. To be noted, the defendant did not plead that the plaintiff has no wherewithal to lend a sum of Rs.5,00,000/- to her. In the absence of such pleadings, the defendant cannot now turn around and say that the plaintiff has no wherewithal to lend a sum of Rs.5,00,000/- to the defendant.

13.The case of the defendant is that the defendant and her husband borrowed money from one PVK Finance Company and repaid the same. At the time of borrowal, the Finance Company got unfilled promissory notes and other papers and that the said Finance Company foisted the suit with the connivance of plaintiff. The defendant with a view to prove the said facts examined D.W.1 to D.W.3 and marked Exs-B.1 to B.6 documents. One Kumaravel, Partner of PVK Finance Company was examined as D.W.2. Defendant's husband was examined as D.W.3. D.W.2 was examined through process of Court. He deposed that defendant's husband borrowed money from PVK Finance Company and settled the said loan. His evidence does not help the defendant's case. D.W.3 deposed the line with D.W.1. Documentary evidence viz., Ex-B.1 to Ex-B.6 and oral evidence of D.W.1 to D.W.3. do not rebut the presumption attracted by Ex-A.1. Ex-B.1 is the judgment of this Court passed in S.A.No.244 of 2015. The said case was filed by one P.Selvam against the husband of the defendant seeking money decree based on a promissory note. The said Suit was dismissed by the Trial Court and the said dismissal was confirmed by the Court in S.A.No.244 of 2015. Likewise, Ex-B.2 is the suit filed by one S.Kanakarathinam against the defendant herein seeking money decree based on a promissory note and the same was dismissed by the Trial Court and the said dismissal decree was confirmed by this Court in S.A.No.243 of 2015. It is to be noted that the defendant miserably failed to connect the said documents with the plaintiff herein. Hence, Ex-B.1 and Ex-B.2 do not help the defendant's case. Ex-B.3 is the Certificate of Registration of Vehicle bearing Registration No.'TCJ 5132' which stands in the name of defendant. Ex-B.4 is the acknowledgment of Registration of Firm issued by Registrar of Firms in favour of PVK Finance Company and Ex-B.5 is the Partnership Deed of the said Finance Company. Ex-B.6 is the Certificate of Registration of vehicle bearing Registration No.TN28-AK-6566 standing in the name of the defendant. Ex-B.1 to Ex-B.6 do not connect with the plaintiff. The defendant failed to prove that the plaintiff is connected with Ex-B.1 to Ex-B.6 documents. Mere pleading does not amount to proof. As stated supra, Ex-B.1 to Ex-B.6 documents do not connect with the plaintiff. Hence, this Court is of the considered view that the defendant did not rebut the presumption under Section 118 of the Negotiable Instruments Act, 1881. Hence, this Court concludes that the plaintiff has proved the suit promissory note and proved the execution and consideration of the suit promissory note. The Trial Court, after considering the evidence available on record, has rightly decreed the suit. Hence, this Court finds no warrant to interfere with the Trial Court's judgments. Point nos.(i) to (iii) are answered accordingly against the defendant i.e. appellant.

14.Resultantly, the Appeal is dismissed and the judgment and decree dated April 8th, 2019 passed in O.S.No.298 of 2018 by the Principal District Court cum Commercial Court, Namakkal is confirmed. No costs. Consequently, connected civil miscellaneous petition is closed.

[R.S.M., J.] **[R.S.V., J.]**

13 / 02 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

The Commercial Court cum
Principal District Court
Namakkal.

R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN APPEAL (CAD) NO.8 OF 2023

13 / 02 / 2024