IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.13 of 2024

V.Jayaraman

… Appellant

Vs.

M.Srinivasan

... Respondent

Prayer:- Second Appeal is filed under Section 100 of C.P.C to set aside the Judgement and Decree dated 10.12.2019 made in A.S.No. 12 of 2018 on the file of the II Additional District Judge, Vellore @ Ranipet reversing the Decree and Judgement dated 12.03.2018 made in O.S.No. 123 of 2015 on the file of the Subordinate Judge, Arakkonam.

For Appellant : M/s.A.V.Arun

For Respondent : M/s.S.Jeremiah, for sole respondent
[vide order dated 14.12.2023.]

JUDGEMENT

The defendant is the appellant before this Court. The facts are stated herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.123 of 2015 on the file of the Subordinate Judge, Arakkonam for recovery of a sum of Rs.6,26,400/- together with future interest and cost.

3. It is the case of the plaintiff that the defendant had borrowed a sum of Rs.2,00,000/- from him for commencing a Brick-kiln business and executed a promissory note dated 09.11.2014. The defendant had borrowed a further sum of Rs.3,00,000/- from the plaintiff for the very same purpose and executed a promissory note dated 07.12.2014. The defendant had promised to repay the above sums on demand together with interest at the rate of 24% p.a.

4. The plaintiff would contend that the defendant had neither paid the principal nor interest towards the above promissory notes. The plaintiff had issued a legal notice dated 11.12.2015 to the defendant, the defendant did not receive the notice and returned the same. Hence, the suit.

5. The defendant had filed a written statement inter alia denying the suit promissory notes. It is his contention that he had been supplying his agricultural products to the plaintiff who was carrying on wholesale business of agricultural products at Kanchipuram. The defendant would submit that he had borrowed a sum of Rs.20,000/- in the month of May 2010 and has been paying a monthly interest of Rs.800/- at the rate of 48% p.a. He is paying the monthly interest in the form of agricultural products on Kandhayam basis. Again in the month of December 2010, the defendant had borrowed a sum of Rs.30,000/- from the plaintiff and was paying a monthly interest of

Rs.1,000/- per month at the rate of 48% p.a. Once again in the form of of agricultural products on Kandhayam basis.

6. The defendant would submit that at the time of borrowing the above sums, the plaintiff had obtained signatures in blank promissory notes. He would submit that he had paid the interest on the above sums till July 2015 and thereafter owing to a financial crisis he was not able to repay the interest and the principal. The plaintiff has therefore fabricated and created the suit promissory notes by using the blank signed promissory notes. The defendant denies the execution, attestation and consideration of the alleged promissory notes. The defendant would further submit that he did not receive any pre-suit notice. He would seek to have the suit dismissed.

7. The learned Trial Judge had framed the following issues:-

1. Whether the plaintiff is entitled for a recovery of a sum of Rs.6,26,400/- with interest as prayed for?

2. To what other relief?

8. The plaintiff had examined himself as P.W.1 and marked Ex.A.1 to A.4. The defendant had examined himself as D.W.1 and had only submitted himself to chief examination and marked Ex.B.1 to B.5. However, he had not submitted himself for cross examination.

9. The Trial Court on considering the evidence had dismissed the suit. The learned Trial Judge had observed that the plaintiff has failed to prove that consideration has passed under Ex.A.1, promissory note. Challenging the said judgement and decree the plaintiff had filed A.S.No.12 of 2018 on the file of the II Additional District Judge, Vellore.

10. The Lower Appellate Judge by his judgement and decree

dated 10.12.2019 was pleased to allow the appeal. The learned Appellate Judge observed that the Trial Court had proceeded to dismiss the case solely based on Ex.B.1 to B.5 which has not been proved by the defendant as he had not submitted himself for cross examination and his evidence had been struck off from the Courts records. Once the evidence has been struck off, the Trial Court had erred in relying upon these Exhibits.

11. The lower Appellate Court had observed that the defendant himself has accepted his signature in the suit promissory notes. The defendant who had come forward with a case that he has only borrowed a sum of Rs.20,000/- and Rs.30,000/- as early as in the year 2010 and that he has been repaying the interest on this sums has not proved the same. Therefore, the learned Judge had allowed the appeal and had consequently decreed the suit. Challenging the same, the defendant has filed the above Second Appeal.

12. The Second Appeal has been admitted on the following Substantial Questions of Law :-

i) Whether the First Appellate Court is right in reversing the well considered judgment of the trial court by mere drawing presumption under Section 118 of Negotiable Instrument Act?

(ii) Whether the First Appellate Court is right in holding that no witness is necessary to prove the execution of Promissory Note?

(iii) Whether it is necessary to prove the due execution of promissory note by the plaintiff by examining the witness especially when the defendant categorically denied the execution of suit promissory note?

(iv) Whether the First Appellate Court is right in not remanding the case for leading evidence by the defendant while reversing the judgment of the trial court

after holding that the evidence of DW 1 was "Struck off"?

(v) Whether the First Appellate Court is right in holding that the defendant did not adduce evidence with regard the means of the plaintiff when the burden of proof is on the plaintiff?

(vi) Whether the 1st appellate court is right when the plaintiff has not proved that the defendant is carrying on brick Klin business but admitted he is an agriculturist?

(vii) Whether the suit is not barred by the provisions of Tamil Nadu Debts Relief Act?

(viii) Whether the First Appellate Court judgment is in conformity with Order 41, Rule 31 of CPC?

13. However, on hearing the arguments, the Substantial Questions of Law that require considerations are as follows:-

i) Whether the First Appellate Court is right in reversing the well considered judgment of the trial court *by mere drawing presumption under Section 118 of Negotiable Instrument Act?*

(ii) Whether the First Appellate Court is right in holding that no witness is necessary to prove the execution of Promissory Note?

(iii) Whether the suit is not barred by the provisions of Tamil Nadu Debts Relief Act?

14. Mr.A.V.Arun, learned counsel appearing on behalf of the defendant would submit that the Lower Appellate Court had failed to appreciate that the plaintiff has not proved the execution of the promissory notes by the defendant. He would submit that the plaintiff is a money lender which is evident from the documents filed by the defendant as D.W.1 and once it is proved that he is a money lender, the onus lies heavily upon the plaintiff to prove the borrowal by producing his books of accounts etc. The learned counsel would submit that this onus has not been discharged by the plaintiff. He

would rely on the judgement of the Hon'ble Supreme Court reported in ***(2004) 12 SCC 83 - G.Pankajakshi Amma and Others Vs. Mathai Mathew (dead) Through LRs and Anothers***. He would also produce the judgement of the Hon'ble Supreme Court reported in ***(2019) 5 SCC 418 - Basalingappa Vs. Mudibasappa*** in support of his argument that the defendant in a suit for promissory note need not adduce independent evidence but could rely upon the evidence let in by the plaintiff to infer the preponderance of probabilities and therefore, there was no necessity for the defendant to enter the witness box.

15. Per contra, Mr. S.Jeremiah learned counsel appearing on behalf of the plaintiff would submit that the execution of the promissory notes has been admitted by the defendant. Once the execution is admitted, the onus shifts on the defendant to prove that there was no passing of consideration and that the promissory notes have not been executed in the manner pleaded. That apart, it is the contention of the learned counsel for the plaintiff that the defendant

has not submitted himself for cross examination and his evidence has been struck off. Once his evidence is struck off, the documents marked by him also cannot be relied upon. However, the Trial Court has proceeded to rely upon the documents which is marked by the defendant in his chief examination. The lower Appellate Court has rightly allowed the appeal and decreed the suit. He would submit that the same cannot be set aside by this Court especially when the defendant has failed to prove the contentions raised by him.

16. Heard the counsels on either side and perused the records.

17. Admittedly the defendant in his written statement has contended that he had borrowed money on two dates from the plaintiff and that he has handed over blank signed promissory notes. He has also stated that he had been repaying the loan till July 2015 and thereafter owing to his financial problems he was unable to service

the interest. Therefore, his dire financial situation has been taken advantage of and the plaintiff has filed the above suit by making use of the two blank promissory notes. The defendant has not proved the payment of the monthly interest nor has he let in any independent evidence to prove that it was only in the year 2010 that he had borrowed money from the plaintiff.

18. The judgement in the case of ***G.Pankajakshi Amma*** cited supra does not apply to the case on hand as in that case, the 1st respondent was a money lender by profession. In the instant case, the plaintiff is only a dealer of agricultural produce to whom the defendant and others have supplied their produce. In the course of this business, the plaintiff has extended financial help to the defendant. It is not the case of the defendant that the plaintiff is carrying on business of money lending. Once the signature in the promissory notes has been accepted, the onus lies heavily upon the defendant to prove otherwise. This onus has not been discharged by the defendant. The

defendant who has submitted himself for chief examination had not appeared for cross examination and his evidence had also been struck off. Therefore, there is no evidence to counter the case of the plaintiff.

19. The Substantial Questions of Law nos.(i) and (ii) are answered against the defendant. In order to claim the benefits of the Tamil Nadu Debt Relief Act, the defendant has to make an application before the authorities concerned. It is not the case of the defendant that he had made such an application. Therefore, Substantial Question of Law no.(iii) is also answered against the defendant. Consequently, the Second Appeal stands dismissed. No costs.

20. The Executing Court shall consider any request made by the judgement debtor for paying the decree amount in instalments as and

when such request is made by the judgement debtor.

11.03.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The II Additional District Judge, Vellore @ Ranipet.

2. The Subordinate Judge, Arakkonam.

3. The Section Officer,
V.R.Section,
High Court, Madras.

P.T.ASHA, J.,

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