IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM

THE HONOURABLE MRS. JUSTRICE J.NISHA BANU
AND
THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

A.S.No.67 of 2019

V.Arumugam ...Appellant/Plaintiff

vs.

S.Ravi ...Respondent/Defendant

PRAYER: Appeal Suit is filed under Section 96 of Civil Procedure Code, 1908 read with Order 41 Rule 1 C.P.C to set aside the judgment and decree dated 05.07.2018 made in O.S.No.132 of 2015 on the file of II-Additional District Judge at Puducherry by allowing present appeal.

For Appellant : Mr.A.Gouthaman
For Respondent : Mr.K.Maheswaran

JUDGMENT

(Judgment of the Court was made by Mrs.R.Kalaimathi, J.)

Being aggrieved by the judgment and decree dated 05.07.2018 made in O.S.No.132 of 2015 on the file of IInd Additional District Court at Puducherry, the plaintiff herein has preferred this appeal.

2. A suit was laid by the plaintiff for recovery of money of Rs.36,38,911.60/- with subsequent interest at 12% per annum on the principle amount of Rs.27,40,144/- from the date of the plaint and for costs against the defendant herein based on a promissory note.

3. Facts led to filing of the suit are set out hereunder:

The defendant was known to the plaintiff's family for the past 10 years. Based on the acquaintance, the defendant approached the plaintiff for financial assistance demanding a sum of Rs.27,40,144/- in the second week of November, 2012 in order to meet out his urgent need for family expenses and for business expenses (as the defendant was doing real estate business). The plaintiff arranged the said sum on 22.11.2012 and paid to the defendant and to evidence the same, the defendant executed the promissory note in favour of the plaintiff for the due consideration received and agreed to pay the same on demand or order such sum with interest thereon at the rate of 12% per annum. When the plaintiff sought to demand the defendant to repay the borrowed amount on several occasions, the defendant did not repay the amount due under the promissory note either towards principal or towards interest from the date of borrowal.

4. He would further submit that a lawyer's notice was caused to be issued to the defendant on 06.08.2015, calling upon the defendant to repay the dues under the promissory note. The defendant received the said notice on 08.08.2015 and gave a reply dated 18.08.2015, denying the transaction with concocted stories. Hence this suit for recovery of money.

5. Details of written statement and additional written statement are stated in brief:

It is true that the defendant is known to the plaintiff and the defendant is engaged in the real estate business. It is denied that he approached the plaintiff for financial assistance. It is also denied that he received a sum of Rs.27,40,144/- and executed a promissory note in favour of the plaintiff. The promissory note is a concocted and forged document.

6. The defendant further submits that the plaintiff along with defendant and one Sivasankaran son of Krishnasamy entered into a partnership agreement dated 15.02.2012 for doing real estate business.

Each partner has contributed a sum of Rs.25,00,000/- and they have sold their promoted sites, divided the profits and settled the accounts. It is further submitted that during the course of business, all the three partners entered into a sale agreement with the land owners. For which, all the partners used to sign in the blank Non-Judicial Stamp paper of value of Rs.20/-. During the existence of partnership, they used to keep the blank Stamp papers and execute sale agreements whenever necessity arose. In the final project, misunderstanding arose between the defendant and the plaintiff as the plaintiff took excessive profits, for which the defendant questioned him along with other partner Sivasankaran. The plaintiff gave a evasive reply and closed the further business. The defendant has been doing the real estate business alone and he has entered into an agreement with the land owner. The plaintiff has got an eye to purchase the said land and tried to prevent the defendant's business. Out of vengeance, he has manipulated the documents in order to enrich himself. As the suit was filed without any cause of action, suit is liable to be dismissed.

7. The following issues were framed by the trial Court:

i. Whether the plaintiff is entitled to get Rs.36,38,911.60/- with subsequent interest from the defendants?

ii. Whether the promissory note is a forged document?

iii. To what other relief the plaintiff is entitled to?

8. At trial, plaintiff has examined himself as P.W.1 and 4 documents were marked. Ex.A1 dated 22.11.2012 is the promissory note executed by the defendant in favour of the plaintiff. Ex.A2 is copy of the legal notice issued by the plaintiff to the defendant and A4 is the reply notice issued by the defendant. On the defendant side, defendant has examined himself as D.W.1 and one Sivasankaran, who is the attesting witness in the suit promissory note and one scribe, Sachidhanandham have been examined as D.W.2 and D.W.3.

9. At the first instance, the defendant took a stand that the promissory note is a forged document. At a later point of time, he has taken a stand that he signed in a blank Non-Judicial Stamp Paper (value of Rs.20/-)

10. Heard Mr.A.Goutham, learned counsel appearing for the appellant and Mr.K.Maheswaran, learned counsel appearing for the respondent.

11. Mr.A.Gouthaman, learned counsel for the appellant/plaintiff would vehemently argue that, as the signature in the promissory note is admitted by the defendant, the plaintiff has examined himself as P.W.1. Therefore, based on the pleadings of the defendant, it is not necessary for the plaintiff to prove the execution part. He would further contend that once the execution of promissory note is admitted, presumption arises in favour of the plaintiff as per Section 118 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act). The said presumption was not rebutted properly by the defendant and prayed to allow the appeal.

12. Per contra, Mr.K.Maheswaran, learned counsel for the respondent/defendant would strenuously argue that it is true that the defendant signed in a blank Non-Judicial Stamp paper for business purpose. After closure of partnership, taking advantage of the signed blank Non-Judicial Stamp paper of the defendant, in order to gain unlawfully, he has filed this suit for a huge sum and his attempt was thwarted by dismissing the suit. He would further argue that by examining D.W.2 and D.W.3, the defendant has suitably rebutted the presumption and the trial Court has rightly non-suited the plaintiff.

13. The following points for consideration arises in this appeal:

1. Whether the trial Court is right in dismissing the suit as the defendant has suitably rebutted the presumption arose in favour of the plaintiff?
2. Whether this appeal has to be allowed or not?

14. On the plaintiff side, the plaintiff has filed his proof affidavit in line with the contents of the plaint. When a suggestion was posed to P.W.1, during the cross examination to the effect that during the course of real estate business, all the partners will have the signed blank Non-Judicial Stamp paper (value of Rs.20/-), was denied by him. He has also denied that the same was utilized for executing the sale agreements. Another suggestion was also posed to the effect that as the defendant started to do real estate business, angered on his action, he has filled up the blank Non-Judicial Stamp paper and filed this suit was also denied by him.

15. Likewise, the defendant who has examined himself as D.W.1 has also filed his proof affidavit in line with the written statement and additional written statement. One Sivasankaran son of Krishnasamy has been examined as D.W.2 in the capacity of attesting witness in the suit

promissory note/Ex.A1. D.W.2 has admitted his signature found in Ex.A1. On the other hand, he would state that he did not attest in Ex.A1 promissory note but signed in a blank paper and identified his signature found in Ex.A1 Promissory note. He would also state that as found in Ex.A1, no consideration was passed to the defendant from the plaintiff. It has come on record through the cross-examination of D.W.2 that as stated by the plaintiff, the plaintiff, defendant and himself, all the three did real estate business together.

16. One Sachidhanandham son of Ramamoorthy was examined as D.W.3 in the capacity of scribe. It is his evidence that he used to prepare documents for the plaintiff as well as the defendant. However, it is his testimony that he did not sign in Ex.A1. He is a document writer at Vanur (Villupuram). Ex.A1 is the Non-Judicial Stamp Paper of Pudhucherry Union Territory. It is his categorical evidence that he did not prepare Ex.A1.

17. In view of the above said evidence given by D.W.3, his evidence will not be of much use to the defendant case.

18. Law is well settled that in the case of execution of promissory

note, once the execution is admitted by the defendant, then as per Section 118 of the NI Act, presumption arises in favour of the plaintiff.

19. Section 118 of the NI Act is extracted hereunder for proper understanding:

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, endorsed, negotiated or transferred, was accepted endorsed, 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 endorsements:—that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereupon;*
>
> *(f) as to stamps:— 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:

provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder-in-due course lies upon him."

20. Section 118 of the NI Act evolves certain principles, which are given hereunder:

i. There is presumption under Section 118 that consideration has passed for execution of document.
ii. In order to rebut the presumption the defendant has to prove that no consideration has passed.
iii. The presumption can be rebutted by producing definite evidence to the effect that no consideration has passed or by relying on the facts and circumstances of the case as well as the flaws in the evidence of plaintiff's side. To put it in a nutshell, the defendant may through direct or circumstantial evidence demolish the plaintiff's case by preponderance of probabilities.

21. As regards the scope of Section 118 of NI Act, the Apex Court in

Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay reported in AIR 1961 SC 1361, it has been held that:

"5. This section lays down a special rule of evidence applicable to negotiable instruments. The presumption is one of law and thereunder a court shall presume, inter alia, that the negotiable instrument or the endorsement was made or endorsed for consideration. In effect it throws the burden of proof of failure of consideration on the maker of the note or the endorser, as the case may be. The question is, how the burden can be discharged? The rules of evidence pertaining to burden of proof are embodied in Chapter VII of the Evidence Act. The phrase "burden of proof' has two meanings - one the burden of proof as a matter of law and pleading and the other the burden of establishing a case; the former is fixed as a question of law on the basis of the pleadings and is unchanged during the entire trial, whereas the latter is not constant but shifts as soon as a party adduces sufficient evidence to raise a presumption in his favour. The evidence required to shift the burden need not necessarily be direct evidence, i.e., oral or documentary evidence or admissions made by opposite party; it may comprise circumstantial evidence or presumptions of law or fact. To illustrate how this doctrine works in practice, we may take a suit on a promissory note. Under S.101 of the Evidence Act, "Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist". Therefore, the burden

initially rests on the plaintiff who has to prove that the promissory note was executed by the defendant. As soon as the execution of the promissory note is proved, the rule of presumption laid down in S.118 of the Negotiable Instruments Act helps him to shift the burden to the other side. The burden of proof as a question of law rests, therefore on the plaintiff; but as soon as the execution is proved, S.118 of the Negotiable Instruments Act imposes a duty on the Court to raise a presumption in his favour that the said instrument was made for consideration. This presumption shifts the burden of proof in the second sense, that is, the burden of establishing a case shifts to the defendant. The defendant may adduce direct evidence to prove that the promissory note was not supported by consideration and, if he adduced acceptable evidence, the burden again shifts to the plaintiff, and so on. The defendant may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling, the burden may likewise shift again to the plaintiff. He may also rely upon presumptions of fact, for instance those mentioned in S.114 and other sections of the Evidence Act. Under S.114 of the Evidence Act, "The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case." Illustration (g) to that section shows that the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. A plaintiff, who says that he had *sold certain goods to the defendant and that a promissory note was executed as consideration for the goods and that he is in possession of the relevant account books to show that he was in possession of the goods sold and that the sale was effected for a particular consideration, should produce the said account books, for he is in possession of the same and the defendant certainly cannot be expected to produce his documents. In those circumstances, if such a relevant evidence is withheld by the plaintiff, S.114 enables the Court to draw a presumption to the effect that, if produced, the said accounts would be unfavourable to the plaintiff. This presumption, if raised by a court, can under certain circumstances rebut the presumption of law raised under S.118 of the Negotiable instruments Act. Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or presumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law."*

22. Therefore, the presumption arose in favour of the plaintiff may be rebutted by the defendant by direct or circumstantial evidence and also by presumption of law or fact.

23. It is an admitted fact that plaintiff and defendant are known to

each other for the past 10 years. Reverting back to the facts of this case, as the execution is admitted by the defendant, presumption arises as per the Section 118 of NI Act in favour of the plaintiff as regards the execution of Ex.A1 promissory note. The said presumption is a special rule of evidence which is applicable to NI Act, it is a legal presumption.

24. The moot question is whether the defendant has succeeded in rebutting the presumption arose against him. D.W.2 has attested in Ex.A1 promissory note as a first witness. He has clearly identified his signature found in Ex.A1 promissory note. On the other hand, he has also stated in clear terms that he put his signature in a blank Non-Judicial Stamp paper. He has also added that no consideration was passed to the defendant from the plaintiff. Therefore, the evidence of D.W.2 throws much light as to the execution of document and passing of consideration. Of course, he has identified the signature of plaintiff as well as the defendant found in Ex.A1. Taking into consideration of totality of circumstances, we have no hesitation to non-suit the plaintiff on the following grounds:

i. By examining D.W.2 one of the attesting witness, through his clear evidence, it is made clear that the defendant signed in the blank Non- Judicial Stamp paper (Ex.A1).

ii. No consideration was passed from the plaintiff to the defendant.

iii. As the promissory note/Ex.A1 is typed, non-mentioning of scribe is fatal to the plaintiff's case.

iv. It is so unusual that the plaintiff who has granted loan being an executor has signed in the right side of the document and it is also unusual that the defendant has signed in the left side of borrowal.

v. In a case of business transaction for a part consideration or on account of adjustment of loan, negotiable instrument would be executed for a fraction of amount. The candid case of the plaintiff is that the defendant borrowed a sum of Rs.27,40,144/- for his business purposes and he gave the said amount. This loan amount in fraction, which is said to have been given to the defendant itself is totally unbelievable for the reasons mentioned supra.

25. Taking into the totality of circumstances, we are of the firm view that during the partnership business/real estate business, the blank Non-Judicial Stamp paper signed by the defendant, attested by D.W.2 Sivasankaran was manipulated for some reasons by the plaintiff as if the defendant borrowed a sum of Rs.27,40,144/- from the plaintiff as loan on 22.11.2012.

26. We have no hesitation to hold that the defendant has successfully rebutted the presumption arose in favour of the plaintiff through candid evidence of D.W.2. In such a view of the matter, we do not find any perversity or infirmity in the judgment of the trial Court.

27. Based on the above said discussions and observations, this first appeal stands dismissed. Sequel to this, the judgment and decree passed by the trial Court in O.S.No.132 of 2015 dated 05.07.2018 stands confirmed. There is no order as to costs.

(J.N.B.,J.) (R.K.M.,J.)
09.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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J.NISHA BANU, J.
and
R.KALAIMATHI, J.

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To
The II-Additional District Judge,
Puducherry.

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