IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.25 of 2019
and
C.M.P.No.421 of 2019

A.Velusamy .. Appellant

Vs.

M.Marimuthu .. Respondent

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree passed in A.S.No.27 of 2018, dated 06.10.2018, by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam reversing the judgment and decree passed in O.S.No.82 of 2017, dated 19.02.2018, by the learned Subordinate Judge at Sathiyamangalam.

For Appellant : Ms.S.R.Adhisree
for Mr.S.Parthasarathy

For Respondent : Ms.M.Adhisree
for Mr.N.Manokaran

JUDGMENT

The defendant is the appellant before me. The present Second Appeal arises out of the judgment and decree passed in A.S.No.27 of 2018 by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam, dated 06.10.2018, in reversing the judgment and decree passed in O.S.No.82 of 2017 by the learned Subordinate Judge at Sathiyamangalam, dated 19.02.2018.

2. O.S.No.82 of 2017 is a suit for recovery of money based on a promissory note.

3. The suit came to be dismissed by the learned trial Judge on 19.02.2018. Thereafter, an appeal was preferred to the file of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam in A.S.No.27 of 2018. The learned appellate Judge reversed the judgment of the learned trial Judge and decreed the suit. Aggrieved by the said decree, the present Second Appeal has been presented before this Court.

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

5. The case of the plaintiff is that on 13.03.2016, the defendant had requested the plaintiff for a loan. He wanted a sum of Rs.8,00,000/- and on 15.03.2016, the plaintiff advanced the said amount to the defendant. On that date, the defendant executed a promissory note and since the defendant did not honor the document by repayment, the plaintiff was constrained to file the suit.

6. Summons was issued to the defendant and he had entered appearance through a counsel. A detailed written statement was filed, whereby, the primary plea that was taken was that the defendant wanted to expand his existing petrol bunk. Therefore, he approached the plaintiff and his father-in-law, who is a retired employee of Tamil Nadu Electricity Board, for a loan of Rs.50,00,000/-. Since the plaintiff stated that he did not have the said sum of Rs.50,00,000/- with him, he assured the defendant that he will introduce him to one Dr.Senthil Kumar, who was a medical doctor and who was also indulging in the business of money lending, and promised

to get the defendant the amount sought by him.

7. The plaintiff, according to the defendant, had stated that for the loan of Rs.50,00,000/- that he was securing, a sum of Rs.10,00,000/- should be paid as a commission. On the introduction of the defendant to one Dr.Senthil Kumar, the plaintiff's immediate requirement was satisfied. However, Dr.Senthil Kumar extracted the sale deed for the property belonging to the defendant and in addition, he had also got four blank promissory notes and four blank cheques as security.

8. The defendant would state that one of the promissory notes that had been given to Dr.Senthil Kumar had been misutilized by the plaintiff, who is a close associate and friend of Dr.Senthil Kumar, by filling the document in his favour and presenting the suit on that basis. He would state that the suit promissory note is not supported by consideration and therefore, sought dismissal of the suit.

9. On these pleadings, the learned trial Judge framed the following

issues :

"1. வழக்கு கடனுறுதி சீட்டானது திருப்பூரை சார்ந்த டாக்டர் செந்தில்குமாரன் என்பவருக்கு பூர்த்தி செய்யப்படாமல் எழுதிக் கொடுக்கப்பட்டதா?

2. 15.03.2016 ம் தேதியிட்ட வழக்கு கடனுறுதி சீட்டு மறுபயனுடன் எழுதிக் கொடுக்கப்பட்டதா?

3. வாதி வழக்குரையில் கோரியுள்ளவாறு பரிகாரம் கிடைக்க கூடியதா?

4. வேறு பரிகாரங்கள் என்ன?"

10. On the basis of these pleadings and issues, the parties went for trial.

11. On behalf of the plaintiff, M.Marimuthu/the plaintiff examined himself as P.W.1 and one Panneerselvam, who is the witness to the promissory note, as P.W.2. He marked Ex.A1 and Ex.A2. On the side of the defendant, A.Velusamy/the defendant examined himself as D.W.1 and he marked Ex.B1 to Ex.B6.

12. On consideration of the oral and documentary evidence that had

been let in before the learned trial Judge, the learned trial Judge came to a conclusion that :

(1) the plaintiff had not proved that he had the capacity to give the loan.

(2) the plaintiff's case should be looked at with suspicion as he had not issued a pre-suit notice.

(3) the plaintiff has not been able to substantiate the fact that he had paid the amount.

13. On these three grounds, the learned trial Judge came to the conclusion that the suit for recovery of money deserves dismissal and accordingly, he dismissed it. Feeling aggrieved by the said judgment and decree, a regular appeal was preferred to the file of the learned III Additional District and Sessions Judge.

14. The learned District Judge, on the analysis of the written statement, evidence of P.W.1 and P.W.2 and the cross examination of D.W.1, came to a conclusion that the plaintiff had proved his case and the preponderance of probability lay in favour of the plaintiff and therefore,

decreed the suit. He did not decree the suit for the principal sought for. He reduced the interest from 9%, for the period between the date of loan and the date of decree, to 6% for the period thereafter. Aggrieved by this reversal, the present Second Appeal has come before this Court at the instance of the defendant.

15. The Second Appeal was admitted on 08.01.2019 on the following substantial questions of law :

"(a) Whether the Lower Appellate Court is right in coming to the conclusion, that the burden of proof lies on the appellant when he has clearly established that the promissory note was given as security to one Dr.Dr.Senthil Kumar?

(b) Whether the Lower Appellate Court is right in coming to the conclusion that the respondent has proved in source of income through his wife income, when the documentary evidence was produced to prove that the respondent has no amount in the bank?

(c) Whether the Lower Appellate Court is right in coming to the conclusion that the promissory note was executed only on obtaining loan amount, when admittedly there was a civil dispute with one Dr.Dr.Senthil Kumar who was introduced by the respondent to the appellant?"

16. Notice was ordered in the appeal and the same was issued to the respondent. Mr.N.Manoharan has entered appearance on behalf of the respondent.

17. I heard Ms.S.R.Adhisree for Mr.S.Parthasarathy, appearing on behalf of the appellant and Ms.M.Adhisree for Mr.N.Manokaran, appearing on behalf of the respondent.

18. After having narrated the facts, Ms.S.R.Adhisree would point out that had the plaintiff genuinely entered into a transaction with the defendant, the normal course of action would have been to issue a lawyer's notice demanding the payment of loan. She would then invite my attention to the cross examination of P.W.1 and P.W.2 and point out that she had specifically cross examined both the witnesses on the aspect that the money had been advanced by Dr.Senthil Kumar and therefore, she requested this Court to come to a conclusion that the promissory note is not one supported

with consideration. She would further add that there are disputes that are pending between Dr.Senthil Kumar and her client as it would be clear from Ex.B4 to Ex.B6, namely, a suit presented by Dr.Senthil Kumar seeking declaration of title in O.S.No.83 of 2017 and a suit presented by the defendant in O.S.No.84 of 2017 seeking cancellation of the sale deed executed by him in favour of Dr.Senthil Kumar.

19. She would plead that the plaintiff though had specifically stated that he had withdrawn a sum of Rs.8,00,000/- from the Indian Overseas Bank at Erode Branch and had handed over the said sum to the defendant, a perusal of Ex.A2 would show that what was withdrawn on 15.03.2016 was only a sum of Rs.4,65,000/- which is way below the amount of Rs.8,00,000/- alleged to have been given by the plaintiff to the defendant. On all these points, she would state that the lower appellate Court had miserably erred to appreciate the evidence and therefore, she would seek that the appeal be allowed and the decree of the trial Court be restored.

20. Ms.M.Adhisree, representing Mr.N.Manokaran, would submit that the signature of the defendant having been admitted on the promissory note

and the promissory note having been written on the same day as its execution, she would submit that her client is entitled to the presumption under Section 118 of the Negotiable Instruments Act. The presumption, that she would concede, is an rebuttable presumption. But she would add that no evidence had been let in by the defendant in order to state that the amount had not been advanced or to dislodge the presumption under the said Act.

21. She would secondly submit that the defendant had not summoned Dr.Senthil Kumar, a person who the defendant had alleged had advanced a sum of Rs.50,00,000/- and that should be looked against the defendant. She would state that the plaintiff had produced all the records available with him to substantiate his case in the form of Ex.A2/a bank statement which would show that he is a person of sufficient wealth and on the date on which the transaction had been entered into, he had sufficient funds to deny the case of the defendant.

22. She would then draw my attention to the evidence of D.W.1/the defendant himself as well as the written statement that had been filed by him

to substantiate her plea that the defendant himself had admitted that the plaintiff had sufficient capacity to give him the loan of Rs.8,00,000/-.

23. Finally, she would state that the lower appellate Court had rightly appreciated the evidence and sitting in Second Appeal under Section 100 of the Code of Civil Procedure, this Court should not re-appreciate the evidence.

24. In fine, the argument of Ms.M.Adhisree is that where two views are possible in the litigation, if the view taken by the lower appellate Court is a plausible view, then this Court should not interfere with the same in the Second Appeal.

25. I have carefully considered the arguments on either side and I have carefully gone through the original records as well as perused the judgments of the Courts below.

26. I have to begin the judgment stating that the defendant had not disputed the execution of the promissory note under Ex.A1.

27. A perusal of the promissory note would show that the entire document had been written in the same ink on the same day. Therefore, the argument of the defendant that what she had given was only a blank promissory note in favour of Dr.Senthil Kumar and that had been filled up later does not appeal to me. The defendant, by virtue of the averment in the written statement, has conceded to the fact that the document had, in fact, been executed by him. This brings me to the point under Section 118 of the Negotiable Instruments Act. Under the said Act, the Court must draw a presumption that the Negotiable Instrument, which had been executed on the basis of a proper consideration had been given to the holder of the document by the executant. This presumption is a revertible presumption and the burden falls on the defendant to show that the circumstances alleged by the plaintiff does not exist. I have to see, whether in the facts of the present case, the defendant has proved the lack of such circumstances.

28. Under Ex.A2, the plaintiff has produced his bank statements for the entire period from 12.12.2015 to 13.06.2016. The period of transaction in the case at hand is on 15.03.2016. It is the case of the plaintiff that he withdrew a sum of Rs.4,65,000/- from the Indian Overseas Bank at Erode Branch on the date of loan and thereafter, along with the money that was available with him in his hands, he had advanced the amount of Rs.8,00,000/- to the defendant.

29. A close perusal of Ex.A2 would show that on 09.03.2016 and 11.03.2016, the plaintiff had withdrawn a sum of Rs.4,00,000/- and on 15.03.2016, he had issued a cheque for a sum of Rs.4,65,000/-. This supports the case of the plaintiff that he had cash in his hand on the date of the transaction and in addition, he had withdrawn the amount from the bank and had handed over a total sum of Rs.8,00,000/- to the defendant.

30. Ms.S.R.Adhisree, appearing on behalf of the appellant, would vehemently contend that the plaintiff is unable to remember as to how he had secured eight bundles of Rs.1000 notes. Ex.A2, in my view, is the answer to that submission. Furthermore, I cannot expect a party who is

deposing after two years from the date of the transaction to recollect with exactitude the amount that he had in his hands and the number of bundles that had been handed over. Had the plaintiff given these details, then I would have looked against the plaintiff for the same. It is not in the normal course of events that a person would remember with the exact details as to how he had made the payment. In the facts of this case, on going through the evidence of P.W.1 as well as Ex.A2, I am convinced that the plaintiff had sufficient funds for the purpose of the transaction. A reply to this point which was argued by Ms.S.R.Adhisree was that the plaintiff did not have the capacity to make the payment and on this basis, she would state that the plaintiff would not have advanced the amount of Rs.8,00,000/-.

31. It is here that the submission of Ms.M.Adhisree, appearing on behalf of the respondent, becomes relevant. She would draw my attention to the written statement where the defendant had conceded that he wanted a sum of Rs.50,00,000/- and hence approached the plaintiff. If the plaintiff was a person who did not have the capacity to pay even a sum of Rs.8,00,000/-, by no stretch of imagination the defendant would have approached the plaintiff for payment of a sum of Rs.50,00,000/-. It is only

because the defendant was aware that the plaintiff was a wealthy man, he had approached him for this huge amount.

32. The story trotted out for a loan of Rs.50,00,000/-, the plaintiff had demanded a sum of Rs.10,00,000/- as commission, is too much for me to swallow. A Commission is paid in few percentages, perhaps, in one or two percent. No person in proper senses will borrow a sum of Rs.50,00,000/- and pay a sum of Rs.10,00,000/- as a commission. This story as projected by Ms.S.R.Adhisree, appearing on behalf of the appellant, is one raised only for the purpose of its rejection.

33. Apart from this fact, a further fact that remains for consideration is during the course of cross examination of D.W.1, the defendant had admitted that the plaintiff's family is a wealthy one. He admits that the plaintiff is owning his own residence and further, he is having about 15 acres of agricultural land in Erode District. The defendant has further conceded in the cross examination that the plaintiff's father-in-law is a wealthy person, who had retired after service with the TNEB and that the plaintiff's wife is also an employee of TNEB.

34. A cumulative reading of the evidence of the plaintiff as well as that of the admissions made by the defendant and the plea raised in the written statement lead me to conclude that the plaintiff is a person who is possessed of sufficient funds and had in pursuance of the request made by the defendant had advanced the loan to the defendant, for which consideration, he had executed the promissory note. Therefore, the presumption raised under Section 118 of the Negotiable Instruments Act has not been dislodged by the defendant.

35. The last argument of Ms.M.Adhisree, appearing on behalf of the respondent, is that the defendant's case should fail because he has not taken any effort to examine Dr.Senthil Kumar or summon him to the Court does not appeal to me either. It is not in dispute that Dr.Senthil Kumar and the defendant/A.Velusamy are at each others throat by virtue of Ex.B4 and Ex.B5. It is normal for a person who is contesting as against the defendant not to support the latter's case merely to satisfy the case of the plaintiff. Dr.Senthil Kumar and the defendant being loggerheads, I find this argument of Ms.M.Adhisree, appearing on behalf of the respondent, similar to the

argument raised by Ms.S.R.Adhisree, appearing on behalf of the appellant, as one raised only for its rejection.

36. Though this Court should not re-appreciate the evidence in the Second Appeal, considering the vehement pleas for the appellant, I went through the documents as well as the evidence and I am of the view that the verdict of the learned III Additional District Judge at Erode is a correct one.

37. The questions of law, that has been framed by the appellant, are answered against him and in favour of the respondent. Therefore, the judgment and decree of the Court of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam in A.S.No.27 of 2018, dated 06.10.2018 in reversing the judgment and decree of the Court of the learned Subordinate Judge at Sathiyamangalam in O.S.No.82 of 2017, dated 19.02.2018 stands confirmed.

38. Accordingly, the Second Appeal is dismissed. Costs through out. The connected Civil Miscellaneous Petition is closed.

13.06.2024

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Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.

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To

1.The learned III Additional District and Sessions Judge,
Erode at Gobichettipalayam

2.The learned Subordinate Judge,
Sathiyamangalam

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and
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