



A.S.(MD)No.645 of 2011

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
12.01.2024	30.01.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

A.S.(MD)No.645 of 2011
and
C.M.P.(MD)No.10427 of 2022

K.Seenivasan

... Appellant

vs.

1.Shanthi Joseph, W/o.Late T.E.Joseph
2.Janson, S/o.Late T.E.Joseph
3.Ebrim, S/o. Late T.E.Joseph
4.Anthony Jerom, S/o. Late T.E.Joseph
5.Felix, S/o.Late T.E.Joseph
6.Stella Mary, D/o.Late T.E.Joseph
7.Selin, D/o.Late T.E.Joseph

... Respondents

[R3 and R5 were set *ex parte* in the Trial Court. Hence,
the service of notice to them may be dispensed with]



A.S.(MD)No.645 of 2011

WEB C

PRAYER : Appeal Suit filed under Section 96 of C.P.C., against the judgment and decree, dated 26.08.2011, made in O.S.No.63 of 2008, on the file of the Principal District Court, Dindigul.

For Appellant	: Mr.R.R.Kannan
For R1 & R4	: Mr.S.Anand Chandrasekar for M/s.Sarvabhuman Associates
For R2, R6 & R7	: Mr.K.Abiya Legal Aid Counsel

JUDGMENT

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

The Appeal is directed against the dismissal of the money suit instituted based on pronotes. The aggrieved plaintiff being the appellant has also filed the Miscellaneous Petition under Order 41 Rule 27 of C.P.C. to receive additional documents.

2. The facts canvassed in the pleadings:-

2.1. Plaint averments after amendment read as under:-

(i) T.E.Joseph (deceased) borrowed a sum of Rs.9,50,000/- from the plaintiff on 01.10.2005 to meet out his family expenses and business

2/22



A.S.(MD)No.645 of 2011

WEB COPY

expansion and executed a pronote agreeing to repay on demand the principal with 1% interest per mensem. Again, on 15.10.2005, borrowed another sum of Rs.9,50,000/- with similar promise and executed an another pronote. The defendants are the wife and children of the deceased T.E.Joseph. They are aware of the borrowing and execution of the two pronotes in favour of the plaintiff. The said Joseph, in order to discharge the loan with interest gave a cheque, dated 03.04.2007, bearing No.74/S.F.346263, drawn from his account, maintained in Lakshmi Vilas Bank, C.Pudupatti Branch, for a sum of Rs.22,00,000/-, drawn in favour of the plaintiff and instructed to present the cheque on 09.08.2007. Accordingly, when the plaintiff presented the cheque for collection through his bank viz., M/s.Canara Bank, Dindugul Branch, the same was returned on 31.08.2007 with an endorsement "Account Dormant". Hence, the plaintiff caused a notice dated 20.09.2007 to T.E.Joseph informing about the return of the cheque and to pay the cheque amount within 15 days. The said notice returned unserved with postal endorsement informing that the addressee (Joseph) died.

(ii) The 1st defendant is the wife of Joseph. The defendants 2 to 7 are his children. These defendants as legal heirs of the said Joseph, had inherited the



A.S.(MD)No.645 of 2011

WEB COPY

moveables and immovable properties of late T.E.Joseph. As such, they are liable to discharge the debt of Joseph. Hence, notice was caused to them, calling upon to discharge the pronote debt along with interest. The 1st defendant received the notice, but did not reply. The notice sent to defendants 3, 4 and 5 returned as "Left India". The notice sent to defendants 2, 6 and 7 returned with postal endorsement "not claimed". Stating the above facts as causes for action, suit for recovery of Rs.24,49,733/- was filed.

2.2. Written Statement by the 1st defendant:-

(i) The plaint averments are denied. The suit is not maintainable and the plaint lack cause of action. It is admitted that the defendants are legal heirs of T.E.Joseph. The plaint averment that Joseph borrowed loan from the plaintiff to meet out the family expenses and executed the suit pronotes at the residence of the plaintiff is denied. There was no necessity for Joseph to borrow money and also the plaintiff had no wherewithal to lend money. Joseph was ill for few days and died on 20.04.2007. It is false to claim that he gave the cheque dated 03.04.2007 for Rs.22,00,000/- to discharge the loan. There is no necessity



A.S.(MD)No.645 of 2011

WEB COPY to instruct the plaintiff to present the cheque on 09.08.2007. The said averment in the plaint exposes the falsehood of the plaintiff.

(ii) The plaintiff and the deceased Joseph had business dealing in respect of cardboard box supply. Since the goods supplied by the plaintiff was sub-standard, the business relationship was terminated and accounts were settled long back. Despite that, the plaintiff was indulging in third decree method and threatening the defendants. Hence, Police complaint was lodged against the plaintiff, which was enquired by the Police. The suit is filed with distorted facts and hence, liable to be dismissed.

2.3. The written statement by 4th defendant:-

The plaint averments are denied. T.E.Joseph, the father of this defendant was dealer in grapes during 1995 to 2003. For packing the grape fruits, he used to purchase cardboard boxes from the plaintiff, who was in the field of manufacturing cardboard boxes in the name and style as 'M/s.Krishna Industries'. Joseph stopped business in the year 2003. The accounts with Krishna Industries were reconciled and settled by paying Rs.3,00,000/- through Bank between



A.S.(MD)No.645 of 2011

WEB COPY

September, 2006 and February, 2007. There is no other due payable to the plaintiff. While so, on 27.02.2007, the plaintiff along with his henchmen met Joseph and threatened him demanding more money. In this connection, complaint to the Uthamapalayam Police was lodged on 27.02.2007. The plaintiff also gave a counter complaint on 05.03.2007. During the enquiry by Police, the plaintiff was not able to produce any document to substantiate his demand. Thereafter, he had fabricated the pronotes and cheque to present the plaint. His father and the plaintiff had only business transaction *viz.*, sale of cardboard boxes and entire payments were made through the Account maintained in State Bank of India, Uthamapalayam. Long back Joseph stopped operating his account maintained at Lakshmi Vilas Bank and the cheque of a dormant account been misused by the plaintiff. The signatures found in the pronotes are not that of Joseph and the revenue stamp on which the signatures found are not currently in circulation.

2.4. Reply statement filed by the plaintiff:-

It is admitted that Joseph had business transaction with M/s.Krishna Industries, which is owned by the wife of the plaintiff. That apart, he used to frequently borrow loan for his business and family expenses from the

6/22



A.S.(MD)No.645 of 2011

WEB CUP

plaintiff. He used to repay the loan with interest through Bank. The payment of Rs.3,00,000/- between September, 2006 and February, 2007 to M/s.Krishna Industries has no relevance to the suit loan transaction. The plaintiff was the Auditor of the Cardboard Company viz., M/s.Krishna Industries. Joseph's business transaction with M/s.Krishna Industries and his personal money transaction with the plaintiff are distinct and independent. For his borrowing of Rs.9,50,000/- each on 01.10.2005 and 15.10.2005 respectively, Joseph executed pronotes in favour of the plaintiff. To discharge the loan, he gave the cheque drawn in the name of the plaintiff from Lakshmi Vilas Bank. That cheque returned with an endorsement "Account Dormant". The defendants are trying to mislead by referring the payment made to M/s.Krishna Industries with the personal loan availed from the plaintiff. The averment that Joseph gave a Police complaint against the plaintiff is denied. The Police complaint by the plaintiff was with respect to non-payment for the supply of cardboard boxes. They are not in connection with the loan or pronotes, which is subject matter of the suit. The allegation that the suit pronotes and cheque are fabricated for the purpose of filing suit is denied. The allegation that the signature in the cheque is not that of Joseph is denied.

7/22



A.S.(MD)No.645 of 2011

WEB COPY

3. Based on the above pleadings, the trial Court framed the following issues:-

"1. Whether late.T.E.Joseph executed the promissory notes dated 01.10.2005 and 15.10.2005 and received the amounts as claimed by the plaintiff?

2. Whether late.T.E.Joseph issued a cheque dated 03.04.2007 to discharge the pronotes?

3. Whether the plaintiff is entitled for the amount as claimed?

4. To what relief?"

4. On the side of the plaintiff, 6 witnesses were examined and on the side of the defendants, 3 witnesses were examined. Through these witnesses, Ex.A-1 to Ex.A-11 marked on the side of the plaintiff. Ex.B-1 to Ex.B-7 marked on the side of the defendants.

5. The trial Court dismissed the suit for the reason that the execution of 2 pronotes marked as Ex.A-1 and Ex.A-2 not proved. Though, to prove the execution of the pronotes, the plaintiff examined P.W.2 Vallimanavalan as a



A.S.(MD)No.645 of 2011

WEB COPY

common witness to both the pronotes, dated 01.10.2005 and 15.10.2005, besides Shanmugam (P.W.3) witness to Ex.A-1 and Babu Suresh (P.W.4) witness to Ex.A-2, the trial Court disbelieved the case of the plaintiff, since P.W.2 had deposed that both the pronotes were executed on the same day that is on 15.10.2005. Further, regarding the business transaction between M/s.Krishna Industries and the Late.Joseph, the plaintiff had specifically denied about relevancy between the suit transaction and the payment made to M/s.Krishna Industries. The plaintiff's specific plea was that, he is an Auditor by profession and not the owner of M/s.Krishna Industries. However, the letter of the plaintiff marked as Ex.B-7 had revealed that P.W.1, the plaintiff had business transaction with Joseph. In the cross examination, P.W.1 had admitted that M/s.Krishna Industries belongs to his wife and he might have supplied cardboard boxes to Joseph. The information obtained from Additional Superintendent of Police, Theni, through R.T.I. marked as Ex.B-6 and the letter of P.W.1, Ex.B-7, dated 11.11.2009, addressed to Joseph, extracting the account and seeking confirmation of balance were found against the plaintiff, who had emphatically denied about the trade relationship with the Joseph and receipt of Rs.3,00,000/- towards the supply of cardboard boxes.

9/22



A.S.(MD)No.645 of 2011

WEB COPY

6. The trial Court has also taken note of the total denial by the plaintiff about the Police complaints regarding the dispute between him and Joseph as false and contrary to the information obtained through R.T.I. Act, which was marked as Ex.B-6. This document reveals that the plaintiff had lodged a complaint on 23.03.2007 before the District Crime Branch as if Joseph owe him Rs.11,27,616/- towards supply of cardboard boxes and for cheating. While so, the suit was filed for recovery of Rs.19,00,000/- with interest based on two pronotes alleged to have been executed on 01.10.2005 and 15.10.2005 for Rs.9,50,000/- each.

7. The trial Court has hence, concluded that, after lodging the above referred complaint dated 23.03.2007, the plaintiff had fabricated two pronotes and the cheque as if Joseph borrowed Rs.9,50,000/- each on two promissory notes dated 01.10.2005 and 15.10.2005 and gave the cheque Ex.A-3 for Rs.22,00,000/- to repay the loan with interest. The trial Court has held that, the executants of Ex.A-1 to Ex.A-3 is no more. The signatures found in these documents are denied by the defendants. The comparison of the signature found in Ex.A-3 differs with the signature found in Ex.A-1 and Ex.A-2. The plaintiff having failed to prove the

10/22



A.S.(MD)No.645 of 2011

WEB COPY

execution of the documents, the presumption under Section 118 of Negotiable Instruments Act will not apply to the facts of the case.

8. The above finding stands challenged on the following grounds:-

(i) The trial Court ought not to have relied upon the slip answers of P.W.2 in the cross examination and ought to have read the whole evidence of P.W.2 and thus, the approach of the trial Court relying upon some slip answers and taking small part of the evidence for deciding the whole case is against the settled principles of Law of Evidence.

(ii) The trial Court ought not to have taken the task of comparison of signature of late T.E.Joseph found in the suit promissory note and the cheque Ex.A-3 and the same has to be done only by the expert as held by various judgments of this Court and Hon'ble Apex Court.

(iii) The findings of the trial Court that there cannot be any presumption under Section 118 of the



A.S.(MD)No.645 of 2011

WEB COPY

Negotiable Instruments Act in favour of the appellant/plaintiff, there is a denial of execution of Promissory Note by the defendants is incorrect, since mere denial is not sufficient but once execution is proved by the plaintiff, he is entitled to the benefit of the presumption under Section 118 of the Negotiable Instruments Act.

(iv) Once the appellant/plaintiff proved the execution of the suit promissory notes by examining P.W.2, P.W.3 and P.W.4 attesting witnesses in the suit promissory notes, the trial Court ought to have drawn a presumption under Section 118 of the Negotiable Instruments Act in favour of the appellant/plaintiff and ought to have held that the appellant/plaintiff discharged his initial burden of proof.

(v) The trial Court ought not to have relied upon the daily extract Ex.B-4, since it is only a few pages of diary.

(vi) The trial Court ought not to have relied upon Ex.B-6, the alleged Police complaint lodged by the appellant/plaintiff on 23.03.2007, since there is no complaint



A.S.(MD)No.645 of 2011

WEB COPY

as on 23.03.2007 by the appellant/plaintiff against late T.E.Joseph.

(vii) The trial Court ought not to have believed Ex.B-6 and ought not to have relied upon the same, since there are no pleadings regarding the said document in his written statement.

(viii) The trial Court failed to note that the respondents/defendants had not taken any steps to get the opinion of the Experts on the genuineness of the signatures found in the suit two promissory notes with the admitted signatures of late T.E.Joseph in the contemporaneous period of execution of Ex.A-1 and Ex.A-2.

(ix) The portion of the deposition of P.W.2 relied upon by the trial Court to the effect that "two promissory notes were executed on 15.10.2005" for dismissing the suit is not correct, since the said portion in the deposition of P.W.2 is having corrections and overwriting.



A.S.(MD)No.645 of 2011

WEB COPY

9. Pending appeal, C.M.P.(MD)No.10427 of 2022 filed to receive and mark the additional documents received from the Public Information Officer, District Crime Branch, Theni, under the Right to Information Act.

10. Before advertng to the point for determination in this appeal, it is proper and necessary to decide whether the application to receive additional documents to be allowed.

11. The case of the plaintiff /appellant centres around the two pronotes marked as Ex.A-1 and Ex.A-2 as well as the cheque marked as Ex.A-3. The first pronote is dated 01.10.2005, the second pronote is dated 15.10.2005. The case of the plaintiff is that, loan against these two pronotes were borrowed by late Joseph to meet out his business needs and family expenses. This averment is denied by the defendants, who are the legal heirs of Joseph. According to them, Joseph wound up his business in the year 2003 itself due to loss. He settled dues payable to M/s.Krishna Indsutries, run in the name of the plaintiff's wife, but managed by the plaintiff, through Bank transfer between September, 2006 and Februrary, 2007. This fact was not disputed by the plaintiff, but his case is that, the loan on

14/22



A.S.(MD)No.645 of 2011

WEB COPY

promote was distinct and different from the business transaction between him and Joseph. However, the complaint by Joseph dated 27.02.2007 along with the C.S.R. receipt issued by the Police and marked as Ex.B-5 reveals that there was dispute between the plaintiff and Joseph regarding settling the dues arising from supply of cardboard boxes. In his complaint, Joseph had alleged that the plaintiff and his friends came to his house and threatened him demanding Rs.12 lakhs inspite of settling the entire due payable. Ex.B-6 is the extract of the counter complaint given by the plaintiff alleging Joseph still liable to pay Rs.11,27,615/- towards the cardboard boxes supply.

12. The plaintiff neither in his plaint nor in his reply statement admit about the Police complaint. During his cross examination as P.W.1 also, he had emphatically denied about the criminal complaint made to the Police either by him or by Joseph. Whereas the 4th defendant, in his written statement, had disclosed about the complaints given by his father Joseph on 27.02.2007 and another by the plaintiff on 23.03.2007. The trial Court had relied on Ex.B-6, the extract of the plaintiff's complaint, which alleges that Joseph owe him Rs.11,27,615/- as on 23.03.2007 towards supply of cardboard boxes and also his



A.S.(MD)No.645 of 2011

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act of cheating. To disprove such contention, the plaintiff had sought for information about the content of Petition No.60/DCB/Theni/2007. His application dated 23.11.2011 under the Right to Information Act been considered by the Public Information Officer, DCB, Theni and in his reply, he had stated that the said petition is in respect of a complaint given by one Rajesh against one Ravi alleging forcible extortion of cheque for non-payment of due for Cardamom supplied. At this juncture, the admission of the plaintiff in his reply statement about the Police complaint given by M/s.Krishna Industries against Joseph assumes much significance and run counter to the plaintiff's case.

13. The request letter of the plaintiff dated 23.11.2011, seeking information about the complaint referring it's reference number without the complaint date, but still replied by the Public Information Officer on 01.12.2011. Whereas, the 4th defendant soon after the institution of the case, has sought for information providing date and complaint number, for which the Public Information Officer had replied with the extract of the complaint given by the plaintiff and also informed that due to efflux of time, the original documents are destroyed.



A.S.(MD)No.645 of 2011

WEB COPY

14. These records are only to show there was complaint and counter complaint prior to instituting the plaint. They are not proof of any fact. Statements before the Police had not been investigated and tested in the Court of law. The trial Court has considered Ex.B-5 and Ex.B-6 only for the sake of preponderance of probability and not as proof, beyond doubt. These complaints, which were totally denied by the plaintiff, was found to be false by the C.S.R. issued by the Police, which is marked as Ex.B-5. The documents, which are now sought to be introduced in the appeal, does not improve the case of the plaintiff or will prove that Ex.A-1 to Ex.A-3 were issued by Joseph.

15. The additional documents sought to be introduced at appellate stage must have direct bearing on pronouncing the judgment. Document brought on record as additional document, can be considered by the appellate Court, if the authenticity and genuineness including contents are proved. In this case, the additional documents relate to the alleged Police complaint, which has not been investigated to reach a logical end. These complaints shall have no bearing on the pronouncement of the judgment, except to infer that parties have gone to Police Station regarding the money dispute. The trial Court has ventured to look into



A.S.(MD)No.645 of 2011

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16. Therefore, this Court holds that the Miscellaneous Petition filed under Order 41 Rule 27 of C.P.C. is liable to be dismissed.

17. Reverting back to the appeal, the point for determination shall be "Whether the finding of the trial Court that the plaintiff had not proved the factum of advancement of loan of Rs.19 lakhs to Joseph and the absence of proof of execution of Ex.A-1 and Ex.A-2 pronotes and issuance of Ex.A-3 cheque by Joseph is sustainable?"

18. Based on the promissory notes Ex.A-1 and Ex.A-2 alleged to have been executed by Joseph, suit for recovery of money filed after his death arraying his legal heirs as defendants. The plaintiff's case is that, during his life time, Joseph gave cheque Ex.A-3, dated 03.04.2007, with instruction to present the same after 09.08.2007, but the said Joseph died on 20.04.2007. Without knowing his demise, the cheque was presented on 31.08.2007. It is contented by the plaintiff



A.S.(MD)No.645 of 2011

WEB COPY

that the defendants had inherited the properties of Joseph, hence, liable to discharge his debt. Though the plaintiff had not specifically described the properties left behind by Joseph, the defendants deny the very factum of borrowing and execution of promissory notes. The presentation of the cheque after four months after its issuance and death of the drawer of the cheque, is doubted seriously. The signatures in the promissory notes are disputed. Hence, the trial Court has compared the signatures in the pronotes Ex.A-1 and Ex.A-2 with the signatures in the cheque Ex.A-3 alleged to have been given by Joseph to discharge the loan and observed that they does not tally.

19. The learned counsel appearing for the appellant/plaintiff rely upon the judgments of Supreme Court and High Courts to impress the point that Court should have referred the disputed signature for comparison with admitted signature for expert opinion and should not have compared exercising power under Section 73 of the Evidence Act.

20. When the signatory is no more and his son denies the signatures found in the documents, the plaintiff, who has averred a fact and claims it to be a



A.S.(MD)No.645 of 2011

WEB COPY

genuine document should have endeavoured to prove the same by producing contemporaneous admitted signature and ought to have taken steps for comparison by expert. Instead, he had strongly relied on the oral evidence of P.W.2 to P.W.4, who were witnesses to the execution of the promissory notes. The testimony of P.W.2 had caused suspicion about the very execution of the promissory notes by Joseph. P.W.2 a common witness for both the promissory notes alleged to have been executed on two different dates *i.e.*, on 01.10.2005 and 15.10.2005, had deposed that both Ex.A-1 and Ex.A-2 were executed on 15.10.2005. This inconsistency goes to the root of the matter. The plaintiff cannot claim advantage of presumption under Section 118 of the Negotiable Instruments Act without proving the foundational fact of execution of the promissory notes. Therefore, when the plaintiff miserably failed to prove the due execution of the promissory notes for consideration, the plaint has to be dismissed. The trial Court has rightly dismissed the suit for want of proof. In addition, the introduction of the cheque, marked as Ex.A-3, to show Joseph acknowledged the liability and issued cheque, had proved to be a counter productive, since the cheque is from a dormant account and presented for collection after four months from it's date and after the demise of the account holder.

20/22



A.S.(MD)No.645 of 2011

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22. As a result, the Appeal Suit is dismissed. No order as to costs. C.M.P. (MD)No.10427 of 2022 is also dismissed.

Index : Yes / No
NCC : Yes / No
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[G.J., J.] [C.K., J.]
30.01.2024

To

- 1.The Principal District Judge,
Dindigul.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court.
Madurai.

21/22



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A.S.(MD)No.645 of 2011

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

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PRE-DELIVERY JUDGMENT MADE IN
A.S.(MD)No.645 of 2011

30.01.2024

22/22