



SA(MD)No.546 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.09.2024**

C O R A M

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

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Selvaraj

... Appellant/Appellant /Plaintiff

Vs.

Pugalenth

...Respondent/Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, as against the judgment and decree made in AS.No.11 of 2017 on the file of the Additional Sessions and District Judge, Virudhunagar dated 26.02.2021 confirming the judgment and decree made in OS.No.41 of 2005 on the file of the Subordinate Judge, Virudhunagar dated 22.04.2016.

For Appellant : Mr.S.M.Mohan Gandhi

For Respondent : Mr.S.Pon Senthilkumaran

JUDGMENT

This second appeal is arising out of the concurrent findings of the Courts below in OS.No.41 of 2005 and in AS.No.11 of 2017. The appellant is the plaintiff, who had instituted the suit as against the respondent / defendant in



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OS.No.41 of 2005 before the Sub Court, Virudhunagar for recovery of money

pursuant to a promissory note Ex.A1.

2.The case of the plaintiff is that the defendant borrowed a sum of Rs.1,60,000/- from the plaintiff on 07.11.2002 for the purpose of improving his business and executed a promissory note Ex.A1 with an assurance that the amount would be returned together with interest @ 12 % per annum. However the defendant did not repay principle and did not pay the interest. Therefore the plaintiff caused a legal notice through his counsel on 16.10.2004 to the defendant demanding repayment of the money. The defendant did not repay the amount, but issued a reply notice dated 05.11.2004 denying the execution of the promissory note. Therefore, the appellant filed the suit seeking recovery of money from the respondent. During the trial before the trial Court the plaintiff was examined as PW1. He marked the promissory note dated 07.11.2002 as Ex.A1, the copy of the legal notice dated 16.10.2004 as Ex.A2 and the reply notice issued by the defendant on 05.11.2004 as Ex.A3. The defendant had taken a specific stand that the plaintiff is a stranger to him and was set up by one Ramasamy for the issue between Ramasamy and Manoharan. According to the defendant the defendant had given security for the money borrowed by one Manohar from Ramasamy in the year 2001. Ramasamy is a money lender.



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Manoharan borrowed a sum of Rs.60,000/- from Ramasamy in the month of August 2001 and this defendant stood as surety for the said loan amount.

The said Manoharan had repaid the amount. However there was some interest due. Ramasamy demanded huge interest towards the principle amount and therefore, Manoharan lodged a complaint before the Superintendent of Police, Virudhunagar under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act and during the enquiry Ramasamy settled the issue amicably in order to avoid the criminal prosecution. Ramasamy also issued a receipt to Manoharan on 23.03.2004 as full and final settlement. In that receipt the defendant is the witness to the document. The said Ramasamy, who was aggrieved on the steps taken by Manoharan by lodging a complaint, set up this plaintiff for filing this suit as against the defendant under the impression that the defendant was backing Manoharan. With this averment the reply notice was also issued on 05.11.2004. The defendant examined himself as DW1 and the said Manoharan as DW2. However no document was marked on the side of the defendants. The defendant also attempted to mark certain documents, however, it was not accepted by the trial court that those document were Xerox copies.

3.Considering the evidence adduced, the trial Court dismissed the suit that (i) the contents of Ex.A1 are written in black ink and the signature of this



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defendant is in blue ink; (ii) the Court by comparing the signature of the defendant in Ex.A1 with the deposition of the defendant found that the defendant could not have written the contents of Ex.A1 ; (iii) though specific stand was taken by the defendant by rebutting the execution of the document Ex.A1 for any consideration, the plaintiff failed to examine the attesor to the promissory note by name Palanivel; (iv) the defendant has taken a specific plea that the plaintiff is a Cooliee and he is not having sufficient means to lend this much of Rs.1,60,000/- to the defendant; (v) this promissory note was also executed on 07.11.2002 for a period of one month with a condition that the defendant should repay the borrowed money. However the plaintiff had not demanded this amount for two years and had issued a notice Ex.A2 only on 16.10.2004; (vi) The plaintiff, who is not having any source of income is said to have lent money of Rs.1,60,000/-, but has not demanded this money for two years and thus the defendant has rebutted the presumption and therefore, the plaintiff has to prove his case; (vii) the plaintiff has not adduced proper evidence for the difference in the colours of the writings in Ex.A1 and for non-examination of attesor to Ex.A1; (viii) The plaintiff has taken a specific stand that the contents in the Ex.A1 was written by the defendant himself. However the same was also found to be false. Therefore, the trial Court applied the principle under Section 114 (g) of the Indian Evidence Act dismissed the suit.



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4. Challenging the dismissal of the suit, the plaintiff preferred an appeal in AS.No.11 of 2017 before the I Additional District and Sessions Court, Virudhunagar and it was also dismissed by its judgment and decree dated 26.02.2021. As against these concurrent findings of the courts below, this second appeal is filed on the following substantial questions of law.

i. Whether the Courts below are justified in not drawing legal presumption available under Section 118 of Negotiable Instruments Act in favour of the Appellant / Plaintiff in spite of the respondent / defendant admitted the signature in Ex.A1 suit promissory note?

ii. Whether Courts below are justified in shifting the burden in appellant . Plaintiff in spite of proving the respondent's signature over the suit promissory note?

iii. Whether the Courts below are justified in dismissing the suit on the ground that the respondent / defendant rebutted the presumption especially when there is no witness examine in this regard?

5. The learned Counsel for the appellant submits that the defendant has admitted his signature in the document Ex.A1 and therefore, the presumption under Section 118 of the Negotiable Instruments Act, 1981 is on the defendant



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and not on the plaintiff. However, the trial Court and the appellate Court have erred in taking a decision that the presumption has been shifted on the plaintiff.

He also submits that as per Section 20 of the Negotiable Instruments Act, in the event promissory note is given in blank, then the presumption is still against the defendant and this aspect has not been considered by the trial Court as well as by the appellate Court. Without comparing the signatures of the defendant and his handwriting through an expert, the trial Court is not justified in arriving at the conclusion that the contents of the Ex.A1 are not written by the defendant.

6.This Court considered the submissions of the learned Counsel for the appellant, the substantial questions of law raised in the grounds of appeal and also the grounds raised in this second appeal.

7.The main contention of the learned Counsel for the appellant is that once the signature in Ex.A1 is admitted by the defendant, the presumption would be applicable and the burden is on the defendant to rebut the presumption. But in this case though the signature has been admitted by the defendant, he has taken a specific plea that this document was given to one Ramasamy as security for the money which was parted to one Manoharan [DW2] in the year 2001 for the amount Rs.60,000. In this regard there was



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some negotiations in the police station between the Ramasamy and Manoharan and the amount has been settled. He also produced certain documents for this transaction between Ramasamy and Manoharan and since they were Xerox copies, it was not marked. It is the case of the plaintiff that this document Ex.A1 was written by the defendant himself and therefore, Section 20 of the Negotiable Instruments Act will not be applicable to this case.

8.The specific case of the plaintiff is that the promissory note was executed by the defendant on his own handwriting. The contents of the Ex.A1 was written in black ink and signature was in blue ink. The contents of the Ex.A1 was compared by the trial Court, which is permissible under Section 73 of the Indian Evidence Act. Admittedly this appellant is a daily wage employee in a textile mill and he is not having any source to part with this amount. This stand was taken by the defendant in his reply dated 05.11.2004 as well as in his written statement. However the plaintiff did not establish his source of income. This promissory note was also executed with a condition that this amount has to be returned within a period one month with interest @ 12 % per annum. The plaintiff, who is said to have lent the amount on 07.11.2002 has not taken any steps till 16.10.2004 for demanding this money.



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9. In similar circumstances this Court in ***Narayana Sathiya Siva Senathipathi Vs Natarajan*** [AS.No.188 of 2010 dated 11.07.2017] has decided the issue by following the ratio laid down by the Hon'ble Supreme Court as under:

“17. Now, it is to be seen whether the presumption has been rebutted by the defendant. On the question of rebuttal the Hon'ble Supreme Court in Kundan Lal Rallaram Vs. Custodian, Evacuee Property, Bombay reported in AIR 1961 SC 1316, referring to the provisions under Section 118 of the Negotiable Instrument Act and Section 101 of the Evidence Act, held as follows:-

4. To appreciate this argument it would be necessary to notice at the outset the scope of the presumption under Section 118 of the Negotiable Instruments Act and also the different methods available to a person against whom such a presumption is drawn to rebut the same. The relevant part of S. 118 of the Negotiable Instruments Act reads:

Until the contrary is proved, the following presumption shall be made:-

(a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.



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5. *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 Section.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, Section 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 Section 114 and other sections of the Evidence Act. Under Section 114 of the Evidence Act.*

18. *From the above, declared position of law, it is clear that the defendant case rely upon, even the circumstantial evidence to rebutt the presumption. I had followed the said Judgment of the Hon'ble Supreme Court in G. Vasantha Versus Maharaja Kallash Benefit Fund Ltd, reported in [2017 (2) CTC*



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625]. *If we are to analyse the evidence available on record, in the light of the legal position summarised by the Hon'ble Supreme Court, it is seen that the evidence of the plaintiff himself is sufficient to hold that the presumption under Section 118 stood rebutted. From the evidence, extracted above it is seen that the plaintiff claims that he had the money. He claims the source of funds through the sale of the properties in November 1999. The sale deed or deeds have not been produced. The promissory Note is dated 15.12.2002. Therefore, it is almost three years after the sale and it is highly improbable that the plaintiff who is a business man retained the money for three years for advancing the same to the defendant. The very fact that the plaintiff has not shown this sum of Rs.10,00,000/- in his income tax return would militate against his claim.*

19. Again the plaintiff deposed that he had taken the money from his brother-in-law, three days prior to the lending. This evidence, belies the claim of the plaintiff that he had the money namely the proceeds of the sale deed executed by the plaintiff in the year 1999 and the same was advanced to the defendant in the December 2002. Again, the plaintiff has deposed that he kept the money only in the ancestral house and hence the pro note was executed in his ancestral house instead of Tiruppur. This conflicting evidence on the part of the plaintiff would itself, in my considered opinion is enough to rebutt the statutory presumption created under section 118 of the Negotiable Instrument Act. This court in Murugesan Vs.



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Subramaniya Goundar and others [1997 (3) CTC 478] observed that the defendant cannot take advantage of the weakness of the case of the plaintiff. At the same time, when the plaintiff's evidence is totally unbelievable and it is improbablised the plaintiff's case, I do not think, the plaintiff could be entitled to a decree, despite such improbable evidence."

Ultimately the case of the plaintiff was rejected by this Court.

10.By following the ratio laid down in the above case and by considering the available evidence, this Court is of the view that there is no error in the impugned judgments and accordingly, this second appeal is dismissed.
No costs.

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index : yes/ no

dsk

To

1.The Additional Sessions and District Judge,
Virudhunagar

2.The Subordinate Judge,
Virudhunagar.



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B.PUGALENDHI., J

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