



S.A(MD)No.415 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.09.2024

Pronounced on : 04.12.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.415 of 2019

and

C.M.P(MD)Nos.10409 of 2024 and 8193 of 2019

K.Narayanan

... Appellant/Appellant/Defendant

Vs.

S.Mohan

... Respondent/Respondent/Plaintiff

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to allow the Second Appeal and set aside the judgment and decree, dated 20.03.2019 made in A.S.No.32 of 2018 on the file of the II Additional Sub Court, Madurai, confirming the judgment and decree, dated 11.12.2017 made in O.S.No.15 of 2013 on the file of the Principal District Munsif Court, Madurai.

For Appellant : Mr.T.K.Gopalan

For Respondent : Mr.R.Swaminathan



S.A(MD)No.415 of 2019

JUDGMENT

WEB COPY

This Second Appeal is filed against the judgment and decree, dated 20.03.2019 passed in A.S.No.32 of 2018 on the file of the learned II Additional Subordinate Judge, Madurai, confirming the judgment and decree, dated 11.12.2017 passed in O.S.No.15 of 2013 on the file of the Principal District Munsif Court, Madurai.

2. The appellant is the defendant and the respondent is the plaintiff in O.S.No.15 of 2013 on the file of the Principal District Munsif Court, Madurai. The respondent/plaintiff filed the suit for recovery of money against the appellant/defendant.

3. For the sake of convenience, the parties referred as plaintiff and the defendant as arrayed in O.S.No.15 of 2013 on the file of the Principal District Munsif Court, Madurai.

4. Case of the plaintiff:

The defendant was working in the Head Post Office, Tallakulam, Madurai. The defendant obtained loan of Rs.50,000/- on 20.10.2010.



S.A(MD)No.415 of 2019

He executed promissory note, dated 20.10.2010 for Rs.50,000/- in favour of the plaintiff agreeing to repay the same with interest at 12% p.a on demand.

The defendant did not repay any amount either towards principal or interest.

The plaintiff issued the legal notice, dated 18.10.2012. The defendant sent reply, dated 24.10.2012 with false allegations. Hence, the plaintiff filed the suit for recovery of Rs.63,250/- with interest at 12% p.a. on Rs.50,000/-.

5. Case of the Defendant:

The defendant has not obtained any loan from the plaintiff and never executed any pronote in favour of the plaintiff. The defendant obtained loan of Rs.50,000/- from one S.Ramamoorthy and he had given signed unfilled pronote to him. The defendant settled the loan amount to the said Ramamoorthy. While the defendant demanded the pronote given by him, the said Ramamoorthy told him that the pronote and cheque were misplaced in his home, and he would return back the same after tracing out. Since the said Ramamoorthy is a friend of 10 years, the defendant believed his words. The defendant already lodged a complaint upon demand of exorbitant interest against Ramamoorthy before the Tallakulam police station. On enquiry by the police, Ramamoorthy executed statement that there was a



S.A(MD)No.415 of 2019

money transaction between himself and the defendant. The said Ramamoorthy utilized the plaintiff to grab more money from the defendant and filed the false suit. In an additional written statement, the defendant stated that he settled the suit pronote amount to the plaintiff through one Ravichandran.

6. The trial Court framed the following issues based on pleadings of both side.

- "1)Whether the plaintiff is entitled to suit claim
as prayed for?
2) To what other relief the plaintiff is entitled
to?"*

7. During trial, on the plaintiff's side, the plaintiff was examined as P.W.1 and one Manohar was examined as P.W.2 and marked 4 exhibits as Ex.A.1 to Ex.A.4. On the defendant's side, the defendant was examined as D.W.1, one Ravichadnran was examined as D.W.2 and two exhibits were marked as Ex.B.1 and Ex.B.2.



S.A(MD)No.415 of 2019

WEB COPY

8. After hearing both sides, the learned Principal District Munsif, Madurai, concluded that the plaintiff has proved his case and decreed the suit as prayed for with cost by passing judgment, dated 11.12.2017.

9. Aggrieved by the judgment and decree in O.S.No.15 of 2013, the defendant preferred the Civil Appeal in A.S.No.32 of 2018 before the learned II Additional Subordinate Court, Madurai.

10. The first Appellate Court after hearing both and after perusing the material records of the case, dismissed the appeal in A.S.No.32 of 2018 by passing judgment, dated 20.03.2019 and confirmed the judgment and decree passed in O.S.No.15 of 2013.

11. Challenging the judgment and decree of the First Appellate Court, the defendant has preferred this Second Appeal and the same has been admitted on 06.02.2019 by framing the following substantial questions of law:-

"A. Whether the Courts below were correct in law in not considering Ex.B.1 and Ex.B.2 together



WEB COPY



S.A(MD)No.415 of 2019

with the evidence of D.W.2 which would show that the defendant has discharged the onus cast on him?

B. Whether the Courts below were correct in law in not shifting the burden on the plaintiff to prove his case?"

12. The learned counsel for the appellant/defendant mainly argued that the defendant borrowed Rs.50,000/- only from one Ramamoorthy and handed over signed but_unfilled pronote to him. The defendant discharged that loan amount with interest, however, Ramamoorthy did not return back stating that the pronote was misplaced. In order to grab further amount, the said Ramamoorthy through the plaintiff has filed the suit. Moreover, as per Ex.A.1 pronote of the year 2010, the defendant availed loan of Rs.50,000/- wherein the defendant was described as Public Relations Officer. In fact, in 2010 the defendant was not working as Public Relations Officer he was serving as such only in 2011. One of the attestors was examined as D.W.2, who clearly deposed about the real facts and no amount was advanced through Ex.A.1 - Pronote. The plaintiff is a pure stranger to the defendant and the plaintiff did not possess sufficient means to lend money to the defendant. Both the Courts below completely lost sight about the rebuttal



S.A(MD)No.415 of 2019

evidence of the defendant under Section 118 of the Negotiable Instruments Act. The Courts below have not considered the exhibits Ex.B.1 and Ex.B.2., in right perspective. So, he prayed that this Second Appeal may be allowed. In support of his argument the learned counsel for the appellant/defendant relied on the following decisions:

"(1) AIR 2008 Supreme Court 1325 (Krishna Janardhan Bhat /v/ Dattatraya G.Hedge)

(2) 2017-1 Law Weekly 722 (Kathirvel /v/ Purushothaman)

(3) (2020) 4 MLJ 30 (S.V.Sathiyaseelan /v/ R.Vajravel)"

13. Per contra, the learned counsel for the respondent/plaintiff submitted that the defendant admitted his signature and the amount as mentioned in Ex.A.1 - Pronote. When the signature is admitted, the presumption under Section 118 of the Negotiable Instruments Act has to be considered in favour of the holder of the pronote. The defendant has not adduced any rebuttal evidence. Even, the defendant has not established by adducing acceptable evidence to show that there was a relationship between the plaintiff and the said Ramamoorthy. As per Ex.B.1 and Ex.B.2, there was



S.A(MD)No.415 of 2019

no content that the non-return of earlier pronote by the said Ramamoorthy or he has not stated that the plaintiff is possessing his pronote in the alleged police enquiry. The defendant has not stated the present defence in his reply notice. Both the Courts below properly appreciated the evidence and gave concurrent findings. In this Second Appeal, this Court cannot again reappreciate the decided facts. Therefore, he prayed that this Second Appeal may be dismissed. In support of his argument, the learned counsel for the respondent/plaintiff has relied on the following citations:

***"(i) (1989) 2 Supreme Court Cases
685 (Maniar Ismail Sab /v/ Maniar Fakruddin)***

***(ii) (1998) 6 Supreme Court Cases 423 (Satya
Gupta /v/ Brijesh Kumar)***

***(iii) 2024 SAR (Cri) 957 Supreme Court
(Sri Dattaraya /v/ Sharanappa)"***

14. Heard the arguments of both sides and perused the material records in this Second Appeal. The plaintiff has produced Ex.A.1 - Pronote to substantiate that the defendant borrowed Rs.50,000/-. The defendant has also admitted his signature found in Ex.A.1 and also the amount of Rs.50,000/- mentioned therein. But, the defendant made a defense that he borrowed loan



S.A(MD)No.415 of 2019

only from one S.Ramamoorthy and at the time of borrowing the loan, he had given signed but unfilled pronote to him, and though he discharged the loan, the said Ramamoorthy had not returned the pronote stating that it was misplaced. It is the further defence of the appellant/defendant that the said Ramamoorthy through the plaintiff herein has filed the suit to grab more money from the defendant by utilizing the unfilled pronote. On perusal of the evidence adduced on both sides, as rightly argued by the plaintiff's side, the defendant has not substantiated his allegations about any relationship between Ramamoorthy and the plaintiff. It is revealed from the evidence that the defendant lodged a police complaint against Ramamoorthy alleging the abovesaid Ramamoorthy demanded exorbitant interest, in which, enquiry was conducted by the police official. The defendant submitted that during police enquiry the said Ramamoorthy executed a statement. It is settled proposition of law, any statement given before the police official in the nature of civil dispute would not have any trustworthiness.

15. The defendant categorically admitted his signature found in Ex.A.1 and mentioning of Rs.50,000/- therein. The litigant does not need to prove the admitted fact. Hence, when the signature of the defendant on the



S.A(MD)No.415 of 2019

pro-note is proved with oral and documentary evidence, the presumption under Section 118 of the Negotiable Instruments Act clearly arises, until the contrary is proved. Section 118 of the Negotiable Instruments Act reads as follows:

“Section 118 : Presumptions as to negotiable instruments of consideration-

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 thereon;



S.A(MD)No.415 of 2019

(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 contained 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 the holder is a holder in due course lies upon him.”

In this case, the defendant contended that he had given signed unfilled pronote. When the signature in the pro-note is admitted therein and when the signatory states that he executed the pro-note in blank, it is an inchoate pro-note, i.e. the debtor therein is authorised the creditor to fill up the pro-note.

16. This Court had an occasion to deal with the similar issue, in the decision reported in **2002 (4) LW 360** (supra), wherein it has been held that when the signature in the pro-note is admitted and the signatory states that he handed over unfilled pro-note, it is inchoate pro-note and held that the pronote is proved in the absence of any rebuttal evidence by the defendant,



S.A(MD)No.415 of 2019

based on the decision of Hon'ble Supreme Court, which is held in paragraph

No.7 reads as follows:

"7. The Supreme Court in Mohideenkutty Hajee Vs. Pappu Manjooran (1996 (8) SCC 586), following a number of earlier pronouncements, held that when a suit is based on a promissory note and the promissory note is proved to have been executed, Section 118(a) raises a presumption, until the contrary is proved, that the promissory note was made for consideration. In the case of Kundan Lal Vs. Custodian Evacuee Property (AIR 1961 SC 1316), the Supreme Court has held that the presumption under Section - 118 Negotiable Instruments Act is one of law and a Court shall presume, inter alia, that the Negotiable Instrument was made or endorsed for consideration. Therefore, the said Judgment of the learned Single Judge is not in conformity with the Judgment of the Supreme Court. Under Section-118 of the Negotiable Instruments Act, there is a valid presumption with respect to consideration also. Inasmuch as the learned Single Judge has held that there is no presumption for consideration, it is not a good law."



S.A(MD)No.415 of 2019

WEB COPY

17. The Hon'ble Supreme Court has again reiterated the decision in its judgment in Civil Appeal No.5854 of 2022 and held in paragraph Nos.6.1 and 7 as follows:-

“6.1. At this stage it is required to be noted that as per the provision of section 118 of the NI Act there is a presumption of consideration in the negotiable instrument (Section 118(a)). It is true that such presumption may be rebutted. However, no rebuttal evidence is led by the defendant. Under the circumstances also the High Court has erred in allowing the second appeal and quashing and setting aside the decree passed by the learned Trial Court confirmed by the learned first appellate court..

7.The judgment and the decree passed by the learned Trial Court confirmed by the learned first appellate court is hereby restored. The present appeal is accordingly allowed.”

Even as per citation **(2020) 4 MLJ 30** relied on by the defendant's side, mere defense that the plaintiff did not have sufficient means, statutory presumption available under Section 118 of the Negotiable Instruments Act had not been dislodged by the defendant. Once the defendant admitted his



S.A(MD)No.415 of 2019

signature and amount in Ex.A.1, the burden shifts on the defendant to rebut the legal presumption. In this case, the defendant has not rebutted the statutory legal presumption.

18. More particularly in this case, the defendant has not let in any rebuttal evidence and has not established that the plaintiff had no means to advance such loan, while he argued that the plaintiff was not having sufficient means to lend money. Though the attestors were examined on both sides, they did not depose that the plaintiff was not having sufficient money. Moreover, the defendant had pleaded inconsistent statements in the written statements. At one time he pleaded that the plaintiff was a stranger to him and in the additional written statement he stated that he settled the loan to the plaintiff through D.W.2 Ravichandran. The above inconsistent pleas totally destroyed the defendant's case. Of course, being the defendant he is entitled to take as many defence as possible. But a defendant cannot take inconsistent pleas which are destructive to each other.

19. Another argument submitted by the defendant is that the defendant was shown as Public Relations Officer in the pronote, but at the relevant time



S.A(MD)No.415 of 2019

he was not working as Public Relations Officer. For which, he relied on the evidence of D.W.2. As already held once signature and amount are admitted in the pronote, the contents are also deemed to be admitted. Further, the pronote being an inchoate document, the defendant herein authorised the plaintiff to fill up the pro-note. So this defense also failed.

20. The Courts below correctly appreciated the evidence and came to a correct decision. It is settled proposition of law that in the Second Appeal it is not open to the appellant to re-paginate facts or to call upon the High Court to re-analyze or re-appreciate evidence in the Second Appeal and the Court cannot expand the scope of the appeal as rightly submitted by the plaintiff's side by relying on citations. This Court does not see any misappreciation of evidence by the Courts below. The citations relied on by the defendant are not applicable to the facts of this case. Concurrent findings cannot be interfered with, in the absence of any perversity in findings from the proved facts by the Courts below. From the above facts and circumstances, the Courts below found concurrent findings based on the evidence adduced in the case. The said findings need not be interfered by this Court by way of Second Appeal. Hence, the questions of law framed in



S.A(MD)No.415 of 2019

this Second Appeal are answered against the appellant/defendant. Thus, this Second Appeal must fail.

21. In the result, this Second Appeal is dismissed. The judgment and decree, dated 20.03.2019 passed in A.S.No.32 of 2018 on the file of the learned II Additional Subordinate Judge, Madurai, confirming the judgment and decree, dated 11.12.2017 passed in O.S.No.15 of 2013 on the file of the Principal District Munsif Court, Madurai, are confirmed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

04.12.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The II Additional Subordinate Judge,
Madurai.
- 2.The Principal District Munsif Court,
Madurai
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A(MD)No.415 of 2019

P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
S.A(MD)No.415 of 2019
and
C.M.P(MD)Nos.10409 of 2024 and 8193 of 2019

04.12.2024