BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 15.07.2024

PRONOUNCED ON: 22.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.137 of 2017
and
C.M.P.(MD)No.2175 of 2017

P.Baskar : Appellant//Respondent/Defendant

Vs.

K.S.Sekar : Respondent/Appellant/Plaintiff

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, passed in A.S.No.8 of 2015, on the file of the Principal District Court, Karur, dated 13.06.2016, reversing the judgment and decree, passed in O.S.No.172 of 2012, on the file of the Additional Subordinate Court, Karur, dated 04.07.2014.

For Appellant : Mr.M.P.Senthil

For Respondent :Mr.K.Prabhakaran

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.8 of 2015, dated 13.06.2016, on the file of the Principal District Court, Karur, reversing the judgment and decree made in O.S.No. 172 of 2012, dated 04.07.2014, on the file of Additional Subordinate Court, Karur.

2. The suit is on a promissory note.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

4. The case of the plaintiff is that the defendant borrowed a sum of Rs.4,50,000/- from the plaintiff on 22.01.2012 agreeing to repay the same with interest at Rs.1.50 per hundred per month either to the plaintiff or to his order on demand and executed a promissory note, that despite repeated demands made in person, the defendant has not cared to discharge the loan amount with interest, that the plaintiff came to know from one Nareshkumar that the defendant with a malafide intention to

defeat and defraud the plaintiff's debt, has been making hectic attempts to alienate the property owned by him, that except the suit property, the defendant did not possess any other immovable property and that therefore, the plaintiff was constrained to file the above suit for recovery of Rs.4,89,825/- with subsequent interest and costs.

5. The defence of the defendant is of total denial. The defendant in the written statement has taken a stand that he borrowed a sum of Rs.1,00,000/- from one K.Balagurusamy @ Rice Balu, who is a running a finance as Heera Capitals, that the defendant was insisted by the said Balagurusamy to subscribe signature in four printed unfilled promissory notes in the name of Heera Capitals and three unfilled promissory notes and two cheques, that the defendant due to his pressing financial necessity was forced to put his signatures in unfilled documents, that the defendant during the last week of May 2012 has settled the entire principal amount with interest, that the said Balagurusamy had demanded the penal interest for the delayed payment of interest, for which the defendant refused to pay the penal interest and hence there arose a dispute between the said Balagurusamy and the defendant, that the said Balagurusamy after the settlement of dues, informed the defendant that

he has misplaced the documents obtained from the defendant and he would hand over the same as and when he traced out the same, that the defendant bonafidely believing the words of the said Balagurusamy did not take any legal action, that the said Balagurusamy taking advantage of the custody of the said documents, set up the plaintiff and filed the present suit, that the defendant has never borrowed any amount nor executed any promissory note in favour of the plaintiff, that the non-issuance of legal notice prior to the filing of the suit would reveal the malafideness of the plaintiff, that there was absolutely no consideration for the execution of the suit promissory note, that the suit promissory note is a created, fabricated, concocted and bogus document, that there is no debtor and creditor relationship between the plaintiff and the defendant, that the said Balagurusamy has already set up one Sadhasivam and filed a complaint under Section 138 of Negotiable Instruments Act before the Fast Track Court (Judicial Magistrate Court Level), Karur and that therefore, the suit is liable to be dismissed.

6. The learned trial Judge, upon perusing the pleadings of both parties, has framed the following issues:

(1) Whether the contention that the plaintiff has filed the suit by filling up the signed blank promissory note, handed over by the defendant to one Balagurusamy for the amount borrowed from him, is true and correct?

(2) Whether the plaintiff is entitled to recover the suit claim from the defendant?

(3) To what other relief reliefs, the plaintiff is entitled to?

7. During trial, the plaintiff has examined himself as P.W.1 and one Paramathi Balu as P.W.2 and exhibited two documents as Exs.A.1 and A.2. The defendant has examined himself as D.W.1 and one Nareshkumar as D.W.2 and exhibited 7 documents as Exs.B.1 to B.7. Copy of the affidavit filed by a third party in O.S.No.172 of 2012 has been marked as Ex.C.1. The learned trial Judge, upon considering the pleadings and the evidence both oral and documentary and on hearing the arguments of both sides, has passed a judgment and decree dated 04.07.2014, by holding that the plaintiff has failed to prove that the defendant borrowed a sum of Rs.4,50,000/- and executed a suit promissory note, dismissed the suit.

8. Aggrieved by the dismissal of the suit, the plaintiff has preferred an appeal in A.S.No.8 of 2015 and the learned Principal District Judge, Karur, upon considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree, dated 13.06.2016, reversing the judgment and decree passed by the trial Court and granted the decree as prayed for. Challenging the impugned judgment and decree, the present Second Appeal came to be filed.

9. At the time of admission, the following Substantial Questions of Law came tobe formulated:

> "(a) Whether the judgment and decree of the lower Appellate Court could be sustained in law in decreeing the suit by reversing the judgment and decree of the trial Court by mechanically applying Section 20 of the Negotiable Instruments Act, especially it is not even the case of the respondent that is holder in due course?
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> (b) Has not the lower Appellate Court committed serious error in law in reversing the well considered judgment and decree of the trial Court without assigning any cogent reasons by mechanically relying

on Sections 20 & 118 of the Negotiable Instruments Act even without analyzing the said provisions of Negotiable Instrument Act could be applied the case on hand?

(c) Whether the judgment and decree of the lower Appellate Court is vitiated in decree the relief for money completely overlooking that the appellant has successfully rebutted the Section 118 of Negotiable Instruments Act by virtue of oral testimony of D.W.1 and D.W.2 corroborating by documentary evidence under Exs.B.1 to B.7?

(d) Whether the lower Appellate Court is right in law in granting the relief sought for completely overlooked the very admission of P.W.1 which itself would suffice to reject the relief sought for?"

10. The learned Counsel for the appellant/defendant would submit that the plaintiff has not adduced any iota of evidence relating to the actual passing of consideration under Ex.A.1 promissory note, that the entire evidence adduced would go to show that the alleged passing of consideration as well as debtor and creditor relationship between the plaintiff and the defendant is preponderance of improbability whereas the blank promissory note was given by the defendant to one Balagurusamy

and the same was misused by the plaintiff is probable, that P.W.2 – scribe of promissory note would categorically admit that he has no knowledge regarding the execution of Ex.A.1 and no other attetesting witness to Ex.A.1 has been examined, that the first appellate Court erred in law in drawing presumption under Section 118 of the Negotiable Instruments Act simply disbelieving the pleadings of passing of no consideration, especially when the defendant adduced material evidence under Exs.B.1 to B.7 corroborating the evidence of the defendant as D.W.1, that the first appellate Court erred in not adverting that the defendant has discharged his initial burden that no consideration was passed on the suit promissory note by adducing documentary evidence under Exs.B.1 to B.7 corroborating the evidence of defendant as well as the admissions of P.W. 1 and P.W.2, that the first appellate Court misconstrued the whole issue as if the plaintiff is a holder in due course even without adverting the very plea of the plaintiff that the promissory note was executed directly in favour of the plaintiff which was not proved by him, that the first appellate Court had mechanically applied Section 20 of the Negotiable Instruments Act especially it is not even in the case of the plaintiff and that therefore, the judgment and decree of the trial Court are liable to be set aside.

11. The learned Counsel for the plaintiff would contend that the suit promissory note was proved by P.W.1 and P.W.2, that the documents Exs.B.1 to B.7 produced by the defendant have absolutely no connection with the plaintiff or with the present suit, that the defendant has specifically admitted his signatures in the suit promissory note and as such, the first appellate Court has rightly held that the presumption under Section 118 of the Negotiable Instruments Act had arisen, that the defendant has not taken any probable defence so as to rebut the presumption raised under Section 118 of the Negotiable Instruments Act, that the first appellate Court has rightly applied the provisions of Sections 118 and 20 of the Negotiable Instruments Act and came to a finding that the defendant has not discharged his burden of proof that the suit promissory note was not supported by consideration and that therefore, the first appellate Court has rightly concluded that the suit promissory note is true and valid and is supported by consideration and consequently, decreed the suit as prayed for.

12. Before entering into further discussion, it is necessary to consider the legal position.

13. The learned Counsel for the plaintiff as well as the defendant would rely on the same decision in the case of ***Bharat Barrel & Drum Manufacturing Company s. Amin Chand Payrelal*** reported in ***(1999)3 SCC 35*** and the relevant passage is extracted hereunder:

> *"Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would dis-entitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case,*

where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as existence of negative evidence is neither possible nor contemplated and even if led is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption the defendant has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist. We find ourselves in the close proximity of the view expressed by the Full Benches of the Rajasthan High Court and Andhra Pradesh High Court in this regard."

14. When the suit is based on a promissory note and the defendant denies the execution of the promissory note, then the plaintiff is duty bound to prove the execution of the promissory note and in case, if the plaintiff discharges his onus of proof and proves the execution, arising of

presumption under Section 118 of Negotiable Instruments Act is automatic as to the passing of consideration, date, name, time etc., and in that situation, the burden of proof gets shifted to the defendant and it is for the defendant to disprove the legal presumption by setting up a probable defence. When the defendant proves his case through tangible evidence, then the liability once again shifted to the plaintiff to prove that the promissory note was executed by the defendant.

15. Bearing the legal position on mind, let us proceed with the present case. The defendant in his evidence before the trial Court would specifically admit not only his signature, but also thump impression in Ex.A.1 promissory note and the relevant portion is extracted hereunder:

“வா.சா.ஆ.1 ஆன புரோநோட்டில் உள்ள கையெழுத்தும் மற்றும் கைரேகை என்னுடையதுதான்.”

But as already pointed out, according to the defendant, he borrowed the amount from Balagurusamy and subscribed signatures in the blank promissory notes and that the entire amount was settled by him during the last week of May 2012. Admittedly, the defendant has not produced any iota of materials or evidence to show that he borrowed Rs.1,00,000/- only from Balagurusamy by subscribing his signatures in blank promissory notes and the finance company's promissory notes and that he had discharged the loan during the last week of May 2012. The defendant has not produced any discharge receipt or any other document to show that the loan was discharged by him. As rightly contended by the learned Counsel for the plaintiff, there is absolutely no materials to show that the defendant had some transactions with Balagurusamy.

16. As already pointed out, it is the specific contention of the defendant that at the time of settling the loan amount to Balagurusamy, he demanded penal interest for the belated payment of interest, but the defendant refused to pay the penal interest and hence, there was a dispute between the defendant and the said Balagurusamy. It is the further contention of the defendant that after settling the loan amount, he demanded Balagurusamy to return the signed blank promissory notes and cheques, but he informed that he had misplaced the said documents and would return the documents, after tracing out the same. As rightly contended by the learned Counsel for the plaintiff, when the defendant was having dispute with the said Balagurusamy in not paying the penal interest as claimed by the said Balagurusamy, the contention of the defendant that bonafidely believing the words of Balagurusamy that he

would return the document after tracing out the same, he did not taken any action is, very hard to believe.

17. The learned Counsel for the defendant would submit that the trial Court has erred in applying Section 20 of the Negotiable Instruments Act, when there is absolutely no pleadings that the plaintiff is a holder in due course and as such, he is having authority to fill up the blank promissory note. He relied on the decision of this Court in ***M.Ponnuthaiammal Vs. V.Alagarsamy Naicker*** reported in ***2019(3) CTC 590*** and the relevant passages are extracted hereunder:

> *"20. Now, according to Section 20 of Negotiable Instrument Act, one of the primary conditions of law is that the person signing should deliver the instrument to another. Further, the person so signed is having intention that the Bill should be filled up by anybody. Usually, an incomplete instrument is delivered for some other purpose, for example, safe custody to utilise the Section to his/her advantage, thereby, delivery by a person to another is a primary condition under Section 20 of the Negotiable Instruments Act.*
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> *21. In this case, there is no evidence on the side of the Plaintiff that the Defendant handed over Ex.A.1 with an intention to convert the same as Pro-Note. Under such circumstances, it cannot be held that the Defendant has given*

authorization to the Plaintiff to fill Ex.A.1. Hence, I am of the considered opinion that the manner of writing and lack of evidence with regard to handing over the signed paper to the Plaintiff, has created a doubt whether the transaction alleged by the Plaintiff is in accordance with the evidence given by P.W.2. But, the learned Principal District Judge, without observing those facts, came to the conclusion in favour of the Plaintiff, which requires interference."

18. At this juncture, it is necessary to refer the following decisions:

(i) ***2014-1-L.W.316 (V.S.Veerasamy and others Vs. K.Subramaniam):***

"Under Section 20 of the Negotiable Instruments Act, when a blank Promissory Note was executed, the executant gives authority to the holder to fill the blank promissory note and therefore, when the signature in the Promissory Note is admitted, the execution of the Promissory note and passing of consideration can be presumed as admitted and it is for the defendants to prove that they did not receive any consideration for the Promissory Notes executed by them and the Promissory Notes were obtained for other reasons. In the judgment reported in 2002-3-L.W.692 and 2002-3-L.W.845, cited supra, the said principle has been

reiterated.”

(ii) ***(2017)5 MLJ 600 (P.Ethiraj Vs.M.Nowsath Seth)***

“16.In the light of Section 20 of the Negotiable Instruments Act, it can be safely presumed that the defendant who had admitted the execution of the promissory notes had done so for a valid consideration. An Hon'ble Division Bench of this Court in the judgment in Ramasami Moopar Vs. Ramaswami Moopanar and Karuppa Moopar reported in 2002 (4) LW 360, while dealing in this aspect has held as follows:

7.The Supreme Court in Mohideenkutty Hajee vs. Pappu Manjooran, 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 Instrument 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."

19. Considering the above, it is clear that the position of law is well settled that when the signature in promissory note is admitted, the execution of promissory note and passing of consideration can be presumed as admitted and in that situation, the defendant should prove that he did not receive any consideration for the promissory note. As already pointed out, in the case on hand, the defendant has specifically admitted his signatures and thump impression found in Ex.A.1 – promissory note are that of him. Section 20 of the Act contemplates where one person signs delivers to another either wholly blank or filled up, he gives prima facie authority to fill up that instrument.

20. As rightly contended by the learned Counsel for the plaintiff, since the defendant has admitted his signatures and thump impression in promissory note, even assuming that the signatures and thump impression were put on a blank promissory note, as per Section 20 of the

Negotiable Instruments Act, it has to be inferred that the defendant has impliedly authorised the holder to fill up the promissory note. Considering the above, as rightly observed by the first appellate Court, the plaintiff has discharged his initial burden of proving the execution of suit promissory note and as such, the presumption has to be drawn consequently that the suit promissory note is supported by consideration under Section 118 of Negotiable Instruments Act as it is a legal presumption.

21. The learned Counsel for the defendant would submit that the Hon'ble Supreme Court has already settled the legal position that it is not necessary for the defendant to disprove the existence of consideration by way of direct evidence. There is absolutely no dispute about the said legal position. It is not necessary for the defendant to adduce direct contra evidence and he can very well prove that there was no passing of consideration through the facts and circumstances that are elicited from the plaintiff's side witnesses during their cross-examination. To put it in other way, the defendant can very well rely upon the circumstantial evidence to rebut the evidence.

22. The learned Counsel for the defendant would rely on the decision of this Court in ***Narayana Sathiya Siva Senathipathi Vs Natarajan*** passed in A.S.No.188 of 2010, dated 11.07.2017.

23. In the above decision case, the plaintiff therein had deposed that he had taken the money from his brother-in-law, three days prior to the lending and the said evidence would bely 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 and moreover, the plaintiff had also deposed that he has been an income tax assessee from 1995-2003 and that he has not disclosed the sale of his properties in his income tax return and that the learned Judge of this Court has observed that above creates considerable suspicion on the case of the plaintiff and taking note of the above aspects, concluded that the presumption under Section 118 stood rebutted by the very admissions of the plaintiff. In the case on hand, no doubt, the defendant has taken some admissions, but those admissions are material enough to rebut the presumption raised under Section 118 of the Negotiable Instruments Act.

24. The learned Counsel for the defendant would submit that the defendant has successfully rebutted the presumption under Section 118 by virtue of oral testimony of D.W.1 and D.W.2 corroborating the documentary evidence under Exs.B.1 to B.7.

25. As already pointed out, Exs.B.1 to B.7 are the documents relating to the complaint filed under Section 138 of the Negotiable Instruments Act by one Sadasivam against the defendant and the copy of the cheque and promissory note filed in the said criminal case and certified copy of "A" Register for Heera Capital concern. Admittedly, the above documents does not relate to the plaintiff.

26. The learned Counsel for the defendant would give much importance for non-issuance of pre-suit notice by the plaintiff. But according to the plaintiff, since he came to know that the defendant has been taking hectic steps to alienate his only property through one Naresh Kumar, he was constrained to file the suit without issuing the pre-suit notice. It is pertinent to note that the defendant has summoned and examined the said Naresh Kumar as D.W.2. D.W.2, in his evidence would say that when he met the defendant he informed that he is going to

alienate his property, that he informed the above factum to the plaintiff and that therefore, the plaintiff has approached him and to file an affidavit with regard to the defendant's attempt to alienate the suit property and on that basis, he has given the affidavit. Considering the above, D.W.2 would only confirm the version of the plaintiff as to why the pre-suit notice was not issued.

27. More importantly, the defendant in his cross-examination would admit that he had entered into a sale agreement with one Loganathan to sell his property on 22.06.2012. The above admission of the defendant would only strengthen the case of the plaintiff. It is pertinent to note that the plaintiff has filed the suit on 16.07.2012 and as already pointed out, the defendant himself has admitted that he entered into a sale agreement on 22.06.2012. Considering the above facts and circumstances, the contention of the defendant that the non-issuance of pre-suit notice is fatal to the plaintiff's case, cannot be sustained.

28. Considering the evidence available on record, the learned appellate Judge has rightly come to a decision that since the defendant has failed to discharge his burden of proving that the suit promissory note was not supported by consideration, the suit promissory note was

held to be true, valid and supported by consideration. Hence, the Substantial Questions of Law are answered in favour of the plaintiff and against the defendant and consequently, this Court concludes that the Second Appeal is liable to be dismissed. This Court is further of the view that the parties are to be directed to bear their own costs.

29. In the result, the Second Appeal is dismissed and the judgment and decree passed by the the first appellate Court in A.S.No.8 of 2015, dated 13.06.2016, on the file of the Principal District Court, Karur stands confirmed. Consequently, the connected Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.

22.11.2024

NCC : Yes:No
Index : Yes : No
Internet : Yes : No

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To

1.The Principal District Court, Karur.

2. The Additional Subordinate Court, Karur,

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)No.137 of 2017

22.11.2024