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S.A.No.267 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2025

CORAM:

THE HONOURABLE **Mrs.JUSTICE R.KALAIMATHI**

S.A.No.267 of 2023
and
CMP.No.7890 of 2023

Mahadevan

.. Appellant/Defendant

vs.

Elangovan

.. Respondent/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.14 of 2017 dated 01.09.2022 on the file of the Principal District Court, Ariyalur, confirming the judgment and decree in O.S.No.119 of 2009 dated 03.07.2017 on the file of the Subordinate Court, Ariyalur.

For Appellant : Mrs.B.N.Sivagamasundari

For Respondent : Mr.P.Valliappan
Senior Counsel
Assisted by
Mr.K.M.Hareesh



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JUDGMENT

The defendant who suffered money decree at the hands of trial Court (O.S.No.119 of 2009 on the file of the Subordinate Court, Ariyalur) as well as the First Appellate Court(A.S.No.14 of 2017 on file of the Principal District Court, Ariyalur), has preferred the Second Appeal.

2. The parties are indicated herein as per their litigative status and ranking before the trial court.

3. According to the plaintiff, the defendant borrowed a sum of Rs.1,40,000 /- from the plaintiff on 17.12.2006 and executed a demand promissory note agreeing to repay the said amount with interest at 12% per annum. Despite the repeated request to repay the said loan by the plaintiff, the defendant did not chose to repay the same. A legal notice was caused to be issued by the plaintiff on 23.10.2009 was acknowledged by the defendant. The defendant did not come forward to repay the said loan. Hence, the suit for recovery of money was laid by the plaintiff.

4. Per contra, the defendant would *inter alia* contend that the suit promissory note is forged and concocted, and based on the same, a



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false suit was laid. The defendant is a government servant receiving a sizable salary, not necessary to borrow any debt.

4.1. The plaintiff hired the JCB which belongs to the defendant's wife for agriculture purposes, and he did not repay Rs.10,000/-. As the said due was repeatedly demanded from the plaintiff, the plaintiff forged signature of the defendant and filed this false suit. The plaintiff has no capacity to lend money. He did not issue any reply notice.

5. Based on the divergent pleadings, the Trial Court framed relevant issues. At trial, to substantiate the plaint details, on the plaintiff side, three witnesses have been examined and three documents have been marked. Ex.A1 dated 17.12.2006 is the promissory note executed by the defendant in favour of plaintiff for a sum of Rs.140,000/-. Ex.A2- is the copy of the legal notice issued to the defendant. Ex.A3 is the acknowledgment card. On the defendant's side, defendant has been examined himself as DW1 and a copy of the suit promissory note is marked as Ex.B1.

6. The Trial Court, upon consideration of oral and documentary evidence and after hearing the arguments advanced by either side, concluded that by examining the witnesses connected to the suit



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promissory note, the presumption arises in favour of the plaintiff under

Section 118 of the Negotiable Instrument Act, and the said presumption was not rebutted suitably by the defendant, and ultimately decreed the suit. Aggrieved, the defendant preferred Appeal in A.S.No.14 of 2017 before the Principal District Court, Ariyalur.

7. The First appellate Court upon consideration of material records and after hearing the arguments of both sides, having discussed about the evidence of plaintiff's side witnesses raised presumption in favour of the plaintiff under Section 118 of the Negotiable Instrument Act and also held that the suit pronote is true, valid and binding on the defendant and confirmed the judgment and decree of the Trial court by dismissing the First Appeal.

8. Aggrieved, the defendant has preferred the Second Appeal before this Court.

9. The plaintiff has been examined himself as PW1 and he has filed proof affidavit in line with the details of the plaint. It is the evidence of PW2-Saravanan, who is the arrestor of Ex.A1 - Promissory note, on 17.12.2006, the defendant borrowed a sum of Rs.1,40,000/- from the



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plaintiff in their presence and executed a suit promissory note in favour of the plaintiff by appending their signature.

10. It is relevant to note that the defendant and PW2 belong to the same political party. The suit pronote is dated 17.12.2006 (Ex.A1). From the evidence of PW2, it appears that the plaintiff has been running a Computer Center since 2002. With regard to the place of execution, PW2 has deposed that "வாதி வீட்டின் உள்ளே வைத்து பாண்டு எழுதப்பட்டது. P.W.3 would state that வாதி வீட்டின் திண்ணையில் வைத்து எழுதப்பட்டது." Thinnai forms part of the house. Therefore, these details cannot be considered as material contradictions.

11. It is the evidence of PW3 that he was taken to the plaintiff's house by the defendant and the suit promissory note was penned by PW3. It was read over to the defendant and the defendant appended his signature in the promissory note, and thereafter P.W.1 and P.W2 attested in the promissory note. After their attestation, PW3 signed in the document in the capacity of scribe. It is his further evidence that the promissory note was handed over to the defendant by the plaintiff, and the defendant received a sum of Rs.1,40,000/- from the plaintiff.



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12. A thorough perusal of evidence of PW1 and PW2, it is established that the defendant received the aforesaid amount from the plaintiff and executed the promissory note in favour of the plaintiff, and PW2-Mr.Saravanan attested the promissory note and PW3 scribed the suit promissory note. No enmity against PW2 and PW3 suggested by the defendant, and such circumstances, based on the evidence of PW1 to PW3 except some immaterial contradictions that are bound to occur, it is established that the suit promissory note was executed by the defendant in favour of the plaintiff for consideration as stated in the plaint.

13. Therefore, as per Section 118 of Negotiable Instruments Act, presumption arose in favour of the plaintiff in connection with the suit promissory note (Ex.A1). The said presumption is a rebuttable one. The defendant is at liberty to refute the presumption through oral or documentary evidence, and even through circumstantial evidence.

14. The defendant has examined himself as DW1, and during his cross examination, he would state that he had already obtained a loan amount of Rs.15,000/- and executed a blank promissory note, and gave the said promissory note to the plaintiff. As per section 101 of the Evidence Act, 1882, one who pleads has to prove. When the defendant has pleaded forgery [in the written statement]. To prove the same, he did



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not take any steps to send the promissory note/Ex.A1 for obtaining opinion from the Handwriting Expert. DW1 has specifically admitted that the witnesses are known to him. DW1 would also state that he has repaid the aforesaid loan of Rs.15,000/- but he did not receive the connected promissory note from the plaintiff, which would go to show that he did speak falsehood.

15. DW1 would depose that the plaintiff has to pay a sum of Rs.10,000 towards use of JCB, which belongs to his wife, and since the plaintiff did not pay the dues of Rs.10,000/-, he falsely foisted this case is totally not acceptable. It is also pertinent to note that for the legal notice issued by the plaintiff, he did not issue reply notice.

16. Of course, non-issuance of reply notice does not amount to admission of liability, but omission in not issuing the reply notice cannot be lost sight of. For the below the said commissions and omissions, the money suit was decreed.

i) PW1 has spoken about the granting of loan to the defendant and the execution of promissory note by the defendant and other connected details.

ii) Entire evidence of PW1 is strengthened by the evidence of PW2 and PW3 (Attestor and Scribe).



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iii) P.W.2 and P.W.3 are known persons to the defendant. There is no enmity between PW2, PW3 and the defendant.

iv) Legal presumption under Section 118 of Negotiable Instrument Act arose in favour of the plaintiff was not suitably rebutted by the defendant.

v) The plaintiff, at the relevant point of time, was running a Computer Training Center and Photo Studio.

vi) The defendant has failed to prove forgery.

vii) The cumulative effect is that the Trial court as well as the First Appellate Court, have concurrently decided in favour of the plaintiff.

17. This Court is of the considered view that the plaintiff has proved his case. This Court does not find any infirmity or perversity in the findings of the First Appellate Court. This Court finds no good reason to upset the findings of the First Appellate Court. No substantial question of law arise for consideration.

18. Above being the position, this Second Appeal stands dismissed with cost. Sequel to this, judgment decree dated 01.09.2022



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made in A.S.No.14 of 2017 by the Principal District Court, Ariyalur stands
confirmed. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

Speaking : Non speaking order

Neutral Citation : Yes/No

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To

1.The Principal District Court, Ariyalur,

2. The Subordinate Court, Ariyalur.



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R.KALAIMATHI,J.

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