



A.S.No.94 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-02-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

A.S.No. 94 of 2022

and

C.M.P.No.3412 of 2022

R.Rajendran
S/o. late C.Ramasamy,
Proprietor,
Sree Lakshmi Spinnerss,
A-101, Sun Shine Apartment 1st Floor,
College Nagar,
Peelamedu,
Coimbatore-641 004.

..... Appellant

-Versus-

K.Kullappan
S/o.Kurusamy,
51, Saraswathi Rice Mill Compound,
Ayyankovil Road,
Samalapuram,
Somanur, Tiruppur Dist.

..... Respondent

Appeal under Order 41, Rule 1 r/w 96 of the Code of Civil Procedure, 1908, praying to set aside the judgement and decree dated 01.12.2021 made in O.S.No.34 of 2019 on the file of the learned Principal District Judge, Tiruppur, Tiruppur District.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.S.Arjun



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JUDGEMENT

Challenging the judgement and decree dated 01.12.2021 made by the learned Principal District Judge, Tiruppur District, in O.S.No.34 of 2019, the defendant is before this Court with the present appeal suit. The suit was decreed against the appellant herein directing him to pay to the plaintiff, a sum of Rs.12,50,000/- with interest at the rate of 7.5% per annum from the date of plaint till date of decree and thereafter at 6% per annum till date of repayment in full and cost of Rs.67,764.50.

2. For the sake of convenience, the parties in this appeal suit will hereinafter be referred to as per their array in the original suit.

3. The case of the plaintiff in O.S.No.34 of 2019 in brief is as follows:

(i) The defendant is known to the plaintiff. Knowing the plaintiff, the defendant borrowed Rs. 9,00,000/- from him on 09.09.2014 by signing an on-demand promissory note committing to repay the debt with interest at 24% per annum.

(ii) Despite the plaintiff's repeated demands, the defendant did not pay interest or repay the principal. Following repeated demands, the defendant



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issued a cheque bearing No.493307 dated 15.10.2016 in favour of the plaintiff for Rs.12,50,000/- drawn on ICICI Bank Limited, Coimbatore to satisfy the principal and interest payable to the plaintiff.

(iii) When the aforementioned cheque was presented for collection on 16.10.2016 through the plaintiff's banker, Tamil Nadu Mercantile Bank, Somanur Branch, Coimbatore, it was returned on 17.10.2016 due to the account being closed.

(iv) Knowing that there were insufficient funds in his account to honour the cheque, the defendant fraudulently issued the suit cheque and had it returned in order to avoid paying the principal and interest. Thus, on 22.10.2016, the plaintiff sent a legal notice through his lawyer requiring the defendant to repay the loan amount due within 15 days after the notice, however the notice was returned on 25.10.2016 as intimation delivered. Despite repeated demands, the defendant failed to repay the loan amount and accrued interest. As a result, a suit was filed to retrieve the money.

4. The defendant stiffly resisted the suit *inter alia* contending that the plaintiff worked as an Electrical Contractor for the defendant's mill, M/s.Sree Lakshmi Spinnerss, in Kombakattupudur, Kadampadi, from 2004 to 2013, and that it is the defendant who was responsible for resolving electrical issues in the



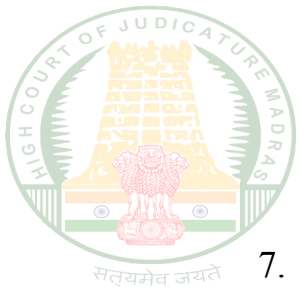
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mill whenever they arose. Except for the electrical contract, there was no financial transaction between the plaintiff and himself, and there were money transactions of no more than Rs.2000 to Rs.3000/-, depending on the electrical work.

5. It is contended that he never borrowed any money from the plaintiff on 09.09.2014 and executed any promissory note thereof nor any cheque was given towards discharge of any liability. The plaintiff was aware that the defendant's mill was closed, and the defendant did not have the mill on the date the cheque was alleged to have been issued. Yet would have clandestinely stolen the cheque from the defendant's possession or would have obtained the promissory note from someone else through Rajendran to make a false claim, fully aware of the closure of the defendant's mill colluding with the said Rajendran with a dishonest intention to cheat him (defendant). Hence, the defendant prayed for dismissal of the suit.

6. Based on the aforesaid pleadings of the parties, the trial court had framed the following issues for trial:

- (1) Whether the defendant is liable to pay the plaintiff a sum of Rs.12,50,000/- with interest as prayed in the plaint? and
- (2) To what other relief the plaintiff is entitled?



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7. During the trial, on the side of the plaintiff, the plaintiff, Kullappan, examined himself as P.W.1, and in support of his case, one P.K. Rajendran was examined as P.W.2, and Exs.A.1 to A.14 were marked, while on the side of the defendant, the defendant, R. Rajendran, examined himself as D.W.1, and in support of his defence, the defendant examined one Chenniappan as D.W.2, and Exs.B.1 to B.8 were marked.

8. Upon considering the oral and documentary evidence adduced by the parties, the learned District Judge decreed the suit against the defendant for recovery of money due to the plaintiff payable on a promissory note, directing the defendant to pay a sum of Rs. 12,50,000/- together with interest at the rate of 7.5% per annum from the date of plaint till the date of decree and thereafter at 6% per annum till the date of repayment in full and the cost of Rs. 67,764.50 paise. Challenging the above-mentioned money decree, the defendant is before this court with the present appeal suit.

9. Heard Mr.N.Manokaran, the learned counsel for the appellant and Mr.S.Arjun, the learned counsel for the respondent.

10. The learned counsel for the appellant would submit that the defendant was only an Electrical Contractor for the defendant's mill – M/s.Sree Lakshmi Spinnerss and that he was responsible for resolving electrical issues in the mill



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whenever they arose and he worked as such until 2013 and the mill was sold.

The plaintiff and one of his close associates, P.K.Rajendran (P.W.2) knew very well that the defendant's mill was sold in 2013 itself. Therefore, the plaintiff advancing the loan of huge sum to the tune of Rs.12.50 lakhs to the defendant for running his business is highly improbable.

11. The learned counsel for the defendant would further submit that when the defendant had already sold his spinning mill in the year 2013 itself and he had sufficient funds in his bank account as evident from Ex.D.5 to Ex. D.7, no need for him to borrow any amount from the plaintiff much less the suit amount.

12. The learned counsel for the defendant would further add that though the suit promissory note was stated to be executed on 09.09.2014, no legal notice whatsoever was issued demanding return of money, and whereas the suit cheque was projected as if the same was drawn by the defendant's mill in discharge of the principal sum and interest money due and payable under the suit promissory note, when the defendant had closed his business and sold the mill in 2013 itself.

13. Furthermore, the suit cheque was alleged to be drawn by the company M/s.Sree Lakshmi Spinnerss — whereas the company had been closed in the



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year 2013 itself. It is therefore highly improbable to contend that the cheque was drawn by the closed company for consideration. Only after the cross-examination by the defendant, the plaintiff has filed Ex.A.10 and Ex.A.11 to show as if the plaintiff had sufficient funds in his account to prove the passing of consideration. Yet, Ex.A.10 and Ex.A.11 did not prove passing of consideration, and it was not established by the plaintiff that Ex.A.10 and Ex.A.11 accounts really relate to the plaintiff. Therefore, according to the learned counsel, when the defendant has brought on record sufficient evidence to draw an inference of probabilities to discharge the legal presumption, the burden shifts to the plaintiff to prove the passing of consideration, but the same has not been established. This aspect was not considered by the trial court.

14. Per contra, the learned counsel for the plaintiff would submit that the plaintiff has, as P.W.1 sufficiently shown that the defendant executed the promissory note and issued the suit cheque to satisfy the obligation owed under the promissory note. P.W.2's evidence would further strengthen the evidence of P.W.1. That apart, though the business of the defendant was closed, there is no evidence to show that his bank account had been closed. The defendant had, in fact, been maintaining his account and therefore, it was only the defendant who



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issued the cheque (Ex.A.2) in discharge of his legal liability due under the promissory note.

15. Thus, according to the learned counsel for the plaintiff, once the execution of the promissory note and the issuance of the cheque have been proved, the burden shifts on the defendant to disprove the passing of consideration. Whereas the plaintiff has produced Ex.A.10 and Ex.A.11 to show that he had sufficient means to advance such huge amount as loan. The trial court has after thorough analysis of the available oral and documentary evidence decreed the suit which does not require any interference at the hands of this court.

16. In the light of the above submissions, the points that arise for consideration in this appeal suit are:-

(1) Whether the suit promissory note (Ex.A.1) was supported by consideration? And if so, did the defendant issue the suit cheque to discharge a lawfully owed debt payable under the suit promissory note?

(2) Whether the plaintiff has proved the execution of Ex.A.1 - Promissory Note and issuance of Ex.A.2- Cheque?

(3) Whether the defendant has discharged the legal presumption attached to Ex.A.1 and Ex.A.2?

Point Nos.1 to 3:



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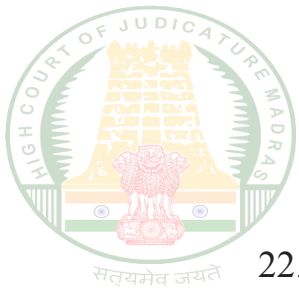
WEB COPY 17. The suit was filed for recovery of money due under the promissory note.

18. It is the case of the plaintiff that the defendant had borrowed a sum of Rs.9,00,000/- from him and executed Ex.A.1 Promissory Note on 09.09.2014 agreeing to repay same with interest @ 24% per annum. However, the defendant had not repaid the loan amount and upon repeated requests, the defendant issued Ex.A.2 cheque bearing No.493307 dated 15.10.2016 in favour of the plaintiff for Rs.12,50,000/- drawn on ICICI Bank Limited, Coimbatore to satisfy the principal and interest payable to the plaintiff. On presentation of the abovesaid cheque, it was returned dishonoured for the reason “account closed”. Hence the suit.

19. On the contrary, the defendant contended that there was no privity of contract between himself and the plaintiff. For the defendant mill, the plaintiff was merely an electrical contractor.

20. The defendant claimed that following the closure of his business and the sale of the mill, the suit promissory note and the suit cheque were misused.

21. The defendant went on to contend that the plaintiff was only a name lender, and he was set up by one P.K. Rajendran, with whom the defendant had some transaction during his business.



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22. It is needless to state that as per Section 118(a) of the Negotiable Instruments Act, 1881 until the contrary is proved, it shall be presumed that every negotiable instrument was made or drawn for consideration. This presumption can be rebutted by the opposing party by way of evidence that the instrument was not issued for consideration effectively disproving the initial presumption. In other words, it is obligatory on the part of the court to raise the initial presumption in every case where the factual basis for the raising of the presumption has been established. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence.

23. In **Kundan Lal Rallara v. The Custodian, Evacuee Property Bombay** [1961 SCC OnLine SC 10 : AIR 1961 SC 1316], the Hon'ble Supreme Court has held that the presumption of law under Section 118 of the Negotiable Instruments Act could be rebutted, in certain circumstances, by a presumption of fact raised under Section 114 of the Evidence Act. The relevant paragraph of the judgement reads as under: -

“5. This section lays down a special rule of evidence applicable to negotiable instruments. The presumption is one of law and thereunder a court shall presume, inter alia, that the negotiable instrument or the endorsement was made or endorsed for consideration. In effect it throws the



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burden of proof of failure of consideration on the maker of the note or the endorser, as the case may be. The question is, how the burden can be discharged? The rules of evidence pertaining to burden of proof are embodied in Chapter 7 of the Evidence Act. The phrase “burden of proof” has two meanings — one the burden of proof as a matter of law and pleading and the other the burden of establishing a case; the former is fixed as a question of law on the basis of the pleadings and is unchanged during the entire trial, whereas the latter is not constant but shifts as soon as a party adduces sufficient evidence to raise a presumption in his favour. The evidence required to shift the burden need not necessarily be direct evidence i.e., oral or documentary evidence or admissions made by opposite party; it may comprise circumstantial evidence or presumptions of law or fact. To illustrate how this doctrine works in practice, we may take a suit on a promissory note. Under Section 101 of the Evidence Act, “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist”. 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



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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, “The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case”. Illustration (g) to that section shows that the court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. A plaintiff, who says that he had sold certain goods to the defendant and that a promissory note was executed as consideration for the goods and that he is in possession of the relevant account books to show that he was in possession of the goods sold and that the sale was effected for a particular consideration, should produce the said account books, for he is in possession of the same and the defendant certainly cannot be expected to produce his documents. In those circumstances, if such a relevant evidence is withheld by the plaintiff, Section 114 enables the court to draw a presumption to the effect that, if produced, the said accounts would be unfavourable to the plaintiff. This presumption, if raised by a court, can under certain circumstances rebut the presumption of law raised under Section 118 of the Negotiable Instruments Act. Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or presumptions of fact may be



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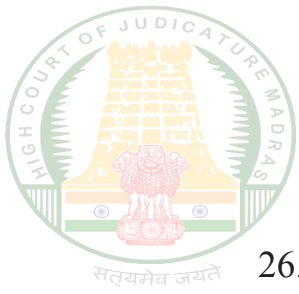


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rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law.” [Emphasis supplied]

24. In the light of the above legal position, now, it has to be seen whether the execution of Ex.A.1-Promissory Note and Ex.A.2-Cheque have been proved to attract the legal presumption? And whether the defendant has brought out circumstances to discharge such legal presumption?

25. The fact that the plaintiff was working as an Electrical Contractor in the defendant mill is not disputed by the plaintiff. Though it was stated by the plaintiff that Ex.A.1 Promissory Note was executed by the defendant on 09.09.2014 and Ex.A.2 Cheque dated 15.10.2016 was issued by the defendant in discharge of the legally owned debt under the promissory note, during cross examination, it was clearly admitted by the plaintiff that he was an Electrical Contractor for the defendant mill. P.W.2-P.K.Rajendran in his cross-examination stated that he was present at the time of borrowal of the suit loan by the defendant, but in the chief examination he never spoke about the execution of promissory note nor stated that Ex.A.1 was signed by the defendant in his presence. P.W.2's evidence had proceeded as if he had signed as a witness on the promissory note.



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26. Be that as it may, when the evidence of P.W.1 is carefully perused, it shows that an electrical fitter only introduced him to the defendant. He has also admitted that the so-called consideration passed on Ex.A.1 was not shown in his income tax account of the year 2014. The plaintiff (P.W.1) himself admitted that the defendant mill was closed in the year 2013 itself. The plaintiff (P.W.1) categorically admitted in his cross-examination that the defendant had sold his property to clear off his liabilities. Knowing all of this, he (plaintiff) had advanced money to the defendant on the promise given by the defendant that he would repay the loan amount after selling the other individual properties.

27. It is relevant to note that when a person was already in dire need of money and incurred a huge liability and already sold the entire asset of the company, it is hard to believe that knowing all this, the plaintiff advanced Rs.9,00,000/- as a loan to the defendant to run his spinning mill business in the year 2014. Furthermore, Ex.A.2-cheque would go to show that the cheque was issued in the name of a closed mill. It was admitted by the plaintiff (P.W.1) himself that the defendant's mill was closed and sold as early as in 2013 itself. Knowing well that the defendant had already closed down his business and sold his mill, the plaintiff advancing the loan towards his business (as seen from the promissory note) is against the normal conduct of the human being. This fact



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forces this court to presume certain facts. Even if it is assumed for the sake of argument that the plaintiff had advanced such a huge amount as a loan to the defendant, when the defendant's mill was already closed and sold in 2013 itself, what made the plaintiff recite in the promissory note allegedly executed on 09.09.2014 that the defendant was still running his mill in 2014. This fact could only probabalize the theory that the promissory note and the cheque had been fabricated subsequently after the defendant's business had been closed and sold to suit the convenience of the plaintiff at the instance of P.W.2. This probability is sufficient to discharge the legal presumption available to Ex.A.1 Promissory Note and Ex.A.2 Cheque.

28. Now, the burden shifts to the plaintiff to establish the fact that consideration was passed on to the defendant under Ex.A.1 promissory note. The plaintiff has placed much reliance on Ex.A.10-Statement of Account from Axis Bank for the period between 01.08.2024 and 31.08.2024 and Ex.A.11-Statement of Account from Canara Bank for the period between 01.09.2014 to 26.09.2015 relating to Roja Textiles. According to him, from 01.08.2014 to 30.08.2014, he has sufficient funds in the account.

29. It is relevant to note that the plaintiff as P.W.1 has categorically admitted in his cross-examination that the amount advanced to the defendant



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did not reflect in his income tax statement. On the contrary, Ex.A.10 and Ex.A.11 Statement of Accounts have been brought into evidence only after the cross-examination of the plaintiff (P.W.1) was over. When Ex.A.10 and Ex.A.11 are perused, this court found that they relate to Roja Textiles. Of course, the accounts indicate that some amounts were available in the account maintained by Roja Textiles. To show whether the plaintiff was running Roja Textiles or not, no material whatsoever was produced by the plaintiff. Even if it is assumed that the plaintiff was running that company, merely showing the income in the account of Roja Textiles would not by itself prove that the plaintiff had sufficient means at the relevant point in time, i.e., on the date of the Ex.A.1 promissory note dated 09.09.2014. Ex.A.10 and Ex.A.11 do not show any entry to prove that the amount had been withdrawn from his bank account to pay the consideration under the promissory note. Therefore, merely showing that some amount is lying in the bank account, by producing a bank statement, it cannot be said that the burden of establishing passing of consideration has been discharged. When the plaintiff was working as an electrical contractor in the defendant's mill and he was aware of the fact that the defendant's mill had been closed and was sold in the year 2013, still by reciting in the promissory note as if the mill was run by the defendant even in the year



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2014 and getting a cheque in 2016 drawn by the company that was closed in the year 2013 is highly improbable. It goes against the normal prudence of an ordinary man. Therefore, in the absence of any convincing evidence to prove the passing of consideration, this court is of the view that the burden to establish the passing of consideration has not been discharged by the plaintiff. Though the signature in Ex.A.1 and Ex.A.2 was admitted by the defendant, the defendant has brought out probable circumstances to discharge the legal presumption, and therefore, the burden shifted to the plaintiff to establish the passing of consideration, which was not established by the plaintiff.

30. It is further to be noted that though the promissory note was said to be executed on 09.09.2014, a suit was not filed immediately for recovery of money due on the promissory. On the contrary, pursuant to the so-called cheque (Ex.A.2), which was returned dishonored for the reason “account closed,” a notice was caused to the defendant, and thereafter, a private complaint under Section 200 of Cr.P.C. was filed against the defendant alleging an offence under Section 138 of the Negotiable Instruments Act, 1881, before the jurisdictional magistrate. Except for the issuance of a legal notice after the cheque was returned dishonoured, there was no attempt whatsoever made by the plaintiff to recover the money, and the suit was filed only in 2019. This



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conduct of the plaintiff in keeping quiet and not choosing to send any legal notice to enforce the alleged legal liability in respect of the promissory note dated 09.09.2014 also cannot be ignored altogether. The trial court has completely lost sight of all these aspects of the matter and erred in decreeing the suit of the plaintiff by granting the relief of recovery of money against the defendant.

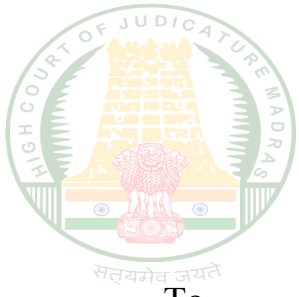
31. In the light of the above discussion, the point Nos.1 to 3 are answered in favour of the defendant and against the plaintiff. Thus, the decree and judgement of the trial court are liable to be set aside and the suit deserves to be dismissed.

In the result, the appeal suit is allowed. The Judgement and decree dated 01.12.2021 passed by the learned Principal District Judge, Tiruppur, Tiruppur District in O.S.No.34 of 2019 are set aside and the suit in O.S.No.34 of 2019 on the file of the learned Principal District Judge, Tiruppur, is dismissed. However, considering the facts and circumstances of the case, there shall be no order as to the costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no

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1.The Principal District Judge, Tiruppur, Tiruppur District.



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