



A.S.NO.296 OF 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2025

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CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.296 OF 2020

AND

CMP NO.3813 OF 2020

S.Vinothkumar ... Appellant / Defendant

Vs.

N.Prabu ... Respondent / Plaintiff

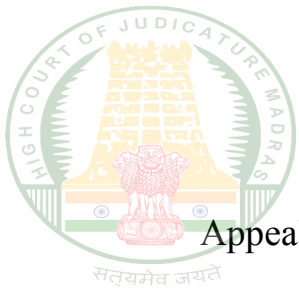
PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated October 31, 2017 passed in O.S.No.49 of 2016 by the II Additional District Court, Salem.

For Appellant : Mr.R.Nalliyappan
For Respondent : Mr.P.Jagadeesan

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated October 31, 2017 passed in O.S.No.49 of 2016 by the 'II Additional District Court, Salem' ['Trial Court' for brevity], the defendant therein has filed this

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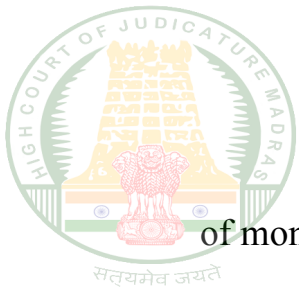
Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The plaintiff's case is that on September 28, 2014, the defendant borrowed a sum of Rs.10 Lakhs in cash from the plaintiff for his business and family expenses, agreeing to repay the same on demand with interest at 18% per month within one year. To discharge the said liability, the defendant issued a post-dated Cheque dated November 13, 2015 on August 16, 2015 for Rs.12,00,000/-, towards the principal and interest due. The plaintiff presented the said Cheque for collection on November 16, 2015, but it was returned on November 27, 2015, with the remark 'insufficient funds' in the defendant's account. Pursuant to this, on December 7, 2015 the plaintiff sent legal notice demanding the Cheque amount to two places of the defendant, which were received by the defendant on December 8, 2015 and on December 10, 2015 respectively. The defendant did not send any reply to the said notice. Hence, the plaintiff filed the Suit for recovery

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of money.

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DEFENDANT'S CASE

4. The defendant filed a written statement denying the allegations made by the plaintiff in the plaint. It was averred that the plaintiff is the defendant's cousin brother and he often used to visit the defendant's house. On one such occasion, the plaintiff took away the Suit Cheque and misused the same. The defendant denied that the handwriting and the signature found in the Suit Cheque are his and contended that the Suit Cheque was fabricated by the plaintiff. Further the plaintiff had taken away several Cheques and promissory notes belonging to him and has filed multiple false cases in the names of his father, wife and uncle. The Suit, therefore, is not maintainable. Accordingly, the defendant prayed for the dismissal of the Suit.

TRIAL COURT

5. Based on the above pleadings, the Trial Court framed the following issues:

- '1. Whether the plaintiff is entitled to recover the Suit claim from the defendant?*



2. *To what other relief?'*

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6. At trial, on the side of the plaintiff, plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.9 were marked. On the side of the defendant, defendant was examined as D.W.1 and no document was marked.

7. After a full-fledged trial, the Trial Court held that the defendant issued the Suit Cheque to the plaintiff towards discharge of the loan amount and that the defendant is liable to pay the Suit amount. Accordingly, the Trial Court decreed the Suit

8. Feeling aggrieved, the defendant has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.

ARGUMENTS

9. Mr.R.Nalliyappan, learned Counsel on record for the appellant / defendant submits that the plaintiff and the defendant are close relatives. Due to the said close relationship, the plaintiff had access to the defendant's house and stole the Cheque in question. By misusing the said Cheque, the plaintiff filed the present Suit. He invites attention of this Court to Paragraph No.9 of the Trial Court's Judgment and submits that the plaintiff's wife has instituted a criminal complaint against the defendant



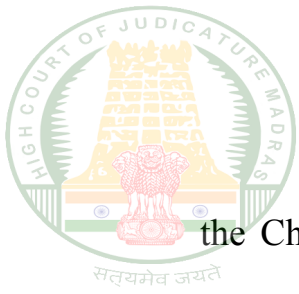
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using another Cheque in a similar manner. He further contends that, apart

from the plaintiff, no other witness was examined to prove the passing of consideration. The amount mentioned in the Cheque was not established by any independent evidence. Moreover, it is not practical to transact such a huge amount via cash and it is also not plausible that such a huge amount was lent on the basis of a Cheque alone without any Promissory Note or any other instrument. Therefore, the presumption under Section 118 of the Negotiable Instruments Act, 1881 cannot be invoked to infer the passing of consideration in this case. The Trial Court failed to properly appreciate these facts and erroneously decreed the Suit without adequate legal justification. Accordingly, the learned Counsel for the appellant / defendant prays to allow this Appeal Suit.

10. Per contra, Mr.P.Jagadeesan, learned Counsel on record for the respondent / plaintiff submits that the defendant did not deny that the Suit Cheque (Ex-A.1) belonged to him, nor did he deny the signature found on the Cheque. He further submits that the plaintiff presented the Cheque for collection on November 16, 2015 and the same was returned on November 27, 2015 with an endorsement "insufficient funds". Immediately thereafter, the plaintiff issued a legal notice to the defendant, calling upon him to pay

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the Cheque amount. However, despite receiving the same, the defendant neither replied to the notice nor paid the amount due under the Cheque.

Consequently, the plaintiff was constrained to file the present Suit for recovery of money. He also points out that the defendant did not lodge any police complaint against the plaintiff alleging theft or misuse of the Cheque. Further, the plaintiff examined himself as P.W.1 and marked the Cheque as Ex-A.1. Thus, the plaintiff has *prima facie* established his case. Consequently, the Suit Cheque attracts the statutory presumptions under Section 118 of the Negotiable Instruments Act, 1881. The onus, therefore, is on the defendant to rebut the presumption. However, the defendant failed to discharge the same. The Trial Court, after considering the entire evidence available on record, rightly decreed the Suit. There is no justification or warrant to interfere with the judgment and Decree of the Trial Court. Accordingly, the learned Counsel for the respondent / plaintiff prays to dismiss the Appeal Suit.

DISCUSSION

11. This Court has heard the submissions made on either side and perused the materials available on record. The point that arise for

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consideration in this Appeal Suit is that whether the defendant borrowed Rs.10,00,000/- from the plaintiff and issued the Suit Cheque.

12. Admittedly, the Suit Cheque belongs to the defendant. The defendant's case is that the plaintiff being his cousin used to visit him often and on one such occasion stole the Suit Cheque and misused the same. The plaintiff examined himself as P.W.1 and marked Ex-A.1 - Suit Cheque. Further, he marked Ex-A.3 – Cheque Return Memo, as per which, the Suit Cheque was return for insufficient funds in the defendant's account. If really the signature found in Ex-A.1 – Suit Cheque is not that of the defendant, then there would have mostly been a mention of the signature mismatch in Ex-A.3, which is not the case here. Further, the defendant preferred Ex-A.9 – Police Complaint against the plaintiff's father and plaintiff's brother-in-law on September 14, 2015 alleging that they are refusing to return a Cheque and a Promissory Note that the defendant had executed for a loan from them even after clearing the loan. The defendant examined himself as D.W.1 and deposed that he did not mention in Ex-A.9 – Police Complaint that the Cheque was stolen. If really the Suit Cheque was stolen, the conduct of an ordinary prudent person would be filing a police complaint. But in this case, the defendant has not mentioned

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anything Cheque being stolen in Ex-A.9 – Police Complaint. Further, the

plaintiff issued Ex-A.4 – Legal Notice dated December 7, 2015

demanding the payment of the Suit Cheque amount. The defendant

received the same and remained silent; he did not issue any reply. In these

circumstances, this Court is of the view that the plaintiff *prima facie*

proved that there was a loan transaction between the parties, for which

the defendant issued the Suit Cheque. Hence, the plaintiff has discharged

his initial burden of proof and the Suit Cheque attracts the presumptions

under Sections 118(a) and 139 of the Negotiable Instruments Act, 1881.

Consequently, the onus shifts to the defendant to rebut the statutory

presumption. As stated *supra*, he has not preferred a police complaint that

his Cheque was stolen, which would be the ordinary conduct of any

prudent person. Nor did he examine any witness to substantiate his claim.

As regards the Cheque Complaint filed by the plaintiff's wife, the

defendant's side suggested to the plaintiff / P.W.1 that in the said

Complaint, the plaintiff's wife had mentioned that she borrowed

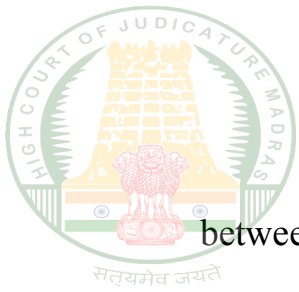
Rs.4,00,000/- from the plaintiff and lent it to the defendant. The plaintiff

admitted the same and deposed that four months from the said transaction,

he advanced the Suit Amount to the defendant. The said transaction is

different from the Suit transaction. In view of the close relationship

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between the parties and in view of the admitted fact that the defendant was running a jewellery shop, it is plausible there were loan transactions between the parties. The Cheque Complaint given by the plaintiff's wife is not sufficient to rebut the statutory presumptions. Hence, this Court is of the view that the defendant has failed to dislodge the presumptions.

13. Since the defendant failed to rebut or dislodge these presumptions, the Trial Court is justifiable in concluding that the plaintiff had proved the Suit claim. There is no reason to interfere with the said finding. Accordingly, this Appeal Suit is liable to be dismissed as devoid of merits.

14. The point that arose for consideration in this Appeal Suit is, therefore, answered in favour of the plaintiff and against the defendant.

CONCLUSION

15. Accordingly, the Appeal Suit is dismissed as devoid of merits. Considering the relationship between the parties, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.



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Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

TK

To

The II Additional District Judge

Salem.



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R. SAKTHIVEL, J.

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