IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2025

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

A.S.No.296 of 2022
and
C.M.P.No.11012 of 2022

Abusali .. Appellant/Defendant

Vs.

Rajendran .. Respondent/Plaintiff

PRAYER: Appeal Suit is filed under Section 96 of Civil Procedure Code, to set aside the decree and judgment dated 11.01.2022 passed in O.S.No.49 of 2019 on the file of the Principal District Court, Nagapattinam.

For Appellant : Mr.G.K.Gaarkey Chandhan

For Respondent : Mr.M.S.Palaniswamy

JUDGMENT

The Appeal Suit has been filed against the judgment and decree passed by the Court below in a suit for recovery of money based on two promissory notes dated 08.09.2016 for Rs.3,00,000/- and 09.09.2016 for

Rs.2,00,000/-.

2. The case of the plaintiff/respondent herein is that the defendant/appellant herein is a known person to the plaintiff. For meeting his family expenses, the defendant borrowed a sum of Rs.3,00,000/- on 08.09.2016 and Rs.2,00,000/- on 09.09.2016 and executed respective promissory notes on those dates, with a promise to repay the same on demand, along with interest at the rate of Rs.3/- per Rs.100/-, i.e., 36% per annum. Since the amount was not repaid, the plaintiff issued pre-suit notice dated 05.08.2019 and thereafter filed the suit.

3. The defendant denied the execution of the promissory notes. According to him, certain blank cheques and promissory notes given to one Krishnamoorthy been misused and the suit filed by the plaintiff. He further questioned the rate of interest claimed by the plaintiff as being contrary to law and against public policy. It was also contended that there is no proximity or privity of contract between the plaintiff and the defendant and hence the suit is liable to be dismissed.

4. To prove his claim, the plaintiff examined himself as PW.1 and one Gopinath, a witness to the execution of the promissory notes as PW.2 and six (6) exhibits were marked. The subject promissory notes are Ex.A1 and Ex.A2. Pre-suit notice and postal acknowledgment are Ex.A3 and Ex.A4. To establish the signature on the promissory notes as that of the defendant, the plaintiff also relied on cheques drawn by the defendant and a memo of deposit of title deeds executed by the defendant in favour of City Union Bank marked as Ex.A5. The defendant has mounted the witness box, examined as DW.1 and was subjected to cross examination. However, no further witnesses were examined, nor were any documents produced on the defendant's side.

5. The trial Court, after considering the oral and documentary evidence and the submissions made, framed the following issues :-

> *"1.Whether the suit two pronotes are not executed by the defendant'?*
>
> *2.Whether the pronote is not supported by consideration?*

3.Whether the signatures found in the two pronotes are not that of the defendant?

4.Whether the interest charged is usurious?

5.To what reliefs?"

6. The trial Court held that the execution of promissory notes was proved and that passing of consideration is presumed under Section 118 of the Negotiable Instruments Act. Further, the Court observed that the plaintiff's capacity to advance loan could be inferred from the status of the plaintiff, as he had retired as Manager of City Union Bank. The defendant had also admitted that he know the plaintiff for more than 10 years.

7. As far as the receipt of interest is concerned, the Court below taking note of the Tamil Nadu Money Lenders Act and the Prohibition of Charging Exorbitant Interest Act, awarded interest at the rate of 9% per annum from the date of the promissory notes till the date of decree and 6% per annum from the date of decree till the date of realization.

8. In the appeal, the learned counsel appearing for the appellant contended that the trial Court failed to properly appreciate the evidence regarding the disputed signature on the promissory notes instead of referring the matter for expert opinion. The trial Court ventured to compare the signature on its own, which is deprecated by the Hon'ble Apex Court on several occasions. Further, despite the defendant's denial of execution of the promissory notes, the trial Court invoked the statutory presumption under the Negotiable Instruments Act. The trial Court also erred in presuming the financial capacity of the plaintiff solely based on his previous employment with City Union Bank, no iota of documents produced by the plaintiff to prove his wherewithal.

9. Per contra, the learned counsel appearing for the respondent submitted that the appellant, in order to evade liability, falsely claimed that he did not know the plaintiff and that there is no privity of contract or acquaintance. However, during cross examination, the appellant admitted that he had known the plaintiff for the past 10 years as a contractor and had interacted with him while he was working as Manager, City Union Bank. Insofar as interest is concerned, it is the agreement between the parties at the time of advancing the loan. The appellant had consciously agreed to pay the interest at the rate of Rs.3/- per Rs.100/- per month and hence he is estopped from now seeking a lesser rate of interest.

10. However, the learned counsel conceded that no appeal was filed regarding the fixation of interest. With respect to the comparison of signatures under Section 73 of the Indian Evidence Act, the learned counsel appearing for the respondent submitted that there is no statutory prohibition for the Court to compare the disputed signature with the admitted signature.

11. Referring to the deposition of the defendant, wherein he admitted the signature found in Ex.A5, a memo of deposit of title deeds. The trial Court had compared the admitted signature in Ex.A5 with the disputed signature found in Ex.A1 and Ex.A2., and found them to be similar.

12. Heard the learned counsel on either side. Records perused.

13. ***Point for determination:-***

Whether the comparison of signature by the trial Court by invoking its power under Section 73 of the Indian Evidence Act is contrary to law?.

14. The judicial pronouncements relied by the learned counsel for the appellant emphasizes that comparison of disputed signatures through handwriting experts is prudent. However, there is no bar for the Court to compare the signatures, since the law of evidence permits such comparison.

15. In this case, the comparison of the signature was undertaken by the trial Court after ascertaining from the defendant regarding the genuineness of the signature found in Ex.A5. Thereafter, the trial Court ventured to compare the admitted signature with the disputed signature found in Ex.A1 and Ex.A2 and found them to be similar.

16. If the defendant had any grievance or sought to dispute the signatures in Ex.A1 and Ex.A2, it was open to him to produce relevant documents for comparison or to seek an expert opinion, which he miserably failed. In the said circumstances, the trial Court rightly arrived at conclusion after comparing the signature. This Court also considering the emphasis is placed by the learned counsel for the appellant that the signature and handwriting vary, called for the original documents from the Court below and examined them. On such examination, no different opinion could be drawn.

17. This Court accepts and affirm the view the Court below regarding the signatures found in Ex.A1 and Ex.A2. As regards the rate of interest, since no appeal has been filed by the plaintiff challenging the same and the interest awarded as only 9% per annum from the date of promissory notes till the date of decree, this Court finds no violation of the relevant statutory provisions or any rule under the C.P.C., regarding interest.

18. With respect to the financial capacity of the plaintiff to advance loan of Rs.5,00.000/- to the defendant, the objection raised by the appellant appears to be a technical contention without any supporting evidence. The plaintiff has mounted the witness box and has deposed that he had wherewithal to advance the loan and the money was given from out of his savings.

19. It is to be noted that “savings” do not mean amount deposited in a bank account. A retired bank officials having advanced a sum of Rs.5,00,000/- from out of his savings and such there is no reason to disbelieve the testimony of PW.1, the plaintiff, regarding the financial capacity.

20. Accordingly, the Court finds no merit in the appeal to interfere with the well-considered judgment of the Court below. Hence the Appeal Suit stands dismissed. Consequently, the connected Civil Miscellaneous Petition is also dismissed. The judgment and decree passed in O.S.No.49 of 2019, on the file of Principal District Court, Nagapattinam, stands confirmed with costs.

30.07.2025

Index: Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
rpl

To

1.The Principal District Court, Nagapattinam.

2.The Section Officer, V.R.Section, High Court of Madras, Chennai.

DR.G.JAYACHANDRAN,J.

rpl

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