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A.S.No.4 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.4 of 2022 & CMP.No.296 of 2022

R.Senthilkumar

... Appellant

Versus

R.Soundarakumar

... Respondent

PRAYER : This Appeal Suit has been filed under section 96 read with Order 41 Rule 1 of Code of Civil Procedure to set aside the judgment and decree in O.S.No.96 of 2014 dated 24.02.2020 passed by the learned III Additional District and Sessions Judge, Coimbatore.

For Appellant : Mr.Labbar Mohamed Abdullah

For respondent : Mr.Bharath Kumar



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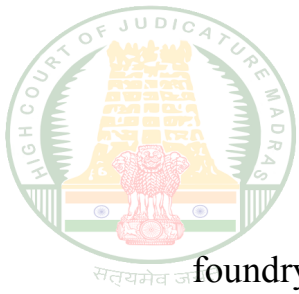
JUDGMENT

Challenging the decree and judgment of the trial Court decreeing the suit in O.S.No.96 of 2014 dated 24.02.2020 for recovery of a sum of Rs.8,50,000/- with interest at the rate of 12% per annum from the date of promissory note till the date of realization of the entire amount, the present appeal came to be filed.

2. The parties are arrayed as per their own ranking before the trial Court.

3. Brief background of the case is as follows :

The suit has been filed for recovery of a sum of Rs.10,23,400/- with future interest at the rate of 24% per annum on the principal of Rs.8,50,000/- till the realization of the entire amount with costs of the suit. The plaintiff is engaged in the manufacturing of Wed grinder and Motor Pump set and marketing the same. The defendant is doing scrap business and running a

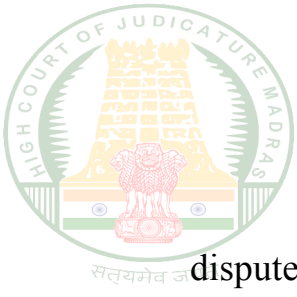


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foundry. He is known to the plaintiff for the past 10 years. During the first week of May 2013, the defendants approached the plaintiff for financial assistance to the tune of Rs.8,50,000/-. Accordingly, the defendant borrowed the said amount from the plaintiff on 10.05.2013 agreeing to repay the amount with interest at the rate of 24% per annum and executed a promissory note on the same day. In spite of the repeated demands, as the amount has not been paid, the suit has been filed.

4. It is the contention of the learned learned counsel for the defendant that he has not borrowed any amount. According to him, the plaintiff is running an unregistered chit. The defendant has also subscribed in some of the groups of the chit and the plaintiff issued a book containing the numbers of the chit group and he is regular in payment of chit instalments. The chit was completed in the year 2012. While joining the chit, the plaintiff has obtained some of agreements from the defendant for the payment made by him. Further, the chit amount has been paid before 2012. Hence, according to him, the signatures obtained in the chit transaction has been fabricated. Hence



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disputed the claim.

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

1. Whether the defendant borrowed Rs.8,50,000/- from the plaintiff on 10.05.2013 by executing a demand promissory note?

2. Whether the defendant is liable to pay a sum of Rs.10,23,400/- together with interest at 24% per annum on Rs.8,50,000/- as claimed by the plaintiff?

3. For what other reliefs are the parties entitled to?

6. On the side of the plaintiff, the plaintiff examined himself as P.W.1 and Ex.A.1 and Ex.A.2 have been marked. On side of the defendant, the defendant had examined himself as D.W.1 and no documents have been marked on his side. On the basis of evidence and materials, the trial Court has decreed the suit. Challenging the same, the present appeal has been filed.



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7. The main contention of the learned counsel appearing for the appellant is that the execution of the promissory note has not been established and the attestors of the promissory have not been examined by the plaintiff. Further, the plaintiff has not proved his financial capacity to advance a sum of Rs.8,50,000/- and no income tax returns have been filed in this regard. It is his contention that the promissory note has been fabricated.

8. Whereas, it is the contention of the respondent that as the execution of the promissory note has not been denied, the question of examining the attesting witness does not arise at all. The execution of the promissory note has been proved and there is no rebuttal evidence on the side of the defendant. Therefore, the statutory presumption available under section 118 of the Negotiable Instruments Act will get attracted.

9. In the light of the above submissions, the the following points arise for consideration in this appeal:-



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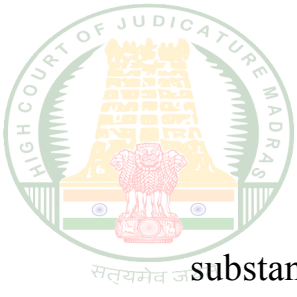
1. Whether the suit promissory note is a result of fabrication?

2. Whether the suit promissory note is not supported by any consideration?

10. Points 1 and 2 :

It is the specific stand of the plaintiff that the defendant had borrowed a sum of Rs.8,50,000/- on 10.05.2013 and executed the suit promissory note agreeing to repay the amount along with interest at the rate of 24% per annum. Whereas, it is the contention of the defendant that he has not borrowed the amount. He has taken a stand that he was a subscriber to an unregistered chit run by the plaintiff and at that time several agreements were obtained from the defendant. Once such document has been misused as a promissory note.

11. On a perusal of the entire evidence and pleadings, the contention of the defendant is nothing but evasive in nature and the denial has not been



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substantiated by any evidence. There is no specific denial in the entire written statement with regard to the execution of the promissory note. Whereas, a contention has been raised as if he has executed some agreements and one such agreement has been misused and fabricated as a promissory note.

12. The very defence itself is very evasive in nature. It is clearly fortified by the fact that his admission clearly indicate that such defence has been made only to delay the suit. Infact, he has admitted in his evidence that he has not even verified the suit promissory note even before filing of the written statement. He has also admitted that under the presumption and assumption, he has taken such defence. Therefore, when the defendant has not denied specifically the execution of the promissory note in his written statement and only evasive defence has been raised, such defence will only amount to admission under Order VII Rule 5 of Code of Civil Procedure.

13. That apart, once the execution of the promissory note is not denied and the plaintiff has clearly spoken about the execution and execution is

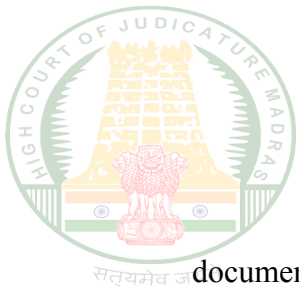


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proved, statutory presumption available under the law will get attracted as to the time, consideration and execution, etc. Then the burden shifts on to the defendant to show that there was no consideration. Shifting the burden by the defendant need not always be by way of direct evidence. Even probabilities in the name of admissions and inferences can be brought on record. Once, the defendant is able to bring some probabilities to rebut the legal presumption, then again the burden shifts on to the plaintiff to establish passing of consideration. In the absence of any rebuttal evidence to shift the burden on the plaintiff to establish consideration, statutory presumption under section Rs.118 of the Negotiable Instruments Act will lie in favour of the plaintiff.

14. The plaintiff in his evidence has clearly stated that the amount advanced has been shown in his income tax returns. Despite, positive admission, to dislodge such evidence, no steps, whatsoever, has been taken by the defendant to call for such returns to bring certain improbabilities. Therefore, once the execution of promissory note is clearly established and the defendant has not denied the promissory note. Further, without verifying the



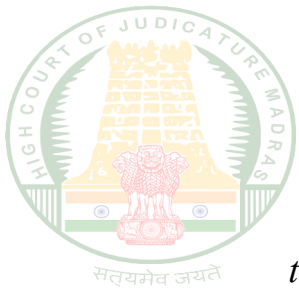
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documents, such denial, in view of this Court, is nothing but evasive and deemed to be admission as per Order VIII Rule 5. That apart, statutory presumption has not been rebutted by any probabilities.

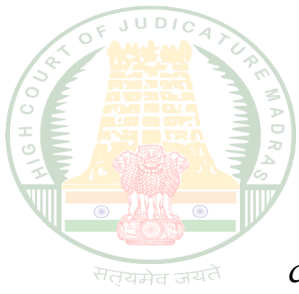
15. In **Kundan Lal Rallaram Vs. The Custodian, Vacuee Property, Bombay** reported in **AIR 1961 SC 1316**, the Supreme Court has dealt with as to how the burden has to be discharged by the parties based on the Negotiable Instruments Act. The relevant paragraph reads as follows:

“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 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



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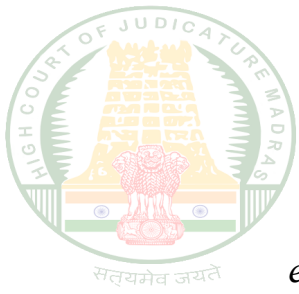
the basis of the pleadings and is unchanged during the entire trial, whereas the latter is not constant but shifts as soon as a party adduces sufficient evidence to raise a presumption in his favour. The evidence required to shift the burden need not necessarily be direct evidence i.e., oral or documentary 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



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case shifts to the defendant. The 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

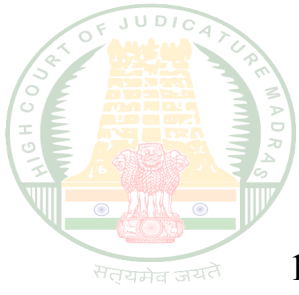


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expected to produce his documents. In those circumstances, if such a relevant evidence is withheld by the plaintiff, Section 114 enables the court to draw a presumption to the effect that, if produced, the said accounts would be unfavourable to the 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 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.”

16. In the light of the above judgment, as the plaintiff has clearly established the execution of promissory note and the defendant has not placed any probabilities to dislodge the legal presumption, it has to be held that promissory note is supported by consideration and legal presumption will automatically apply under Negotiable Instruments Act. Hence, I do not find any merits in this appeal. The points are answered accordingly.



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17. In the result, this Appeal Suit is dismissed confirming the judgment and decree of the trial Court in O.S.No.96 of 2014 dated 24.02.202. There shall be no Order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

The III Additional District and Sessions Judge,
Coimbatore.



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N. SATHISH KUMAR, J.

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