THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 26.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

A.S.No.404 of 2022 & CMP.No.14437 of 2022

P.Easwaran ... Appellant

Versus

D.Radhakrishnan ... Respondent

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the decree and judgment dated 22.03.2022 passed in O.S.No.26 of 2017 on the file of the Sessions Judge, Fast Track Mahila Judge, Namakkal by allowing this appeal.

For Appellants : Mr.R.Nalliyappan

For Respondent : Mr.S.Varanesh

JUDGMENT

Challenge has been made to the decree and judgment of the trial Court decreeing the suit for recovery of a sum of 10,80,900/- along with interest at the rate of 9% per annum from the date of suit till the date of decree and thereafter, at the rate of 6% per annum from the date of decree till the date of realization of the principal amount of Rs.9,00,000/- in the present appeal.

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

3. The brief facts of the plaintiff case is as follows :

The defendant had borrowed a sum of Rs.9 lakhs on 25.01.2016 from the plaintiff for his family expenses and executed a promissory note on the same day agreeing to pay interest at the rate of 1.50 ps per month per hundred. Despite repeated demands, the defendant failed to repay the amount. Therefore, the plaintiff issued a legal notice on 18.10.2016 calling upon the defendant to repay the amount along with agreed rate of interest. The defendant sent a reply on 05.11.2016 with false allegations. Hence, the suit.

4. The defence taken by the defendant in the written statement is that

copies of the documents have not been served to properly. Therefore, the suit is not maintainable. Further, it is his contention that he has not borrowed any amount on 25.01.2016 and that on the date of alleged borrowal and promissory note, he was in Krishnagiri and he was working in Global Lab company and he had also visited several colleges in his official capacity on that date. According to him, the promissory note has been fabricated fraudulently and he has not executed the same. Hence, opposed the suit.

5. On the basis of the above pleadings, the following issues have been framed by the trial Court :

1. Whether it is true that the defendant has borrowed Rs.9,00,000/- [Nine lakhs] on 25.01.2016 from the plaintiff and has executed a demand promissory note in favour of the plaintiff?

2. Whether the plaintiff is entitled for suit amount from the defendant as claimed in the plaint?

3. To what other relief the plaintiff is entitled?

6. On the side of the plaintiff, P.W.1 and P.W.2 have been examined and

E.A.1 to A5 have been marked. On the side of the defendant, D.W.1 to D.W.3 have been examined. No documents have been marked on his side.

7. The trial Court, considering the evidence on either side, both oral and documentary, decreed the suit in favour of the plaintiff. Challenging the same, the present appeal has been filed.

8. The main contention of the learned counsel for the appellant is that the promissory note has not been proved in the manner known to law. The evidence of P.W.1 and P.W.2 itself clearly show that there are differences between the signature on the stamp and other signature. It is his further contention that the evidence of D.W.2 and D.W.3 also shows that the defendant was not in the place where the promissory note was allegedly executed. In the reply notice Ex.A.5, it has been clearly pleaded that the promissory note has been fabricated. When the execution of the promissory note has not been established, the trial Court ought not to have decreed the suit. According to him, the promissory note has been fabricated. The difference in the signature itself prove the above said facts. The trial Court has not considered all these

facts. In support of his submissions, he relied on the following judgments :

Salem Constructions, a registered Partnership Firm and others Vs. K.Santhim reported in **2020 [5] CTC 298**

Robinson Vs. Ramachandran reported in **2014 [6] CTC 195**

9. The learned counsel appearing for the respondent would submit that the defence set up by the defendant in the pleading has not been established. Whereas, the execution of the promissory note has been clearly established. The plea of alibi has not been proved by the defendant. Further, in Ex.A.3 reply notice, the defendant has admitted his signature in the promissory note. Wherein it is pleaded that the promissory note has been given to one Subramaniam, who has misused the same and handed over to the plaintiff. Whereas in the written statement a different stand has been taken by him. Hence, opposed the appeal.

10. Now the points that arise for consideration in the appeal are as

follows :

1. Whether the plaintiff had discharged the initial burden in proving execution of the promissory note?

2. If the plaintiff had discharged his initial burden, whether the defendant has rebutted the statutory legal presumption attached to the promissory note?

3. Whether the plea of alibi taken by the defendant is proved in the manner known to law?

4. To what other reliefs, the parties are entitled?

11. Points 1 to 4 :

The case of the plaintiff is that the defendant had borrowed a sum of Rs.9 lakhs on 25.01.2016 and executed Ex.A.1 promissory note on the same day. As the defendant has failed to repay the amount with interest, a legal notice was issued to the defendant on 18.10.2016 under Ex.A.2 which has been replied by the defendant under ExA.3. Though a stand has been taken by the defendant in the written statement to the effect that on the date of promissory note, the defendant was not in the place of execution and he was in Krishnagiri, it is relevant to note that in the entire written statement, except taking a plea of alibi, execution and signature in the promissory note has not been specifically denied. Though in para 7 of the written statement it is stated that the promissory note has been fabricated, there is no specific denial made in the written statement. Further, though it is stated that the rejoinder issued by the defendant has to be considered as part of the written statement, specific denial has not been made in the written statement, specifically the signature as well as execution of the document. Be that as it may.

12. In Ex.A.3, reply notice sent by the defendant dated 05.11.2016, it is the stand of the defendant that the promissory note was originally given to one Subramniam, who has handed over the same to the plaintiff. The very reply dated 05.11.2016 indicate that the signature and execution of the promissory note has not been disputed by the defendant. Though initial burden is always on the plaintiff to prove execution, once such initial burden is discharged by the plaintiff, the burden shifts on to the defendant, to disprove the execution. Apart from the above circumstances, P.W.2 one of the attesting witness in the promissory note has also been examined and in his evidence, he has

categorically spoken about the execution of the document by the defendant after receipt of the amount in his presence. Once, execution has been spoken by P.W.1 and P.W.2, there is no materials or probabilities brought in their cross examination to dent their evidence, therefore it has to be held that the initial burden of the plaintiff in proving execution has been discharged. Once, the execution has been proved, then the statutory presumption available under section 118 of he Negotiable Instruments Act gets attracted automatically as to the time, consideration, date etc. Such statutory presumption is rebuttable and it is for the defendant to bring out some probabilities to show that there was no consideration passed on that document. The defendant has to bring about some probabilities to show that there was no consideration passed on the promissory note and that the promissory note is not supported by any consideration.

13. In **Salem Constructions, a registered Partnership Firm and others Vs. K.Santhim** reported in **2020 [5] CTC 298,** referred by the learned counsel for appellant, this Court has held as follows :

"Now the issue revolving around the suit is whether the first defendant has retired from the partnership company or not. The plaintiff relied on Ex.A.3 said to have been executed by the first defendant. Whereas, the first defendant has pleaded forgery. Of course, the initial burden always lies on the plaintiff to prove the document and prove its execution. At any event, to unearth the truth, the aid of an expert is necessary to find out the veracity of the parties. Further, in a Civil Court, the voyage of trial is to unearth the truth. Such being the matter, this Court is of the view that merely because there is a delay in filing such an application, the substantive right of the parties cannot be defeated. If the expert evidence come on record with regard to Ex.A.3, the same infact enable the trial Court to appreciate the rival contentions along with their pleadings and for deciding the issues and to arrive at a just conclusion."

14. In another judgment in **Robinson Vs. Ramachandran** reported in **2014 [6] CTC 195,** relied on by the learned counsel, this court has held as follows :

"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 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.

15. Whereas in the present case, a perusal of entire evidence, no probabilities have been brought on record. A specific plea has been taken out by the defendant in the written statement in the nature of alibi. According to him, he was in Krishnagiri on 25.01.2016, when the promissory note is said to have been executed. According to him he was working in Global Lab at

Krishnagiri and he has also visited various colleges on the same day. To prove the plea of alibi, D.W.2 and D.W.3 have been examined. In their oral evidence, though they have stated that on the particular day, the defendant was in Krishnagiri, the fact remains that their cross examination clearly indicate that they are very close to the defendant. Therefore, their evidence cannot be given much importance. When a person takes a plea of alibi, he has to prove the same with concrete evidence.

16. When the plea of alibi has been taken to the effect that he was working in Global Lab and visited many colleges on the particular day, he ought to have produced documents from the lab where he was working or the colleges where he visited and he ought to have examined somebody who is incharge of the lab or colleges. Therefore, mere examination of third parties, who are said to be friends of the defendant, to prove the plea of alibi, will not help the defendant in any way. Therefore, as the execution of the promissory has been clearly established and no materials have been brought on record by way of probabilities to dislodge the legal presumption, consequence is that the defendant is certainly liable to pay the amount. Further it is to be noted that the

alleged alibi is taken in the written statement and in the reply notice he had taken a stand that the promissory note is a fabricated one. All these facts considered cumulatively coupled with the fact that no probabilities have been brought on record, this Court is of the view that the defendant has not dislodged the legal presumption and hence, the plaintiff is certainly entitled to recover the amount from the defendant. The points are answered accordingly.

17. In the result, this Appeal Suit is dismissed. The judgment and decree of the trial Court in O.S.No.26 of 2017 dated 22.03.2022 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

26.03.2025

Index : Yes / No
Internet: Yes
Speaking/non speaking order

vrc

To,

1. The Sessions Judge,
   [Fast Track Mahila Judge]
   Namakkal.

2. V.R.Section, High Court, Madras.

N. SATHISH KUMAR, J.

vrc

A.S.No.404 of 2022

26.03.2025