WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.07.2025

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.441 of 2022
and
C.M.P.No.15958 of 2022

K.Sundararajan,
Son of Krishnasamy,
D.Gopurapuram & Post,
Vridhachalam Taluk,
Cuddalore District. .. Appellant/Defendant

/versus/

Sujatha,
Wife of Muthunarayanan,
No.11, Pazhamalainathar Nagar,
Vridhachalam,
Cuddalore District. .. Respondent/Plaintiff

Appeal Suit has been filed under Section 96 read with Order 41, Rule 1 of C.P.C., to set aside the judgment and decree dated 30.06.2022 made in O.S.No.229 of 2019 passed by the III Additional District and Sessions Judge, Cuddalore at Vridhachalam, Cuddalore District, and allow the appeal.

https://www.mhc.tn.gov.in/judis

WEB COPY

For Appellant :M/sM.Sangamithirai

For Respondents :Mr.C.Munusamy

JUDGMENT

The suit in O.S.No.229 of 2019 on the file of the III Additional District and Sessions Judge, Cuddalore at Virudhachalam, for recovery of loan amount with interest, allowed by the trial Court. Hence, the appeal is filed by the defendant.

2.The case of the plaintiff is that the defendant known to her through the husband of the plaintiff. To meet out his family expenses, the defendant borrowed a sum of Rs.12,00,000/- with a promise to return it within a week time. However, he did not repay the money as promise within a week and repeated request to repay, but it was not heeded by the defendant. At last, he gave a cheque for Rs.12,00,000/-, dated 03.02.2017 and assured that he will honour the cheque. However, when the cheque was presented for collection, it was returned as "insufficient fund". After receiving the intimation from the bank on 13.02.2017, the same was intimated to the

https://www.mhc.tn.gov.in/judis

WEB COPY

defendant. However, the defendant had not repaid the loan amount with interest and hence, pre-suit notice was issued to the defendant on 23.02.2017. The defendant in turn replied with false averment. Therefore, the suit was filed for recovery of Rs.12,00,000/- with interest of Rs.2,64,900/- and costs.

3. The defendant filed a written statement denying the borrowing of Rs.12,00,000/- from the plaintiff on 05.09.2016. The defendant lost his bag containing cheque book, passbook and other valuable documents, while he was driving his vehicle near Palakarai. After searching the lost documents for few days, he gave a complaint to the police on 07.02.2017 reporting about missing of the cheque. His account has been declared inoperative in the year 2013, since he closed his business due to loss incurred. After Thaney cyclone, the contentions of the plaintiff that the defendant borrowed a sum of Rs.12,00,000/- to meet out his family expenses and after much persuasion, he gave the cheque for Rs.12,00,000/- and that cheque on presentation, it was returned for insufficient fund, are all denied with

https://www.mhc.tn.gov.in/judis

WEB COPY

specific allegation that the account became inoperative as early as 2013. The cheque was not given to the plaintiff to discharge any debt incurred in the year 2017.

4. The Court bellow based on the pleadings, the following Issues were framed:-

1.Whether the defendant borrowed a sum of Rs.12,00,000/- on 05.09.2016 from the plaintiff?

2.Whether the defendant gave cheque dated 03.02.2017 to discharge the loan?

3.Whether the plaintiff is entitled for the relief as prayed for?

4.What other relief the plaintiff is entitled to?

5. On behalf of the plaintiff, she was examined as PW-1. 15 documents were marked in support of her case. On behalf of the defendant, he was examined as DW-1 and six exhibits were marked on his behalf.

https://www.mhc.tn.gov.in/judis

WEB COPY

6. The trial Court, after appreciating the evidence, has allowed the suit as prayed. Being aggrieved, the present appeal is filed by the defendant stating that the suit is barred by limitation, since the plaintiff has not proved the date of borrowing. The trial Court failed to take note of the fact that the plaintiff had no wherewithal to advance a sum of Rs.12,00,000/- as loan. Though it is contended by the plaintiff that she had cash in hand, after her mother sold the property worth about Rs.45 lakhs. To substantiate the said contention, no evidence was adduced by the plaintiff. The plaintiff has not filed any supportive documents to prove the wherewithal to advance Rs.12lakhs either by producing the bank statement or Income Tax Return. The oral evidence of the plaintiff's husband, without documentary evidence, ought not to have considered by the trial Court. The subject cheque was lost by the defendant and in this regard, a complaint was given to the police on 07.02.2017. While so, the plaintiff, who came into possession of the lost cheque, has misused it to take advantage of undue enrichment. The trial Court ought not to have drawn any presumption under Section 118 of the

https://www.mhc.tn.gov.in/judis

WEB COPY

Negotiable Instruments Act, 1881, when the plaintiff failed to establish the fundamental fact regarding the issuance of cheque for the discharge of an enforceable liability. The plaint averments that a sum of Rs.12,00,000/- advanced as hand loan without a piece of document and thereafter, issuance of cheque to discharge the debt are unbelievable. However, the Court below had allowed the suit, without proper appreciation of evidence.

7. The learned counsel appearing for the respondent submitted that the signature in the cheque marked as Ex.A1 is not denied by the defendant. In the cross examination, he has admitted that the plaintiff's husband has agriculture land measuring more than 3 ½ acres. The defendant had admitted that the plaintiff is known to him and infact, he had gone to the extent of saying that he got back all his lost documents from the husband of the plaintiff. However, his complaint marked as Ex.B1, dated 07.02.2017 itself clearly proves that it is an afterthought by the appellant to create the evidence, after getting intimation from the bank about the presentation of the cheque. The trial Court, having found untruth in the version of the

https://www.mhc.tn.gov.in/judis

WEB COPY

defendant and failure to rebut the statutory presumption regarding passing of consideration, has rightly allowed the suit.

8. Point for determination:

Whether the cheque Ex.A1 and return memo Ex.A2 are sufficient to hold that the appellant is responsible to pay the decree amount.

9. This case is based on the Negotiable Instruments namely promissory note which is marked as Ex.A1. It is signed by the defendant and issued in favour of the plaintiff for a sum of Rs.12,00,000/-. The cheque is dated 03.02.2017. It has gone to the ICICI Bank for clearance on 06.02.2017. Ex.B2 is the written complaint of the defendant to the Bank Manager on 08.02.2017. In this complaint, the defendant has not mentioned about the cheque leaf number (or) about signed blank cheque leaf. In this complaint to the bank, he had requested to disclose the person, who has presented the cheque and their account number. Ex.B1, CSR receipt given by the police on receipt of the complaint from the defendant. The receipt

https://www.mhc.tn.gov.in/judis

WEB COPY

CSR No.30/2017 is dated 07.02.2017 18.30 hours. In this receipt, the gist of the complaint states that on 02.02.2017 morning when the defendant left his house carrying a bag containing Canara Bank cheque book and passbook as well as the document of his property and driving license, got lost near Palakarai. Even in this complaint he has not mentioned either about the cheque number or they were signed in blank cheque. The defendant had not denied the signature found in the cheque and he could not explain under what circumstances he signed the cheque, except to say that it was lost on 02.02.2017. If really he had closed down his business and his account had become inoperative in the year 2013 itself, he has to explain for what purpose he was carrying the blank cheque along with him on 02.02.2017.

10. From reading the gist of his complaint and the representation given to the bank, it is obviously clear that it is an afterthought to counter blast the plaintiff from proceeding against the defendant in the manner known to law.

https://www.mhc.tn.gov.in/judis

WEB COPY

11. The learned counsel appearing for the appellant made a strenuous argument that the plaintiff had not proved his wherewithal to advance Rs.12,00,000/-and not proved the passing of consideration. As far as the source to advance Rs.12,00,000/-, the plaintiff's husband had mounted the witness box and disclosed the source for advancing Rs.12,00,000/-. Though it is contended by the defendant that there was no necessity for him to borrow the money, however, his disclosure in the complaint about the loss he incurred in the business and his finance distress clearly proves, he was badly in need of finance. Under Section 118 of the Negotiable Instruments Act, 1881, passing of consideration is a presumption, which is rebuttable. Having admitted the signature found in the cheque and denied the borrowing, the defendant should have come with positive evidence, how the cheque with his signature reached the hands of the plaintiff without any consideration.

https://www.mhc.tn.gov.in/judis

WEB COPY

12. Having failed to prove by preponderance of probability that, he was carrying the cheque of that account, which has become inoperative four years ago got lost, while he was travelling in the two wheeler, the presumption of passing of liability stares at the face of the defendant. The onus of reverse burden had not been discharged, even by preponderance of probability, if not beyond reasonable doubt. Contrarily, in the admission and in the cross examination, admitting about the wherewithal of the plaintiff's husband and the omnibus complaint to the police, after receiving intimation from the bank about the presentation of cheque and its return for insufficient fund, the defendant had invented the defence that the account became inoperative and the cheque got lost in transit. The conduct of the defendant leads to adverse inference, besides the statutory presumption against him.

13. In the above circumstances, the trial Court decision to allow the suit is to be confirmed. Accordingly, **this Appeal Suit stands dismissed**.

https://www.mhc.tn.gov.in/judis

WEB COPY

The judgment and decree passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, Cuddalore District in O.S.No.229 of 2019 dated 30.06.2022 are confirmed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

30.07.2025

Index:yes/no
Speaking order/non speaking order
Neutral citation:yes/no
ari

To

1.III Additional District and Sessions Judge, Cuddalore at Vridhachalam, Cuddalore District

2.The Section Officer, V.R.Sectin, High Court, Madras.

https://www.mhc.tn.gov.in/judis

WEB COPY

DR.G.JAYACHANDRAN,J.

ari

A.S.No.441 of 2022
and
C.M.P.No.15958 of 2022

30.07.2025

https://www.mhc.tn.gov.in/judis