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S.A.No.757 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2025

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

S.A.No.757 of 2023
and
C.M.P.No.23941 of 2023

Venugopal

... Appellant/Defendant

Vs.

Ulaganathan

... Respondent/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of C.P.C.to set aside the Judgment and Decree made in A.S.No.15 of 2017 dated 01.10.2021 on the file of the Principal District Judge, Ariyalur confirming the judgment and decree as made in O.S.No.101 of 2008 dated 01.09.2017 on the file of the Sub-Court, Ariyalur.

For Appellant : Mr.P.K.Harinath Babu

For Respondent: Mr.P.Valliappan, Senior Counsel
assisted by Mr.T.Dheeraj
for M/s.P.V.Law Associates



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JUDGMENT

This Second Appeal has been preferred by the defendant against the judgment and decree dated 01.10.2021 passed in A.S.No.15 of 2017 by the Principal District Court, Ariyalur.

2. The parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the plaintiff, on 05.12.2005, the defendant obtained a loan amount of Rs.2,50,000/- from the plaintiff and executed a promissory note on the same day agreeing to repay the principal amount with interest at the rate of 12% p.a, on demand, by the plaintiff. The defendant neither repaid the principal nor interest amount. On 02.07.2008, a legal notice was caused to be issued by the plaintiff to the defendant. Despite the receipt of notice, defendant did not send reply to the legal notice issued by the plaintiff. As the debt amount remained unpaid, the suit for recovery of money was laid by the plaintiff.



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4. Per contra, defendant would *inter-alia* contend that he did not obtain the loan amount of Rs.2,50,000/-. On 01.09.1997, the defendant obtained a loan from the plaintiff for a sum of Rs.1,00,000/- for his son's marriage and at that point of time, he signed in a blank promissory note. He repaid the said loan amount within three years. When he demanded the plaintiff to return the promissory note, plaintiff told him that he would return it, but, he did not return the said promissory note. Suit promissory note is hit by the law of limitation and signature found in the promissory note is also denied.

5. Based on the divergent pleadings, the trial Court framed the relevant issues. At trial, to substantiate the plaint pleadings, plaintiff has examined himself as PW1 and attesor to Ex.A1 promissory note, one Ramalingam has been examined as PW2 and three documents have been marked. Ex.A1 dated 05.12.2005 is the promissory note executed by the defendant in favour of the plaintiff. On the defendant side, defendant has examined himself as DW1 and three documents have been marked.



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6. The trial Court, upon consideration of oral and documentary evidence

and after hearing the arguments advanced by either side, it was concluded that relying upon the testimony of PW1 and PW2, the suit promissory note was executed for valid consideration and as the defendant did not come forward to repay the said loan after the issuance of legal notice by the plaintiff as the defendant did not repay the loan amount and the trial Court concluded that the plaintiff is entitled to recover the money based on Ex.A1 promissory note and decreed the suit.

7. Aggrieved, the defendant preferred appeal before the Principal District Court, Ariyalur in A.S.No.15 of 2017. Upon consideration of trial Court records, and after hearing the arguments advanced by either side, the First Appellate Court concluded that by examining the attester to suit promissory note by examining himself as a witness, the plaintiff has proved his case and rather the defendant failed to prove that the promissory note is forged and dismissed the appeal by confirming the judgment and decree of the trial Court. Aggrieved by the concurrent findings, the defendant herein has preferred this

Second Appeal.

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8. The Following substantial questions of law arise for consideration:

"1. Having treated PW2 as hostile, whether the trial Court was correct in relying upon the proof affidavit alone filed by PW2 under Section 154(2) of the Indian Evidence Act, 1872?

2. Whether the Courts below are correct in holding that the defendant took advantage of PW2 in between the time he was examined-in-chief and his cross-examination when there is no evidence adduced by the plaintiff to substantiate the same?"

9. The defendant's foremost contention is that at the time of obtaining loan at an earlier date, for his son's marriage, he tendered a signed unfilled promissory note to the plaintiff and the same is forged and the present suit was filed. As per Section 101 of the Indian Evidence Act, one who pleads has to prove and the defendant has failed to prove the same. It is pertinent to note that the defendant took out an application in I.A.No.48 of 2010 before the trial

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Court in order to examine the stamps affixed on the promissory note and the same was ordered to be allowed by the trial Court. Pursuant to the above said order of the trial Court, the defendant did not take any further steps and the said application was closed.

10. More so, during the cross-examination of DW1, when he was posed with a question about the filing of the said application and closure of the said application, he revealed ignorance about the same.

11. On a careful perusal of the entire details of the written statement, he has not denied the signature found in Ex.A1 promissory note. When once the signature of the borrower is admitted by him, then presumption arises in favour of the plaintiff under Section 118 of the Negotiable Instruments Act and the said presumption is a rebuttable one. The defendant may rebut the presumption through oral and documentary evidence. He may rely upon the cross-examination of plaintiff also. The plaintiff has examined himself as PW1 and spoken in line with the plaint details. During his cross-examination no details advantageous to the defendant was elicited by the defendant's side.



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12. Moving further, the plaintiff has examined the attessor to Ex.A1 promissory note, one Ramalingam and he has spoken about the plaint details in support of the plaintiff. Proof Affidavit of PW2 was filed on 05.10.2016, whereas he was cross-examined on 15.12.2016. He completely retracted from his chief examination. When the learned Trial Court Judge elicited the below said details from PW2 are extracted hereunder:

“...நீரூபண வாக்குமூலத்தில்உள்ள சங்கதிகள் அனைத்தும் நான் சொல்லித்தான்தட்டச்சு செய்யப்பட்டது, நீரூபண வாக்குமூலத்தில்கையொப்பம்போடச்சொல்லி யாரும் மிரட்டவில்லை...”

13. Thereafter, he was treated as a hostile witness. Therefore, the learned counsel for the appellant would argue that as he was treated as hostile witness, his evidence shall not be relied upon as per Section 154(2) of the Indian Evidence Act, 1872. To thwart the said arguments, the learned counsel for the respondent placed reliance on the below cited judgment:

Rabindra Kumar Dey v. State of Orissa reported in (1976) 4 SCC 233, wherein, the Apex Court held that “*It is also clearly well settled that the*



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mere fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not make him an unreliable witness so as to exclude his evidence from consideration altogether".

14. Law is well settled when a witness turned hostile and if he does not support the party calling him, no law states that his evidence shall not be relied upon. If the evidence is found to be worth of credence, it is a lawful testimony of the hostile witness.

15. It is pertinent to note that on the date of chief examination, PW2 was not cross-examined. However, he has stated that upon his instruction only his proof affidavit was typed and he volunteered to sign upon his proof affidavit would go to show that he has supported the case of the plaintiff.

16. It is the evidence of PW2 that on 05.12.2005, the defendant for his personal expenses obtained a loan of Rs.2,50,000/- in his presence from the plaintiff and executed a promissory note and the same was scribed by one Selvaraj. He along with one Manickandan attested the said promissory note.



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The defendant signed in the promissory note which was witnessed by PW2 and the plea of forgery put-forth by the defendant was also refuted.

17. In such circumstances, though PW2 was treated as hostile witness by the plaintiff, the trial Court was legally right in relying upon the proof affidavit of PW2 as per Section 154(2) of the Indian Evidence Act, 1872, as mentioned supra. The trial Court has elicited the details from PW2 to the effect that the details of proof affidavit of PW2 was in fact given by PW2 only.

18. Notwithstanding the fact that the defendant though has nowhere denied the signature found in Ex.A1, the plaintiff has proved the execution of Ex.A1 promissory note. Then presumption arises in favour of the plaintiff as per Section 118 of Negotiable Instruments Act. The said presumption is a rebuttable one. He may reflect the presumption through oral and documentary evidence and even through circumstantial evidence. The trial Court as well as the First Appellate Court in unison concluded that the promissory note is valid



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one and binding on the defendant.

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19. On the part of the defendant, defendant has examined himself as DW1. The defendant has failed to rebut the presumption arose in favour of the plaintiff.

20. By not cross-examining PW2 at the first instance and after two months when PW2 was cross-examined, he totally retracted from his proof affidavit would go to show that the defendant took advantage in between the time he was examined in chief and his cross-examination and the Courts below have rightly observed against the defendant cannot be found fault with. In such view of the matter, this Court does not find any good reason to upset the findings of the First Appellate Court. This Court does not find any infirmity or perversity in the findings of the First Appellate Court.

21. Based on the above said discussions, the substantial questions of law are answered in favour of the plaintiff.



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22. Above being the position, this Second Appeal stands dismissed.

Sequel to this, the judgment and decree dated 01.10.2021 passed in

A.S.No.15 of 2017 by the Principal District Judge, Ariyalur stands confirmed.

No costs. Consequently, connected miscellaneous petition is closed.

19.08.2025

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

ssn

To

1. The Principal District Judge, Ariyalur.

2. The Sub-Court, Ariyalur.



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