IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2025

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

A.S.No.571 of 2022

N.Saravanan .. Appellant

Vs.

V.P.Kumar .. Respondent

PRAYER: Appeal Suit is filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 29.09.2022 made in O.S.No.77 of 2019 on the file of the II Additional District Court, Vellore @ Ranipet.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.C.S.Jeeva Kuralamudhu

JUDGMENT

Appeal Suit filed by the defendant, aggrieved by the decree passed by the trial Court in a suit for recovery of money based on promissory note.

2. The plaint against the appellant is that on 13.02.2018, the appellant borrowed a sum of Rs.10,00,000/- and executed two promissory notes in favour of the respondents agreeing to repay the same with interest at the rate of 24% per annum. The appellant paid Rs.1,40,000/- towards interest through bank and thereafter, failed to pay interest and the principal amount. The amount was borrowed by the appellant for the purpose of improving his business conducted in the name and style of "S.N.S MOBILES". The appellant, being a teacher by profession earning Rs.40,000/- per month, is not entitled for protection under Debt Relief Act.

3. In the written statement, the appellant has contended that he had not borrowed money from the plaintiff on 13.02.2018. He also denied having repaid a sum of Rs.1,40,000/- towards interest as claimed by the plaintiff. The appellant further contended that he is not running any business in the name and style of "S.N.S MOBILES" and that he did not borrow any money for business improvement. He claimed that the alleged promissory notes are forged documents and therefore, the plaintiff is not entitled for any relief.

4. The trial Court based on the pleadings framed the following issues:-

> *"1.Whether the plaintiff is entitled to recover the plaint amount from defendant as prayed for?*
>
> *2.To what cost and other relief, the plaintiff is entitled?"*

5. On the side of the plaintiff, four (4) witnesses were examined and six (6) exhibits were marked as Ex.A1 to Ex.A6. On the side of the defendant, the defendant mounted the witness box to disprove the case of the plaintiff.

6. The trial Court held, based on the evidence, that the defendant and PW.3 are brothers and they jointly obtained Rs.10,00,000/- which was transferred to the account of S.N.S MOBILES, a business run in the name of their mother. The plaintiff has proved the execution of Ex.A1 and Ex.A2, the promissory notes executed in favour of the plaintiff for valuable consideration and the fact that the amount was not paid were proved. Hence, the suit decreed as prayed, leading to the present appeal.

7. The defendant had contended that the plaintiff had not proved the due execution of Ex.A1 and Ex.A2, the promissory notes or the passing of consideration. The evidence produced by the plaintiff, namely the bank statements marked as Ex.A3 to Ex.A6 clearly show that Rs.10,00,000/- was transferred only to the S.N.S MOBILES and out of that, Rs.9,50,000/- transferred to PW.3, who is none other than the brother-in-law of the plaintiff. The plaintiff's own evidence proves no consideration passed to the defendant. The defendant further contended that no amount was paid to him in any manner and he never repaid any amount to the plaintiff. Thus, in the absence of privity of contract between the plaintiff and the defendant and without proof of passing of consideration, the trial Court had erroneously allowed the suit. It was further contended that the plaintiff failed to examine any independent witness regarding the execution of promissory notes or the passing of consideration.

8. Per contra, the learned counsel appearing for the respondent/plaintiff submitted that though the appellant denied the due execution of Ex.A1 and Ex.A2, he had not rebutted the presumption regarding the execution of promissory notes and the passing of consideration. The transfer of money from the account of the plaintiff to S.N.S MOBILES was clearly established through the bank statements. It was also contended that PW.3, who is the scribe of the promissory note and brother of the defendant, turned hostile in order to protect his brother, therefore, disposed against the interest of the plaintiff. No doubt, PW.3 is the brother-in-law of the plaintiff, a relative by marriage. However, the defendant being a consanguineous relative (a blood brother) had prompted the witness to turn hostile. But their bank account clearly indicates that Rs.10,00,000/- was transferred to the account of S.N.S MOBILES and the amount been withdrawn immediately by PW.3. S.N.S MOBILES it is run by the defendant in the name of his mother since he is a Government servant.

9. The learned counsel for the respondent submits that the trial

Court has rightly drawn presumption under Section 118 of the Negotiable Instruments Act. Since the execution of promissory notes has been duly proved which follows the presumption of passing of consideration. The oral evidence of defendant unsupported by any documentary proof regarding the money transaction was duly considered by the trial Court and rejected. There is no perversity or impropriety in the order of the trial Court, hence the appeal is liable to be dismissed.

10. ***Point for determination***:-

Whether Ex.A3 to Ex.A6 are proof for passing of consideration to the promissory notes Ex.A1 and Ax.A2?

11. The case of the plaintiff is that the money was transferred to the account of S.N.S MOBILES, which is in the name of the defendant's mother. The said relationship and the transfer of money in the account of S.N.S MOBILES account are established through evidence. However, when the defendant has denied receiving the money, it is the duty of the plaintiff to prove how the money transferred to S.N.S MOBILES in turn went to the hands of the defendant or that the money transferred to S.N.S MOBILES was the basis on which the defendant executed the promissory notes Ex.A1 and Ex.A2 to discharge the debt of his mother.

12. There is evidence through bank statement that the money transferred to the S.N.S.MOBILES account is withdraw by PW.3 and not by the defendant. The version during trial projected by the plaintiff that the money given to the defendant through PW.3, is not the case of the plaintiff. His specific case is that Rs.10,00,000/- was given to the defendant directly for his business purpose. Whereas, during trial an entirely different version regarding passing of consideration is projected.

13. To prove the new plea, the plaintiff has examined PW.3. However, PW.3 denied having handed over the money to the defendant. Though he is the scribe of the promissory notes and admitted to have written the promissory notes he had specifically denied the passing of consideration either at the time of promissory notes or subsequently. The presumption under Section 118 of the Negotiable Instruments Act is thus rebutted in this case.

14. The defendant is required to discharge the reverse burden only by preponderance of probability and not proof beyond doubt. In this case, the defendant has discharged this burden by relying the documentary evidence produced by the plaintiff himself and the oral evidence of PW.3 brought by the plaintiff.

15. From the evidence, the proof of transfer of Rs.10,00,000/- by the plaintiff into the account of S.N.S MOBILES is clearly established. However, this transfer is not connected to the execution of the promissory notes. No proof for passing of consideration to the defendant, either directly or indirectly. The plaint is silent about passing of consideration and speaks only about the execution of promissory notes. The bank statements marked as Ex.A3 to Ex.A6 show the transfer of funds only to S.N.S MOBILES and not to the defendant.

16. Just because S.N.S MOBILES is in the name of the defendant's mother, the liability cannot be fastened on the defendant unless there is an express or implied undertaking by the defendant who executed the promissory notes to discharge the debt of his mother. The relationship of mother and son alone is not sufficient to attribute liability to the defendant. For the said reason, this Court finds that the trial Court failed to appreciate the material evidence properly, particularly Ex.A3 to Ex.A6 and thus, rendered a perverse finding.

17. As a result, the Appeal Suit stands allowed. The Judgment and decree passed in O.S.No.77 of 2019 is set aside. There shall be no order as to costs.

29.07.2025

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

To

1.The II Additional District Court, Vellore @ Ranipet.

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

DR.G.JAYACHANDRAN,J.

rpl

<u>A.S.No.571 of 2022</u>

29.07.2025