IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.10.2025	Pronounced on : 31.10.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

A.S.No.749 of 2023
&
C.M.P.No.26099 of 2023

S. Rajkumar ... Appellant

Vs.

A. Saraswathi ... Respondent

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 14.07.2023 made in O.S. No. 102/2020 on the file of the Hon'ble I Additional District Judge Court, Salem and dismiss the said suit with cost .

For Appellant : Mr.J.Ramakrishnan

For Respondent : Ms.K.Indu Priya
for Mr.M.R.Vivekananthan

JUDGMENT

The defendant in a suit for recovery of money, based on a promissory note, being aggrieved by the decree, directing the him to pay the plaintiff a sum of Rs.13,12,657/-, together with interest at the rate of 18% per annum prior to the suit, 9% per annum from the date of suit till the date of decree and thereafter, at the rate of 6% per annum till the date of realization, is the appellant.

2. I have heard Mr.J.Ramakrishnan, the learned counsel appearing for the appellant/defendant and Ms.K.Indu Priya appearing for Mr.M.R.Vivekananthan, learned counsel for the respondent/plaintiff.

3. Plaint Averments in Brief:-

The plaintiff is acquainted with the defendant. On 16.09.2018, the defendant approached the plaintiff and requested financial assistance to the tune of Rs.10,00,000/- to meet his urgent family expenses, undertaking to repay the same within one year. The plaintiff agreed to lend the said sum, provided the defendant would repay the same, together with interest at Rs.1.50 per Rs.100/- per month. The defendant accepted the terms and on the same day, the defendant had executed a promissory note. Despite repeated demands made by the plaintiff, the defendant did not come forward to pay any money. The plaintiff further came to know that the defendant was making arrangement to alienate his property with an intention to defeat the lawful claim of the plaintiff. In order to avoid such alienation of the property, the plaintiff has chosen to institute the suit for recovery of money, even without issuing a pre-suit notice.

4. Written Statement of the Defendant (in brief):-

The defendant denied the borrowing to the tune of Rs.10,00,000/- from the plaintiff as alleged in the plaint. However, the defendant admitted that he had borrowed a sum of Rs.2,00,000/- from the plaintiff. According to the defendant, at the time of of borrowing the said sum, he signed an unfilled promissory note, which was attested by the mother of the defendant.

5. According to the defendant, he had been paying interest on the borrowed sum of Rs.2,00,000/- at the rate of 24% for a period of about 1 ½ years. Since he was unable to pay interest, he repaid the entire sum of Rs.2,00,000/- by arranging funds from his own source, with the help of his friends. However, despite receipt of the entire sum of Rs.2,00,000/-, the plaintiff demanded further money towards interest. Since the defendant refused to pay the same, the plaintiff refused to return the promissory note and another blank signed stamp paper. The defendant denied the allegation that the plaintiff made repeated demands for repayment and reiterated that the plaintiff demanded further interest on the repaid amount of Rs.2,00,000/-. Only because of the refusal of the defendant, the plaintiff has used the unfilled promissory note and blank signed stamp papers to concoct the suit claim. The defendant denies the allegations that he attempted to alienate the property, in order to defeat the claim of the plaintiff.

6. Issues:

Based on the pleadings, the trial Court has framed the following three issues:-

> *1.Whether the plaintiff is entitled for recovery of suit claim amount as prayed for?*
>
> *2.Is it true that the suit claim is false and unenforceable one as alleged by the defendant?*
>
> *3.To what other relief?*

7. The decision of Trial:

The trial Court found that the defendant had admitted the execution of the promissory note and failed to prove his defence that the borrowing was Rs.2,00,000/- only and had fully discharged the same. On that basis, the trial

Court proceeded to decree the suit as prayed for, while restricting the interest alone to 9% on Rs.10,00,000/- from the date of suit till the date of decree and thereafter, at the rate of 6% per annum.

8. Mr.J.Ramakrishnan, learned counsel for the appellant would submit that the plaintiff had failed to discharge the burden of passing of consideration, when it was the specific case of the defendant that the defendant had signed only a blank promissory note and that it has been filled up by the plaintiff on his own volition and discretion. He further contended that the plaintiff did not choose to even issue a notice before filing the suit and therefore, the plaintiff could not be entitled to any interest whatsoever, as there has been no demand made based on the promissory note, which required the defendant to repay the money only on demand made by the plaintiff.

9. It is the further contention of Mr.J.Ramakrishnan that though the defendant had admitted execution of the promissory note, the specific case of the defendant was that the borrowing was only a sum of Rs.2,00,000/-. The defendant further submitted that the plaintiff did not have the wherewithal to finance the huge sum of Rs.10,00,000/- and that the defendant had successfully repaid the admitted sum. The counsel would further contended that the presumption that the execution of the promissory note was for consideration of Rs.10 lakhs has been rebutted, by showing circumstantial and satisfactory evidence that the borrowing could not have been for Rs.10,00,000/- and then the burden shifted back to the plaintiff to establish passing of consideration.

10. Mr.J.Ramakrishnan, learned counsel for the appellant would further submit that the defendant had also called upon the plaintiff to produce Income Tax Returns, which could have served as evidence to prove the actual amount lent by the plaintiff and for withholding such best evidence, the Court ought to have drawn an adverse inference against the plaintiff.

11. The learned counsel also relied upon and fortified his contentions with the following decisions:

(i) S.L.P.(Civil) Diary No.1716 of 2025 dated 17.03.2025

(ii) Rajendran Vs. Kullappan reported in 2025 (1) MWN (Civil) 494

(iii) Thangarasu Vs. Arumugam reported in (2012) 3 MLJ 658

(iv) S.A.No.338 of 2017 A.Govindan & others Vs. K.S.Jayanthakumar, which came to be confirmed by the Hon'ble Supreme Court in ***S.L.P.(C) No.17868 of 2022 dated 06.02.2024***.

12. Per contra, Ms.K.Indu Priya, learned counsel for the respondent/plaintiff would submit that the contradictions that have been pointed out in the cross-examination of the plaintiff's witnesses are not fatal to the case of the plaintiff and that it was not sufficient ground to draw adverse inference or to hold that the defendant rebutted the presumption regarding passing of consideration.

13. The learned counsel for the respondent would further submit that the plaintiff had established due execution of the promissory note and the defendant had taken a false plea that he had repaid the alleged borrowing of Rs.2,00,000/- and that there was no liability remaining to be saddled upon the defendant's shoulder.

14. Ms.K.Indu Priya, learned counsel for the respondent further contended that having taken a plea, the defendant paid interest at the rate of 24% for 1 ½ years and that a sum of Rs.2,00,000/- was also repaid, the defendant failed to establish the same at trial and therefore, the trial Court had rightly held that the defendant having admitted the execution of the promissory note and having failed to prove the plea of discharge raised in the written statement, the plaintiff was entitled to a decree as prayed for. She would also state that even assuming that the defendant signed a blank promissory note, in view of the provisions of the Negotiable Instruments Act, the plaintiff is well within his right to fill up the promissory note and further, PW.2 has been examined to establish the transaction itself, including the due execution of the promissory note. In such circumstances, Ms.K.Indu Priya, learned counsel for the respondent would pray for dismissal of the appeal.

15. The learned counsel in order to fortify her submissions has relied on the following decisions:-

(i) N.S.Arumugam Vs. Trishul Traders reported in 2005 SCC Online Mad 806.

(ii) Bharat Barel & Drum Manufacturing Company Vs. Amin

Chand Payrelal reported in (1999) 3 SCC 35.

(iii) Vikram Singh Aanjana Vs. Prakashchandra Solanki reported in 2024 SCC Online MP 2519.

(iv) Kandati Sarada Vs. Godthi Satish Chowdary and others reported in 2024 SCC Online AP 4696.

16. I have carefully considered the arguments advanced by the learned counsel for the parties.

17. The following points for consideration raised for decision in this first appeal:-

(i) Whether the suit promissory note was supported by a consideration of Rs.10,00,000/- or Rs.2,00,000/-?

(ii) Whether the defendant has discharged the debt payable under the said promissory note?

(iii) Whether the plaintiff has proved

execution of the suit promissory note?

(iv) Whether the defendant has successfully rebutted the legal presumption attached to the suit promissory note?

18. The defendant has admitted the execution of a blank promissory note. However, it is the case of the defendant that he had borrowed only a sum of Rs.2,00,000/- and not Rs.10,00,000/- as claimed by the plaintiff. According to the defendant, he has promptly paid interest of Rs.6000/- per month on the sum of Rs.2,00,000/- and unable to pay interest periodically, he has arranged to repay the entire principal amount of Rs.2,00,000/-. In this regard, there is absolutely no evidence available on the side of the defendant to establish that he had borrowed only Rs.2,00,000/-, or that he had promptly paid interest at the rate of 24% per annum for 1 ½ years. Though the defendant also contended that the he had repaid the entire amount and no further amount was due or payable, there is no evidence to substantiate such a claim. The alleged repayment has not been proved by any acceptable material or record. The plaintiff's case supported by the written promissory note, remains unshaken, whereas, the defendant's version is merely his *ipse dixit*, a self serving statement unsupported by evidence, as revealed during the course of the trial. In view of the above, there is no difficulty in holding that the plaintiff has established the execution of the promissory note. The defendant, on his side, has miserably failed to prove the alleged discharge of liability as pleaded in the written statement.

19. Coming to the actual consideration for the promissory note, the plaintiff's case is that a sum of Rs.10,00,000/- was lent on the date of execution of the promissory note. In order to support the said pleadings, the plaintiff, while examining herself in the witness box, has reiterated the same in her proof affidavit.

20. In the cross-examination, the plaintiff stated that when the defendant requested financial assistance, she did not immediately agree to lend money and that she consulted her son-in-law and daughter before lending the money. The plaintiff has also stated in cross-examination that she had obtained financial assistance from her son-in-law in order to lend the said amount to the defendant. Such a plea was not taken in the plaint in the first instance. She has further stated that she had issued a pre-suit notice which admittedly has not been done and in fact there is specific plea in the plaint as to why the plaintiff did not sent a pre suit notice.

21. PW.2, the daughter of the plaintiff, is the scribe of the promissory note. In her chief-examination, she deposed that on 16.09.2018 the defendant borrowed a sum of Rs.10,00,000/- from her mother and executed the promissory note and that she had written the contents of the promissory note and thereafter, the defendant signed the promissory note and also affixed his left thumb impression. She also stated that the defendant's mother signed the document as a witness. In cross-examination, PW.2 has however, virtually given up the case of the plaintiff while admitting that her mother requested her son-in-law i.e., the husband of the PW.2, to arrange the funds to enable the plaintiff to lend money to the defendant. PW.2 further states that, on the date of execution of the promissory note, her mother lent only Rs.9,00,000/-, which alone was available with her and that the remaining Rs.1,00,000/- was given by PW.2 and her husband, which was received by the defendant, a week later, from her residence.

22. The evidence of PW.2, therefore, falsifies the plaint averments as well as the evidence of PW.1 and PW.2 in chief examinations regarding the lending of Rs.10,00,000/- to the defendant on the date of execution of the promissory note. No doubt, the defendant has admitted the execution of the promissory note and therefore, the initial burden to establish that the promissory note was not supported by consideration or that the consideration as mentioned therein was not actually passed, lies on the defendant. It is settled law that the defendant cannot prove a negative and therefore, it is permissible for the defendant to rebut the presumption of passing of consideration, either by direct evidence or circumstantial evidence.

23. On a conjoined reading of the evidence of PW.1 and PW.2, it becomes evidence that the plaintiff has not spoken the truth. Though the plaintiff claims that she lent the entire sum of Rs.10,00,000/- across which the promissory note was executed, her own daughter stated that only Rs.9,00,000/- was given on the date of execution of the promissory note and that the remaining Rs.1,00,000/- was given a week later. This material contradiction between the testimonies of PW.1 and PW.2 certainly goes to the root of the matter, particularly concerning the passing of consideration.

24. I am unable to countenance the arguments of Ms.K.Indu Priya, learned counsel for the respondent that these contradictions are not fatal to the plaintiff's case. The Division Bench of this Court in ***R.Venkatesan @ Venkatesh Vs. Jitesh Kumar Jain*** reported in ***2024 (5) CTC 580*** has held that though Section 118 of Negotiable Instruments Act, raises a presumption as to the passing of consideration on the admission of execution of a promissory note, the said presumption is only rebuttable. Relying on the ratio laid down in ***Bharat Barel & Drum Manufacturing Company's case*** this Court held that the defendant is entitled to rely upon circumstantial evidence to rebut the statutory presumption and if such circumstances are proved and found probable, the burden then shifts back to the plaintiff to establish, by direct and cogent evidence, regarding passing of consideration.

The Hon'ble Division Bench has also reiterated that the Court must examine the surrounding circumstances as well while examining whether the plea of of passing of consideration has been proved or established.

25. This Court, in *Govindan's case* held that when both parties let in evidence and the defendant has been successfully in rebutting the presumption regarding passing of consideration, the burden of proof under Section 118 of Negotiable Instruments Act, loses its importance and the issue would become academic and thereafter, it is incumbent on the plaintiff to prove the passing of consideration.

26. In *Rajendran's case*, this Court, examining whether the defendant's evidence was sufficient to rebut the presumption regarding consideration, held that if the defendant is able to establish the non-existence of consideration by successfully raising a probable defence, then the burden will be back on the plaintiff, to establish the passing of consideration.

27. In *Thangarasu's case* as well, where the defendant, like in the present case admitted to having signed the promissory note, but contended that he had signed a blank promissory note, this Court held that proper execution will have to be proved by the plaintiff to draw a presumption under Section 118 of N.I.Act.

28. Coming to the decision that has been cited by the learned counsel for the respondent, Ms.K.Indu Priya, in *N.S.Arumugam's* case, the Division Bench of this Court held that the initial burden of proof always rests on the plaintiff. Once execution of the instrument is established, the duty is imposed on the Court to raise a presumption that the instrument was made for consideration. Thereafter, the burden shifts to the defendant, who must, by either direct or circumstantial evidence, acceptable to the Court, prove that the negotiable instrument was not supported by consideration. Unless and until the defendant successfully rebuts the presumption, the burden does not get shifted back to the plaintiff. The Hon'ble Division Bench further held that on the facts of the case before it that the defendant had failed to rebut the presumption regarding passing of consideration.

29. The Hon'ble Supreme Court in *Bharat Barel & Drum*

Manufacturing Company case which in fact has been relied on by this Court in the decision that has been relied by the counsel of the appellant, held that initial burden always lies on the defendant to prove the non-existence of consideration. It is open to the defendant to bring facts and circumstances on record, which would lead the Court to believe non-existence of consideration.

30. The Hon'ble Supreme Court further observed that such an exercise could be done by the defendant, either by direct evidence or on the preponderance of probability by showing that existence of consideration is improbably doubtful or illegal. In *Vikram Singh Aanjana's* case, the High Court of Madhya Pradesh held that mere minor contradictions in respect of the amount in the statement of complaint or the evidence would not be sufficient to dismiss the complaint. However, in that case, arising under the Negotiable Instruments Act and on facts, the Madhya Pradesh High Court found that the legal notice issued by the plaintiff was not even replied to and there was no evidence adduced by the defendant by way of rebuttal.

31. In *Kandati Sarada's* case, the Andhra Pradesh High Court held that minor discrepancies in the evidence are often attributable to errors of observation or lapses of memory, particularly after a long lapse of time, and such discrepancies, by themselves, do not normally affect the credibility of a witness and that it is only where some differences are there, it would advance the credibility of the evidence. In arriving at this conclusion, the High Court applied the ratio laid down by the Hon'ble Supreme Court in *Bharat Barel & Drum Manufacturing Company* and also *R.Venkatesan @ Venkatesh's* case.

32. In the present case, I see no reason not to accept the submissions of the learned counsel for the appellant that the defendant has successfully rebutted the presumption regarding passing of consideration. There are no minor contradictions as strenuously contended by the learned counsel for the respondent. The contradictions go to the very root of the matter. The plaintiff came to Court with a case that she lent a sum of Rs.10,00,000/- on the date of execution of promissory note. However, her own daughter, who was the scribe of the promissory note, has virtually demolished the case by deposing that only Rs.9,00,000/- was handed over on the date of execution and Rs.1,00,000/- was given one week later that too by the husband of PW.2 and PW.2, i.e., herself. These averments do not find a place in the plaint. There is no pre-suit notice issued making demand for repayment of amount borrowed. Though some reasons have been given in the plaint, it was not substantiated in evidence. On the contrary, PW.1 stated that she had given a pre-suit notice.

33. Further, PW.2 also admits that she is an income tax assessee and that the borrowing pertained to her family's saree business and that the entire income and expenditure is subject to the scrutiny of the Income Tax Department. However, PW.2 claims that the amount lent to the defendant has not been reflected in her income tax returns. Though the execution of the promissory note can be inferred, through circumstantial evidence, the evidence of PW.2 which contradicts both the pleading and the testimony of PW.1 casts serious doubt on the claim regarding the passing of consideration.

34. The defendant has been able to create serious doubt with regard to the passing of consideration. In fact, the specific case of the defendant is that he signed a blank promissory note. This Court, in *Thangarasu's* case, held that presumption under Section 118 of N.I.Act, does not arise when there is proof of signature obtained on a blank sheet of paper. In such event, the plaintiff will have to establish not only execution of the promissory note, but also passing of consideration. However, in the present case, the evidence of PW.2 coupled with admissions of DW.1, clearly establishes the factum of execution of the promissory note. However, at the same time, the defendant has also successfully rebutted the presumption that the consideration has reflected in the promissory note cannot be true.

35. In such circumstances, the trial Court ought to have found that the burden of proving the sum of Rs.10,00,000/- shifted back to the plaintiff. The plaintiff has not been able to establish the passing of consideration to the tune of Rs.10,00,000/-. Therefore, the trial Court clearly committed an error in holding that the plaintiff was entitled to a decree as prayed for. At the same time, the defendant having admitted the execution of the promissory note and borrowing Rs.2,00,000/- payable with interest at 24% has failed on his side to prove discharge of this admitted liability as pleaded in the written statement. In such circumstances, the plaintiff cannot be denied a decree for the admitted amount of Rs.2,00,000/-, repayment of which has not been proved by the defendant.

36. In view of the pleadings and the evidence adduced at trial, this Court is inclined to partly allow the appeal, setting aside the decree of the trial Court and limiting the decree to a sum of Rs.2,00,000/- from the date of execution of the promissory note, together with interest at 24% per annum from the date of borrowing till the date of decree and thereafter, at the rate of 6% per annum. The plaintiff is also entitled to proportionate costs in the suit as well as the appeal.

37. Accordingly, this appeal is partly allowed. Consequently, the connected Civil Miscellaneous Petition is closed.

31.10.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No
Internet : Yes / No

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To

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P.B. BALAJI,J.

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