IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2025

PRONOUNCED ON : 14.07.2025

CORAM

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

A.S. No.1021 of 2024
and C.M.P. Nos.27094 of 2024, 12450, 12452 and 12455 of 2025

1. Pungothai
2. Yuvanesh ... Appellants/ Defendants

-vs-

S. Mariappan ... Respondent/ Plaintiff

<u>Prayer:</u> This appeal filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree, dated 19.07.2024 made in O.S.No.7842 of 2022, on the file of the II Additional District Judge, City Civil Court at Chennai.

For Appellants	:	Mr. M. Ramesh
For Respondent	:	Mr. R. Ragavendran

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JUDGMENT

This Appeal Suit is directed against the against the Judgment and Decree, dated 19.07.2024 made in O.S.No.7842 of 2022, on the file of the II Additional District Judge, City Civil Court at Chennai.

2. The suit for recovery of money based on the promissory note alleged to have executed by one Krishna Kumar and his wife Pungothai for a loan of Rs 10,00,000/- with promise to pay on demand with interest, decreed as prayed. Hence the appeal by the aggrieved defendants.

The Plaint averments:

3. Krishna Kumar (deceased) is the husband of the first defendant and father of the second defendant. The plaintiff and Krishna Kumar (deceased) were employed in TNSC Bank and known to each other. In the year 2020, Krishna Kumar and his wife Pungothai (first defendant) approached the plaintiff at TNSC Bank, Head Office, NSC Bose Road, Chennai and sought loan of Rs 5,00,000/- and promised to repay it with interest. On mutual discussion, the plaintiff extended loan of Rs 5,00,000/-

to Krishna Kumar and his wife Pungothai (first defendant) during the month of February, 2020 in his Bank premises on the promise that the loan will be repaid within a short period with 24% interest. As promised, they paid the interest upto the month of June, 2020. In the month of July 2020, Krishna Kumar and his wife again approached him and sought for additional loan of Rs 5,00,000/- and promised to repay it within short span with 24% interest. The plaintiff believing them, gave the additional loan in the month of July, 2020. As security Krishna Kumar and his wife gave two undated cheques for Rs.5,00,000/- each, bearing Nos: 130276 and 130277 drawn at Tamil Nadu State Apex Bank, Washermanpet Branch.

4. The said Krishna Kumar and his wife Pungothai were remitting the interest and part principle amount to the account of Mariappan on various dates from 31.07.2020 to 29.04.2021, totalling a sum of Rs.1,35,000/-. Thereafter, neither paid the principle nor the interest. On enquiry they sought time for repayment and executed a promissory note on 18.02.2021 in the premises of TNSC Bank, NSC Bose Road, Chennai. While being so, Krishna Kumar died leaving behind his wife (first defendant) and son the second defendant with a debt of Rs.14,15,000/-

payable to the plaintiff. Notice demanding the money sent to the residential address of the defendants. Same was returned unserved with postal endorsement “Addressee left”. However, the first defendant received the notice sent to the address her work place and she replied on 28.08.2022 denying liability. Hence the suit.

5. In the written statement of the first defendant, which is adopted by the second defendant, the first defendant admits that the plaintiff is a friend of her husband Krishna Kumar. According to her, from her husband she came to know that the plaintiff and his friends were running a 'Gold Chit' and they compelled her husband to join the chit. Three months after the demise of her husband, the plaintiff approached her under the guise of helping her, demanded money to arrange job and for settlement of her husband’s service benefit. As days went, the plaintiff's demand turned into threat. The plaintiff pressurised her to part away Rs.10,00,000/- showing two blank cheques signed by her husband and a blank Rs.20/- stamp paper with a forged signatures of her and her husband. Denying the signatures on the stamp paper, the defendants also contended that, the money debited from her husband’s bank account to the plaintiff’s account is for the Gold chit

subscription paid monthly and not towards interest for the loan of Rs.10,00,000/-. If the case of the plaintiff is true, then the monthly interest for the loan of Rs.10 lakhs will come to Rs.20,000/- and not Rs.7,500/-, which was actually paid into the plaintiff's account for Gold Chit. This is sufficient to disprove the plaint averment that the defendant and her husband borrowed Rs.10 lakhs from the plaintiff and paying interest upto June, 2021.

6. Based on the pleadings, the issues framed by the Trial Court whereas under:

1. Whether the pro-note dated 18.02.2021 is true, valid and supported with consideration?

2. Whether the cheque issued for by the husband of 1st defendant is for security for the loan obtained by him?

3. Whether the Krishna Kumar was compelled to Join Gold fund by the plaintiff and the amounts paid by him were for Gold Fund not as interest as alleged by the plaintiff?

4. Whether the plaintiff is entitled for suit amount?

5. To what relief?

7. On the side of the plaintiff two witnesses were examined and seven documents were marked as Exs.A-1 to A-7 and on the side of the defendant one witness was examined and no documents were marked.

8. The Trial Court allowed the suit as prayed, passing a decree for a sum of Rs.14,15,000/- (Rupees Fourteen Lakhs Fifteen Thousands only) together with interest at the rate of 24% per annum on the principal sum of Rs.10,00,000/- from the date of plaint till the date of realization.

9. In the appeal, it is contended that the Trial Court failed to appreciate the evidence, which establishes the borrowing against the alleged pro-note and the cheques marked as Ex.A-2 and Ex.A-3 were not issued by the first defendant as pleaded in the plaint. It is the blank cheque of Krishna Kumar without date and the name of the bearer. The said cheques were never given by the first defendant or in her presence. The plaintiff had failed to prove under what circumstances the cheques came into his custody.

10. When the signature in the pro-note (Ex.A-1) is denied as false and fabricated, it is the burden of the plaintiff to prove the contrary. No

evidence produced by the plaintiff to prove how and when he gave the money to Krishna Kumar and his wife, the first defendant/ Pungothai. In the plaint it is averred that all the transactions held in the Bank premises. However, the only witness examined to support the case of the plaintiff is PW-2 who is a colleague of the plaintiff. He is one of the witness to the pro-note (Ex.A-1). He had deposed that he signed the document at the entrance of TNSC Bank, NSC Bose Road and not inside the bank as the plaintiff pleaded. He admit that he did not witness the receipt of the money by Krishna Kumar or Pungothai.

11. The Learned Counsel for the appellants/ defendants submitted that the bare look of the pro-note (Ex.A-1) written on Rs.20/- stamp paper will clearly show that the signature of the first defendant is forged. Under the signature in Ex.A-1 the word 'wife' is inserted within bracket. The contradiction in the legal notice Ex.A-4 and the plaint averments will prove the falsity of the plaintiff's case. In support of his argument, the judgment of this Court rendered in ***A.S. Sakthivel vs. M. Perumal [2023(3) CTC 127]*** is relied.

12. Per contra, the Learned Counsel for the respondent/ plaintiff submitted that, under section 118 of the Negotiable Instruments Act, the passing of consideration is to be presumed. The defendant has to prove the non existence of consideration. In this case, the repayment of the interest in the plaintiffs account is a proof of existence of consideration. Except to say that the said payment were for Gold Chit, no evidence is placed, what the gold chit transaction is meant. The Trial Court after considering the evidence had concluded that the defendants are liable to pay the pro-note amount with interest. The said judgment has to be confirmed.

13. To buttress his argument, the following judgments are relied by the respondent/plaintiff:

1. Bharat Barrel & Drum Manufacturing Company vs. Amin Chand Payreleal ***[(1999) 3 SCC 35]***

2. N.S. Arumugam vs. Trishul Traders, Dealers in Ferrous and Non-Ferrous, Contractors & 2 others ***[(2006) 2 L.W. 167]***

3. Mallavarapu Kasivisweswara Rao vs. Thadikonda Ramulu Firm and others ***[(2008) 7 SCC 655]***

4. Selvi & 2 others vs. Gomathy Ammal ***[2009 (1) CTC 541]***

5. The Division Bench judgment of this Court in A.S.No.13 of 2017 in A.S.No.13 of 2017 dated 01.02.2022.

6. *Ashok Kumar vs. Sankarankutty Pillai and another* ***[(2023) 3 KLJ 31]***

7. *K. Ramesh vs. K. Kothandaraman* ***[2024 SCC Online SC 531]***

14. The Trial Court judgment found fault mainly on the following three grounds:

(i) Execution of Ex.A-1 by the first defendant along with her late husband not proved through adequate evidence.

(ii) In view of the denial of execution of Ex.A-1, passing of consideration cannot be presumed under section 118 of Negotiable Instruments Act.

(iii) The credit entries in the Bank Pass Book Ex.A-7 of the plaintiff is not a proof for receipt of loan Rs 10,00,000/- jointly by the first defendant and her late husband.

Execution of the pro-note - Ex.A-1 and passing of consideration:

15. The plaintiff before filing the suit had issued a pre-suit notice dated 25/06/2022 to the wife and two sons of Krishna Kumar. In this notice which is marked as Ex.A-4, the plaintiff had specifically stated that, Krishna Kumar and his wife (the first defendant) jointly borrowed Rs.10 lakhs on

various dates and entrusted to him two cheques (Ex.A-2 and Ex.A-3). They were regularly paying interest for the said loan by cash till June, 2020 at his work place i.e., TNSC Bank, Head Office, NSC Bose Road. Thereafter, from July 2020, they were remitting the interest in the account of the plaintiff. Though Krishna Kumar and his wife promised to repay the loan amount shortly, but failed to repay. When he enquired them about the failure to repay the loan, they executed the pro-note on 18.02.2020 at TNSC Bank, Head Office, NSC Bose Road, Chennai.

16. Contrary to his notice, in the plaint it is stated that the loan of Rs.10 lakhs borrowed on two instalments of Rs.5 lakhs each. First during the month of February 2020 and the second during the month of July 2020. Also, contrary to his pleading that the cheques Ex.A-2 and Ex.A-3 for Rs.5 lakhs each, drawn at TNSC Bank, Washermanpet Branch is jointly given by Krishna Kumar and his wife, it is the cheques of Krishna Kumar and his signature also seen without date or name of the bearer. No evidence adduced by the plaintiff to prove these cheques were entrusted to him by Krishna Kumar and his wife jointly as security for the loan mentioned.

17. The plaintiff's further case is that, the husband of the first defendant was remitting part amount towards interest in the plaintiff's account maintained in TNSC Bank, Washermanpet. The pro-note was executed on 18.02.2022 at TNSC Bank, NSC Bose Road, Chennai. Whereas PW-2 had stated that Ex.A-1 was signed at the entrance of the Bank. He did not witness passing of consideration. When coming to the pro-note marked as Ex.A-1 it is typed on a Rs.20/- stamp paper in which the signatures of first defendant and her husband Krishna Kumar are found. The recital of the promissory say they promise to pay on demand Rs.10 lakhs with interest at the rate of 24% per annum, the money which they received on various dates. It does not specifically say that the consideration was passed under two instalments of Rs.5 lakhs each during the month of February 2020 and July 2020, as it is contended in the plaint.

18. The embellishment in the plaint by improving and contradicting what said in the notice Ex.A-4 in the light of the emphatic denial by the first defendant about the execution of Ex.A-1 and denial of her signature on it and lack of evidence regarding passing of consideration all put together clearly establishes that the plaintiff had failed to prove the

fundamental fact of passing of consideration on specific date in a specific manner. Particularly in the notice as well as in the pro-note, it is stated that the consideration was passed on various dates prior to it execution. Contrarily, in the plaint it is specifically stated that it was on two occasions one in the month of February 2020 and another in July 2020. Though the plaint says it was given at the bank premises, no evidence adduced to prove the first defendant along with her husband Krishna Kumar came to the Bank during the month of February and July and received money from the plaintiff.

19. In this regard the entries in the Pass Book of the plaintiff marked as Ex.A-7 also does not lend support to the plaintiff. The entries in Ex.A-7 starts from 7th January, 2020 and ends with 29.04.2021. Till February 2020, the maximum cash balance in the account of the plaintiff was only Rs.44,961/- and the maximum balance in his account at the end of July 2020 was only Rs 82,319/-. The cash balance in his account during the relevant point of time does not indicate that he had fund to advance loan of Rs.5 lakhs each during the said months.

20. The Courts have consistently held that, presumption under Section 118 of Negotiable Instruments Act is a rebuttable presumption. The non passing of consideration can be proved by preponderance of probability. Once the defendant discharge the onus of reverse burden, the plaintiff is bound to prove the passing of consideration and cannot still harp on the presumption contemplated under Section 118 of the Negotiable Instruments Act.

21. Ex.A-6 is the reply notice dated 22.08.2022 issued by the lawyer on behalf of the defendants. In the reply there is a categorical denial of the claims made by the plaintiff. She had denied borrowing of loan from the plaintiff. The execution of pro-note also denied as forged document. While so the plaint is filed with improved version from the content of the notice duly replied. Despite clear denial of passing of consideration and execution of the Ex.A-1, no attempt made by the plaintiff to substantiate the case of passing of consideration and the due executon of the pro-note. The cheque is blank in all aspects except amount and signature, even date is not filled up. The cheque is not a valid negotiable instrument. Therefore after clear denial of the passing of consideration and execution of the pro-note,

the onus to prove the passing of consideration shifts to the plaintiff. Neither Ex.A-1 and Ex.A-3 nor his witness PW-2 lend support to the case of the plaintiff.

22. **Entries in pass book Ex.A-7:**

This document is relied by the plaintiff to prove that the following payments were made by Krishna Kumar on various dates towards part interest amount.

S.No.	***Date***	***Amount in Rs.***
1.	31.07.2020	7,500/-
2.	17.08.2020	7,500/-
3.	28.08.2020	7,500/-
4.	17.09.2020	7,500/-
5.	30.09.2020	7,500/-
6.	17.10.2020	7,500/-
7.	02.11.2020	7,500/-
8.	17.11.2020	7,500/-
9.	30.11.2020	7,500/-
10.	17.12.2020	7,500/-
11.	31.12.2020	7,500/-
12.	18.01.2020	7,500/-
13.	17.02.2021	7,500/-
14.	26.02.2021	7,500/-
15.	16.03.2021	7,500/-
16.	16.04.2021	7,500/-
17.	29.04.2021	15,000/-

23. The sum of Rs.7,500/- every month starting from July 2020 to March 2021 and Rs.15,000/- on 29/04/2021 is neither equal to the 24% interest for the principle of Rs.10,00,000/- as shown in the Ex.A-1 nor it indicates instalment paid for any loan due. Scrutiny of the Exhibit A-7, further reveals that few credit entries are shown as voucher transfer, few shown as cash deposit and few shown as batch credit. The plaintiff had not produced evidence to correlate these payments with Krishna Kumar or to the loan alleged to have given to Krishna Kumar.

<u>Validity of Ex.A-1 engrossed on stamp paper:</u>

24. In ***P.Moorthy vs. A.R. Kothandaraman [AIR 1978 MAD 412]***, the issue whether a document written on a stamp paper instead on paper affixed with Adhesive stamp is a valid promissory note came up for consideration before this Court earlier. This Court after considering the provisions of Stamp Act and Rules framed thereunder, held as below:-

> *" In my view, a promissory note can be stamped either with adhesive stamps or engrossed on a stamp paper of proper value. In this view, I find that the trial court is correct in holding the doucment as a properly stamped promissory note and giving reliefs to the plaintiff."*

25. In this case, Ex.A-1 is written on Rs.20/- stamp paper. The Stamp Rules contemplates that pro-note to be cancelled by adhesive stamp of the value mentioned in the Act. The plaintiff is a staff in a Bank and knowledgeable about the ingredients of a pro-note and how it should be drawn. No doubt the definition of duly stamped includes impressed stamp as well as adhesive stamp. Courts have also held that pro-notes can be written on the impressed stamp/stamp paper instead of adhesive stamp and because it is written on a stamp paper it will not become invalid. In any case, its admissibility as a pro-note will be subject to Section 35 of the Indian Stamp Act.

26. However, when the alleged pro-note is on a stamp paper instead of adhesive stamp and the plaintiff's case is that it was executed at the bank premises, the reason for drawing it on an impressed stamp paper instead of adhesive stamp is left unexplained. This just add one more reason to desbelieve the case of the plaintiff regarding the loan transaction alleged.

27. For the reasons stated above, the appeal is allowed with costs. The Trial Court judgement is set aside. Consequentially, the judgment and decree in O.S. No.7842 of 2022 dated 19.07.2024 stands dismissed. Consequently, connected Civil Miscellaneous Petitions stand dismissed.

14-07-2025

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

1. The II Additional District Judge,
   City Civil Court at Chennai.

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

Dr. G. JAYACHANDRAN, J.,

stn

Judgment made in
A.S. No.1021 of 2024
and
C.M.P. Nos.27094 of 2024,
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