



S.A.No.473 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2025

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.473 of 2019

N.Senthil

... Appellant

Vs.

R.Abdul Kadhar

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 22.03.2018 passed in A.S. No.233/2017, on the file of the XVIII Additional Judge, City Civil Court, Chennai, reversing the decree and judgment dated 31.08.2017 passed in O.S.No.5511/2013, on the file of the V Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.A.V.Arun for
Mr.Raja.P

For Respondent : Mr.R.Thiagarajan

JUDGMENT

The appellant is the defendant in O.S.No.5511/2013 on the file of the V Assistant Judge, City Civil Court, Chennai. The respondent/plaintiff filed the suit for recovery of a sum of Rs.8,28,000/- from the defendant together with interest at 12% per annum from the date of plaint till the date of realisation.



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2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff in a nutshell is as follows :

The defendant met the plaintiff at his residence on 10.06.2013 and requested the latter to lend him a sum of Rs.8,00,000/- for his business purpose. Accordingly, the plaintiff lent a sum of Rs.8,00,000/- in cash and the defendant issued a cheque bearing number 768213, dated 10.07.2013 (Ex.A1) drawn on Tamil Nadu Mercantile Bank Limited, Arupukottai Branch for Rs.8,00,000/-. He also requested the plaintiff to present the cheque on the date mentioned on the cheque. When the plaintiff presented the cheque for collection through his bankers viz., Axis Bank Limited, Periyar Nagar Branch, Chennai-82, the same was returned on 24.07.2013 (Ex.A2) for the reason 'payment was stopped by the drawer'. Subsequently, the plaintiff issued a legal notice dated 27.08.2013 (Ex.A3) to the defendant, calling upon him to pay the amount due under the cheque. The defendant, though received the said notice on



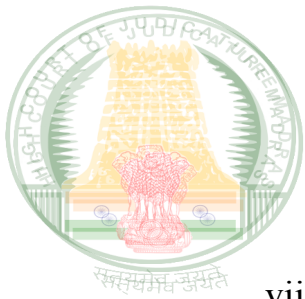
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31.08.2013 as is seen from the postal acknowledgment card (Ex.A4), did not come forward to make good the payment and did not also issue any reply notice. Hence, the suit.

4. The suit was resisted by the defendant on the following grounds:

- i. All the allegations contained in the plaint are false.
- ii. The defendant borrowed a sum of Rs.3,00,000/- from one C.P.Vijayapraveen and issued a blank cheque in his favour as security for the loan amount.
- iii. The defendant had repaid the loan amount together with interest.
- iv. However, the said C.P.Vijayapraveen threatened the defendant to pay additional sum of Rs.5,00,000/-.
- v. Therefore, the defendant gave instructions to his bankers viz., Tamil Nadu Mercantile Bank Limited, Aruppukottai Branch to stop the payment.
- vi. Subsequently the plaintiff and the said C.P.Vijayapraveen colluded with each other and presented the cheque for collection.



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vii. The defendant therefore lodged a complaint (Ex.A6) with the Inspector of Police, Virudhunagar Bazar Police Station, Chennai and FIR in Crime No.45/2014 (Ex.A7) was registered for the offences punishable under Sections 406, 420 r/w. 120(B) I.P.C., and Section 3 and 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 (Tamil Nadu Act 38 of 2003) Therefore, the suit filed by the plaintiff is liable to be dismissed.

5. On the basis of the above pleadings, the trial Court framed the following issues:

- 1) *"Whether the plaintiff is entitled to the suit claim as prayed for?"*
- 2) *To what relief the plaintiffs is entitled?*

6. The plaintiff examined himself and two other witnesses and marked Ex.A1 to Ex.A7. The defendant examined himself. However, no documentary evidence was adduced on his side.



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7. The learned trial court judge, on considering the evidence on record, dismissed the suit, vide her decree and judgment dated 31.08.2017 on the following grounds:

- 1) The plaintiff has not stated in his plaint as to how he knew the defendant.
- 2) There is no corroboration in the evidence of P.W.1 to P.W.3 in all material particulars.
- 3) It is difficult to accept the version of the plaintiff that he lent a huge sum of Rs.8,00,000/- just by receiving a cheque (Ex.A1).
- 4) The cheque was issued for and on behalf of Sri Malaiaimman Traders and the plaintiff has not stated whether it is a proprietorship concern or a company.

8. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiff filed an appeal in A.S.No.233/2017, before the XVIII Additional Judge, City Civil Court, Chennai. The learned XVIII Additional Judge, City Civil Court, Chennai, after analysing the oral and documentary evidence on record, decreed the suit filed by the plaintiff,

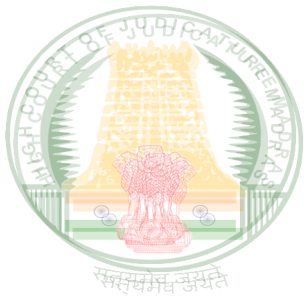


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vide his decree and judgment dated 22.03.2018 on the following grounds:

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- i. The trial Court has not at all applied its mind with regard to Sections 118 and 139 of the Negotiable Instruments Act while dealing with the genuineness of the Cheque (Ex.A1).
- ii. In the written statement, the defendant has not stated that the suit is not maintainable since it is not filed against Sri Malaianman Traders.
- iii. The trial Court had given undue importance to the minor discrepancies in the evidence of P.W.2 and P.W.3.
- iv. The defendant even after the receipt of the legal notice dated 27.08.2013 (Ex.A3) did not choose to send any reply to the plaintiff.
- v. The plaintiff has proved the issuance of the cheque (Ex.A1) by the defendant and therefore the suit filed by the plaintiff is to be decreed.



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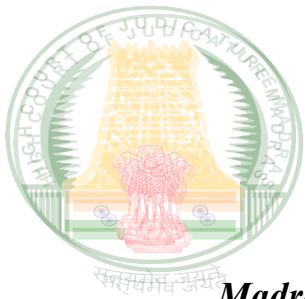
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9. Aggrieved over the decree and judgment passed by the first appellate court, the present second appeal is filed by the defendant.

10. Notice of motion was ordered in the year 2019 and after several adjournments, the second appeal is posted for hearing today.

11. Heard Mr.A.V.Arun, learned counsel appearing for the appellant and Mr.R.Thiyagarajan, learned counsel appearing for the respondent.

12. Mr.A.V.Arun, learned counsel appearing for the appellant contended that the defendant had actually issued the cheque in favour of one C.P.Vijayapraveen(P.W.3) and the said C.P.Vijayapraveen in his evidence had also deposed that he did not know whether the plaintiff lent a sum of Rs.8,00,000/- to the defendant. There are major contradictions in the evidence of P.W1 to P.W.3 and the trial Court had rightly observed that the plaintiff has not proved his case. He also relied on the decision of the Supreme Court in *Ashok Kumar Vs. Latha* reported in *AIR 2017*

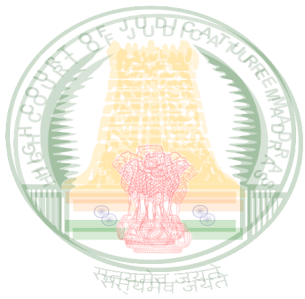


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Madras 161 and contended that the evidence of P.W.1 to P.W.3 would clearly show that passing of consideration is highly improbable as far as the present case is concerned and that the defendants had successfully rebutted the presumption under Section 118 of the Negotiable Instruments Act. He also relied on the decision of the Supreme Court in **Rajesh Jain Vs. Ajay Singh** reported in **(2023) 10 SCC 148** and contended that the standard of proof for discharging the burden to rebut the presumption under Section 118 of the Negotiable Instruments Act is only 'preponderance of probabilities' and not 'beyond reasonable doubts'. The defendant in the instant case had shown that he issued the cheque only in favour of P.W.3 and therefore the suit filed by the plaintiff is liable to be dismissed.

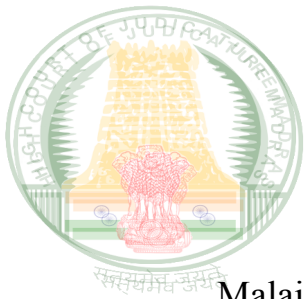
13. Per contra, Mr.R.Thiagarajan, learned counsel appearing for the Respondent contended that the first appellate Court by its well reasoned judgment had decreed the suit filed by the plaintiff and therefore, no interference is called for by this Court.



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14. It is pertinent to point out that the defendant had not denied his signature on the Cheque dated 10.07.2017 (Ex.A1). Once the signature is admitted there is a presumption under Section 118 of the Negotiable Instruments Act unless the contrary is proved. The specific contention of the defendant is that he issued a blank cheque in favour of one C.P.Vijayapraveen (P.W.3) after obtaining a loan of Rs.3,00,000/- from him. It is also his contention that though he repaid the entire loan amount together with interest, C.P.Vijayapraveen demanded more money from him and therefore he issued instructions to his bank officials to stop the payment. The said C.P.Vijayapraveen has been examined as witness on the side of the plaintiff and his evidence is that he introduced the defendant to the plaintiff for getting a loan but did not witness the plaintiff lending a sum of Rs.8,00,000/- to the defendant. His further evidence is that he subsequently came to know that the defendant received a sum of Rs.8,00,000/- from the plaintiff. This evidence of P.W.3 has been given undue importance by the trial Court to conclude that the plaintiff has not proved his case. The trial Court also dismissed the suit on the ground that the cheque was issued on behalf of Sri

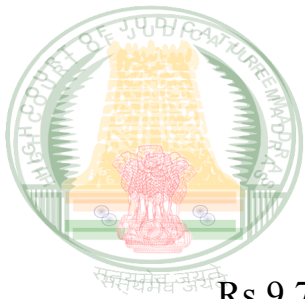


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Malaianman Traders. According to the trial Court, the plaintiff did not state in his plaint that whether Sri Malaianman Traders is a proprietorship concern or a firm or a company and the suit is bad for non-joinder of Sri Malaianman Traders.

15. At this juncture, it is pertinent to point out that in the written statement, the defendant had not pleaded that Sri Malaianman Traders is a company and therefore the suit filed against the defendant in his individual capacity is not maintainable. As already observed, the contention of the defendant is that he handed over the cheque to C.P.Vijayapraveen (P.W.3). However, C.P.Vijayapraveen (P.W.3) did not state that the cheque was issued in his favour and on the contrary his evidence was that he introduced the defendant to the plaintiff. Thus the defendant had not rebutted the presumption under Section 118 of the Negotiable Instruments Act. The decision relied on in *Ashok Kumar Vs. Latha* (cited supra) would not apply to the facts of the case. In that case, the defendant's husband requested to advance money to him. The defendant was not doing any business and therefore, advancing a sum of



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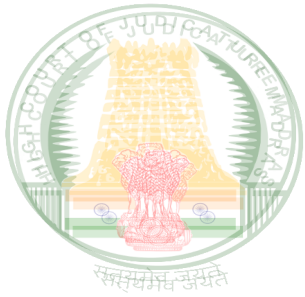
Rs.9,75,000/- to the defendant who is just a house wife was found to be doubtful. The facts of the present case are totally different. The first appellate Court had rightly observed that the plaintiff has proved his case. In fact, there is no substantial question of law involved in the present case.

16. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 22.03.2018 passed in A.S.No.233/2017, on the file of the XVIII Additional Judge, City Civil Court, Chennai, is upheld.
- iii. The suit in O.S.No.5511/2013, on the file of the V Assistant Judge, City Civil Court, Chennai, is decreed with costs.

27.02.2025

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R. HEMALATHA, J.
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To

1. The XVIII Additional Judge, City Civil Court, Chennai
2. The V Assistant Judge, City Civil Court, Chennai.
3. The Section Officer, VR Section, High Court, Madras.

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