BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved On	Order Pronounced On
21.10.2024	20.02.2025

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No.518 of 2011

and

M.P.(MD)Nos.1, 2 & 3 of 2011

1.V.Natarajan

2. N.Chandra ...Appellants/Appellants/Defendants

--Vs--

G.Kamaraj ...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree, dated 30.07.2010 passed in A.S.No.6 of 2009 on he file of the Additional District Judge (Fast Track Court), Virudhunagar, concurring the Decree and Judgment dated 30.10.2008 passed in O.S.No.8 of 2005 on the file of the Learned Subordinate Judge, Virudhunagar.

For Appellants : M/s.P.Malini

For Respondent : Mr.P.Athimoolapandian

JUDGMENT

This Second Appeal is filed by the defendants against the Judgment and Decree, dated 30.07.2010 passed in A.S.No.6 of 2009 on the file of the Additional District Judge (Fast Track Court), Virudhunagar, confirming the Decree and Judgment dated 30.10.2008 passed in O.S.No.8 of 2005 on the file of the Learned

Subordinate Judge, Virudhunagar.

2. The defendants in the suit are the appellants herein and the plaintiff in the suit is the respondent herein. For the sake of convenience, the parties shall be referred as plaintiff and defendants as per the ranking in the suit.

3. The brief facts as stated in the plaint is that the defendants 1 & 2 are husband and wife. The defendants for their urgent family need had borrowed a sum of Rs.90,000/- on 29.02.2004 from the plaintiff and executed the suit promissory note agreeing to repay the same with interest at the rate of 12% per annum. Whenever the plaintiff demanded the amount, the defendants were delaying the payments and giving evasive replies. The defendants are not entitled to the benefits for Debit Relief Act. Hence, the suit was filed.

4. In the written statement the defendants had denied the averments stated in the plaint and submitted that it is false to state that the defendants had borrowed Rs.90,000/- from the plaintiff on 29.02.2004 for the personal needs, it is totally false to state that the defendants executed a promissory note for the same. The defendants had never borrowed any amount from the plaintiff and not executed the promissory note as stated by the plaintiff. Actually the 1st defendant had borrowed Rs.40,000/- only and for the same interest was calculated for three months at five paise per month and had paid Rs.2000/-. Then the 1st defendant had

paid the entire amount of Rs.40,000/- along with applicable interest. Thereafter plaintiff demanded more interest, hence dispute arose between the plaintiff and defendants. Due to enmity, the plaintiff had created a promissory note and had filed the present suit. The signature in the alleged promissory note is falsely affixed by the plaintiff. The said promissory note is created by the plaintiff. The defendants had never borrowed Rs.90,000/- at any point of time and for the same had never executed the suit promissory note. Due to dispute in claiming higher interest, enmity developed among them, hence the suit is filed. There is no cause of action, the alleged cause of action is imaginary and prayed to dismiss the suit.

5. The plaintiff had marked Ex.A1 and had examined PW1 and PW2. The defendants had filed two documents in Ex.B1 and Ex.B2 and examined DW1 and DW2. One Court witness was examined and Ex.C.1 & C2 were marked. Based on the above pleadings and documents, the Trial Court had framed the following issues:

1) Whether the suit promissory note is true and valid?

2) Whether the plaintiff is entitled to recover the suit amount?

3) To what relief?

After considering the pleadings, evidence and deposition the Trial Court has decreed the suit.

6. Against the same, the defendants have preferred an appeal suit in A.S.No.6 of 2009 and the following points for consideration was framed by the Appellate Court:

1. Whether the decree and judgment of the Trial Court have to be set aside?

2. To what other relief the appellant is entitled to?

After considering the points for consideration the Appellate Court had dismissed the appeal. Aggrieved over the same, the defendants had preferred the present Second appeal suit.

7. In Appeal Suit the defendants had filed I.A.No.6 of 2010 in A.S.No.6 of 2009 to receive the additional documents. In the said petition the plaintiff had contended that he did not affix signature in the Ex.A1 promissory note, hence the alleged signature in the suit promissory note and the admitted signature in the additional documents ought to be compared. Hence, prayed to send the documents to Government Expert to find out the genuineness of the suit Promissory Notice. While considering the said interlocutory application the Appellate Court had formulated the following points for consideration:

1. Whether the petition have to be allowed?

2. To what relief the petitioner is entitled to?

8. In the said petition the contention of the petitioner is that the private expert has filed the report, but the private expert had not conducted the seven types of tests, only the government expert would conduct the said seven types of tests. Therefore, the plaintiff had prayed to conduct the same through government expert. After considering the same the Appellate Court had held that already the Ex.A1 promissory note was referred to expert based on the prayer of the defendant, expert report was marked after examining the expert, thereafter the Trial Court had come to the conclusion that the signature is that of the 1st defendant. Even though the expert had opined that the signature of the 2nd defendant varies, but based on the expert opinion that the 1st defendant's signature is same, the Trial Court had held that the suit promissory note was genuine and decreed the suit.

9. Aggrieved over the same the present second appeal is filed raising the following substantial questions of law:

i. When the defendants denied the very execution of the promissory note, the presumption under section 118 of Negotiable Instrument Act was rebutted the burden lies upon the plaintiff to prove that the suit pro note was executed by defendants for valuable consideration whether the same was proved as per Law?

ii. Whether the plaintiff proved the execution of pro note? iii. Whether the findings of Courts below are based upon evidence and law?

10. In order to consider the 1st substantial question of law, the provision of section 118 is essential and the same is extracted hereunder:

118. Presumptions as to negotiable instruments.—Until the contrary is proved, the following presumptions shall be made:

(a) of consideration:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date:—that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance:—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer:—that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements:—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear then on;

(f) as to stamp:— that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course:—that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

11. In the present case the contention of the plaintiff is that the defendants had executed the suit promissory note for the valuable consideration of Rs.90,000/-. But the defendants deny the allegation and submitted that the promissory note for Rs.90,000/- was never executed. Since there is presumption in favour of the plaintiff under section 118 of the NI Act, the defendant had taken steps

to prove the suit promissory note is not genuine. The private expert opinion was submitted and the expert was also examined before the Trial Court, wherein it is opined that the 2nd defendant signature varies but the 1st defendant is the same. When the opinion states that the 2nd defendant signature varies, then it ought to be taken the presumption in favour of plaintiff is no longer available. It is sufficient to prove if one of the defendants' signatures varies, then the burden would be shifted to plaintiff to prove the same. Both the Courts below have recorded that the 2nd defendant signature varies, but had erred in taking that the 1st defendant's signature alone and had come to the conclusion that the promissory note is genuine. Therefore, this Court is of the considered opinion when 2nd defendants signature varies as per the expert opinion, then the initial presumption in favour of the plaintiff is not available to the plaintiff and the burden is shifted to the plaintiff to prove the genuineness of the promissory note. This Court is also of the considered opinion that the expert opinion may states that the 1st defendant signature is same, but the same would not give the plaintiff the protection of presumption, when the 2nd defendant signature varies. Further when there is no clear evidence in favour of the plaintiff, then it always better to analyze further evidence. In such circumstances, it is incumbent on the Courts to scrutinize further evidence.

12. The PW 1, who is the plaintiff is in the suit had admitted in his cross

examination that in the plaint he has not been mentioned when and how much the plaintiff had paid to the defendants. Further the plaintiff had stated that he had withdrawn entire amount from the benefit fund account which stands in the name of the plaintiff's daughter, but partially retracted the said statement and stated part amount is from benefit fund account and part amount which was already available with him. The relevant portion of PW 1 cross examination is extracted hereunder:

> தாவா புரோநோட்டை எழுதியவர் யார் என ஞாபகமில்லை. புரோநோட்டில் யார் சாட்சி கையெழுத்து போட்டுள்ளார்கள் என்று ஞாபகமில்லை. நவரத்னமாலா சேவிங்ஸிலிருந்து நான் பணம் எடுத்து கொடுத்தேன். அது என் மகளுடைய அக்கௌண்ட். என் மகளுக்கு நான் தான் கார்டியன். பாண்டை லோன் மூலம் எடுத்தேன். சாட்சி மீண்டும் கொஞ்சம் பாண்டு மூலமும், கொஞ்சம் கையிலிருந்தும் கொடுத்தேன் என்கிறார். பாண்டு மூலம் எடுத்ததற்கு ஆவணம் உள்ளது.

From the above it is evident that the plaintiff had not stated when and how the consideration was passed on and has not filed any evidence to this effect. Further it is seen that the plaintiff had filed only Ex.A1 suit promissory note alone. But had not filed any statement of accounts to prove consideration was passed on. Hence, no evidence available to corroborate the suit promissory note. Further the plaintiff had not stated in the plaint regarding the withdrawal of amount from the benefit fund account. And has also not produced any documents regarding the benefit fund account, withdrawal of amount etc. In the circumstances of the case, the presumption under section 118 of NI Act that consideration had passed on cannot be granted to the plaintiff and the same is not available to the plaintiff.

13. On the other hand, the contention of the defendants is that the defendants had borrowed Rs.40,000/-, for which cheque was issued. Since the cheque was not cleared, the plaintiff had filed criminal case under section 138 of NI Act. In which the plaintiff had paid Rs.75,000/- along with interest and on such payment the said criminal case was withdrawn by the plaintiff. In order to prove this contention, the defendants had filed petition in MP(MD)No.1 of 2011 to receive the following additional documents:

i. Summons issued to the 1st defendant

ii. Summons issued to the 2nd defendant

iii. Complaint copy filed in C.C.No.176 of 2004

iv. Judgment in C.C.No.176 of 2004 dismissed as withdrawn.

v. Order passed in Cr.M.P.No.647 of 2006 whereby permission sought to withdraw the case and the same was granted.

In the complaint preferred by the plaintiff it is stated that on 01.07.2004 the defendants borrowed Rs.75,000/-. Since the same was not repaid, the 2nd defendant had issued cheque for Rs.75,000/- dated 02.08.2004, but the same was returned as "insufficient funds", hence the case under section 138 of NI Act. On perusal of sequence of dates, it is seen that the plaintiff had paid Rs.40,000/- on 01.02.2004, since the same was not paid the defendants had issued cheque of Rs.75,000/- on 01.07.2004 in order to assure repayment. It is pertinent to state the said amount of Rs.74,000/- is calculated along with interest for the principal amount Rs.40,000/-. When the cheque was returned for insufficient funds, the plaintiff had filed criminal case. The case was pending for two years. Thereafter, the plaintiff had filed criminal miscellaneous petition in Cr.M.P.No.647 of 2006 seeking permission to withdraw the case since the defendants had repaid the amount of Rs.75,000/- and the said petition was allowed vide order dated 17.02.2006. Thereafter, the Criminal Court had granted permission to withdrawn the main case in C.C.No.176 of 2004 vide order dated 17.02.2006 and accordingly the criminal case was allowed to be withdrawn and the defendants was acquitted from the criminal case.

14. The plaintiff had not clearly stated whether the defendants had borrowed Rs.40,000/- and again had borrowed Rs.90,000/-. The plaintiff had not stated these two are independent transactions. In short there is bereft of details in the plaint. In such circumstances, the contention of the defendants that they borrowed Rs.40,000/-, the same was paid along accrued interest to the tune of Rs. 75,000/- in the criminal case, but the suit is filed claiming more interest is

acceptable. The consequences of events also prove the same. Therefore, this Court is of the considered opinion that the defendants had already paid the borrowed amount. And in fact, that is the reason the plaintiff had not clearly stated regarding the passing of consideration for execution of the suit promissory note. When the plaintiff failed to prove passing of consideration, therefore, this Court is of the considered opinion that the consideration was not passed in the present transaction, consequently the presumption under section 118 of NI Act is not available to the plaintiff.

15. The Courts below had rendered the judgment based on the mistakes of the defendants. Even though the initial presumption is available to the plaintiff under section 118, when the defendants had discharged the burden of proof by producing the additional documents in M.P.(MD)No.1 of 2011, then the burden in on the plaintiff to prove his case. As held supra, the plaintiff had not pleaded and proved that consideration had passed on, then the claim of the plaintiff is false. Moreso, when the defendants had paid the amount along with interest, hence the claim in the present suit has no cause of action at all.

16. For the reasons stated supra, all the substantial questions of law are answered in favour of the defendants. The second appeal is allowed by setting aside the Judgment and Decree, dated 30.07.2010 passed in A.S.No.6 of 2009 on the file of

the Additional District Judge (Fast Track Court), Virudhunagar, confirming the Decree and Judgment dated 30.10.2008 passed in O.S.No.8 of 2005 on the file of the Learned Subordinate Judge, Virudhunagar. No costs. The civil miscellaneous petition filed in M.P.(MD)No.1 of 2011 is allowed and the M.P.(MD)No.2 of 2011 and M.P.(MD)No.3 of 2011 are closed.

(*)"17. The petitioner is permitted to withdraw the 25% of the decreed amount which deposited by him before the Subordinate Court, Virudhunagar, along with the accrued interest, if available."

Sd/-
20.02.2025

Sd/-
Assistant Registrar (CS.III)

(*)Incorporated as per order of this Court dated 04/06/2025 made in SA (MD) No.518 of 2011

// True Copy //

/03/2025
Sub Assistant Registrar
(CS-I/II/III/IV)

KSA

To

(*)To be substituted to the order which already despatched on 25/03/2025

1. The Additional District Judge (Fast Track Court),
   Virudhunagar.

2. The Subordinate Judge,
Virudhunagar.

3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.ATHIMOOLAPANDIAN, Advocate(SR-11327[F]dated 21/02/2025)

+1 CC to M/s.P.MALINI, Advocate (SR-11069[F] dated 20/02/2025)

S.A(MD)No.518 of 2011
20.02.2025

SL(18.03.2025)/ 14P/ 7C
Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.

AVK(17.06.2025)/ 14P/ 7C
Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.