BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.01.2025
PRONOUNCED ON : 16.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHIL KUMAR

A.S.(MD)No.75 of 2021

S.Sureshkumar .. Appellant

-Vs-

K.Nakesh ..Respondent

Prayer: Appeal Suit filed under Section 96 of the Civil Procedure Code, 1908, against the judgment and decree dated 26.10.2018, passed in O.S. No. 101 of 2011 on the file of the Principal District Court, Kanyakumari.

For Appellant : Mr.M.P.Senthil

For Respondent : Mr.M.Senthilkumar

JUDGMENT

[Judgment of the Court was made by **RMT.TEEKAA RAMAN, J.]**

The defeated defendant is the appellant herein.

2. The plaintiff was the Teacher, and the defendant was his student.

3. The respondent/plaintiff filed a suit for the recovery of Rs. 34 lakhs along with interest in O.S. No. 101 of 2011 before the learned Principal District Judge, Kanyakumari, based on eight cheques. After trial, the suit was decreed, leading to this appeal.

4. The plaint proceeds on the basis that the defendant was known to the plaintiff, as the plaintiff was the defendant's teacher. The defendant was employed as a Manager at Muthoot Finance Corporation, and the plaintiff had made a Fixed Deposit. The defendant requested Rs. 15 lakhs from the plaintiff for the purpose of running his business, promising either to repay the amount or to purchase land in the plaintiff's name. He subsequently borrowed various amounts, the details of which are given below :-

No	***Date of borrowal***	***Amount***	***Cheque No.***	***Cheque Date***	***Cheque Amount***	***Date of Dishonour***
1.	12.08.2010	4,00,000.00	SBI 902129	01.04.2011	4,00,000.00	24.05.2011
2.	12.08.2010	2,50,000.00	SBI 902130	01.04.2011	2,50,000.00	24.05.2011
3.	20.10.2010	15,00,000.00	Dhana Lakshmi 573171	21.04.2011	15,00,000.00	25.05.2011
4.	18.11.2010	5,00,000.00	SBI 902132	18.12.2010	5,00,000.00	14.05.2011
5.	19.11.2010	2,00,000.00	SBI 902134	20.12.2010	2,00,000.00	14.05.2011

No	Date of borrowal	Amount	Cheque No.	Cheque Date	Cheque Amount	Date of Dishonour
6.	29.11.2010	4,00,000.00	SBI 902137	28.12.2010	1,00,000.00	14.05.2011
7.	08.02.2011	3,00,000.00	Dhana Lakshmi Bank 509911	01.04.2011	3,00,000.00	25.05.2011
8.	08.02.2011	1,50,000.00	Dhana Lakshmi Bank 509911	01.04.2011	1,50,000.00	25.05.2011
Total		**34,00,000.00**	**8 cheques**		**34,00,000.00**	

5. The defendant has filed a written statement admitting the cheques and the signatures on them .

6. The defendant disputes that he borrowed a sum of Rs. 15 lakhs on 20.10.2010 and specifically denies this claim, stating that the amount was given only as security for previous loans. However, he admits to borrowing Rs. 19 lakhs. In short, out of the total suit claim of Rs. 34 lakhs, except for the amount of Rs. 15 lakhs under Ex.A6, the defendant has admitted to Rs. 19 lakhs.

7. During the trial, the plaintiff was examined as P.W.1, and the defendant was examined as D.W.1. The cheques were marked as Exs. A1 to A8, while Exs. A9 to A12 were the bank's intimations regarding the dishonor of the cheques due to insufficient funds. Ex.A13 pertains to the plaintiff's Fixed Deposit with Muthoot Finance, Nagercoil, Meenakshipuram Branch. The plaintiff's bank statements were marked as

Exs. B13 to B16.

8. During the pendency of the suit, the plaintiff filed an I.A. under Order 38 Rule 5 of the C.P.C., seeking attachment before judgment, which was allowed. The C.M.A. and C.M.P. were dismissed. After the trial, the suit was decreed, with Ex.A6 being disputed.

9. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent, and perused the materials available on record .

10. The learned counsel for the respondent draws our attention to the cross-examination of P.W.1, specifically to Question Nos. 31, 32, 33, 35, 36, and 37 .

11. The learned counsel for the appellant/defendant contended that Section 20 of the Negotiable Instruments Act is not applicable to the cheque and that the plaintiff did not issue any pre-suit notice. Furthermore, the signature on the disputed Ex.A6 cheque was not compared with the signatures on the other cheques, Exs.A1 to A5. Hence, it was argued that the trial court's order granting the decree in toto is unsustainable in law.

12. Per contra, the learned counsel for the respondent/plaintiff stated that the defendant, in his written statement, had specifically admitted the cheques and the signatures contained therein. Furthermore, the defendant did not question the plaintiff's financial capacity during the cross-examination of P.W.1. The plaintiff had also provided clear answers to the relevant questions. Hence, the learned counsel supported the judgment of the trial court.

13. After hearing both parties, the following points arise for consideration :-

(i) Whether the respondent/plaintiff has discharged the initial burden upon his shoulders?

(ii) Whether the respondent/plaintiff was entitled to fill up the cheque, Ex.A6, that was signed by the defendant?

(iii) Whether Section 20 of the Negotiable Instruments Act is applicable to the cheque in question?

(iv) Whether the order of the trial court is sustainable in law?

(v) To what other relief, if any, is the plaintiff entitled?

14. The suit claim is for a sum of Rs. 34 lakhs, out of which the defendant has admitted liability for Rs. 19 lakhs. However, the defendant disputes Ex.A6 for the remaining Rs. 15 lakhs. The appellant/defendant contends that Ex.A6 was not supported by consideration and was given only as security for previously borrowed amounts. He further asserts that no amount was received on the date of issuance of Ex.A6.

15. The evidence of P.W.1 and D.W.1 has been perused.

16. D.W.1, both in his pleadings and in his evidence, admitted the execution of the promissory note .

17. The financial capacity of the plaintiff was not questioned by the defendant in the written statement. Additionally, the defendant did not deny the plaintiff's financial capacity to pay the suit amount in his pleadings.

18. In paragraph No. 4 of the written statement, the defendant stated that he had signed a blank cheque and handed it over to the plaintiff, who later filled it up. Once the execution of the cheque is admitted, the plaintiff is entitled to the statutory presumption under the Negotiable Instruments Act.

19. The learned counsel for the defendant argued that Section 20 of the Negotiable Instruments Act is not applicable to cheques. However, we are unable to accept and uphold this contention.

20. A banker's cheque is defined under the Negotiable Instruments Act, and Section 20 is applicable to the cheque in question. When the appellant/defendant signed a blank cheque and handed it over to the plaintiff, he effectively authorized the plaintiff to fill in the details. Therefore, we have no hesitation in holding that Section 20 of the Negotiable Instruments Act applies to the cheque in question.

21. During the cross-examination of D.W.1, he admitted that he had not issued any instructions to stop the payment. Furthermore, he did not deny the financial capacity of the plaintiff during his chief examination as D.W.1. Similarly, no suggestion was made during the cross-examination of P.W.1 that the Rs. 15 lakhs or Ex.A6 cheque was fabricated, which assumes significance.

22. Upon perusal of Question Nos. 31, 32, 33, 35, 36, and 37, we find that the plaintiff has categorically denied all the suggestions made by the defendant. The differences in the size of the letters, the color of the letters, and the smaller size of the letters compared to other cheques were all denied. Additionally, the use of **"lacs"** instead of **"lakhs"** was also clarified by the plaintiff.

23. At this juncture, it is relevant to note that the plaintiff is none other than the school teacher of the defendant. P.W.1 denied that Ex.A6 is a fabricated document, and since the issuance of Ex.A6 and the signature therein are admitted by the defendant, the claim of fabrication does not hold water. Regarding the plaintiff's income, Question No. 11 assumes significance, as the plaintiff stated that he earns Rs. 60,000 per month from agricultural and rental income. Additionally, he has made a Fixed Deposit in the same Muthoot Finance Corporation, Nagercoil, Meenakshipuram Branch, where the appellant/defendant is employed as a Manager.

24. It is evident from the lower court records that P.W.1 was recalled upon application and submitted Exs.A14 to A20, which establish that the plaintiff is a man of means through deposit certificates. In fact, as per Ex.A14, the very same Muthoot Finance Corporation, where the defendant is employed, is a tenant in a building owned by the plaintiff.

25. On the application filed by the defendant for the further cross-examination of P.W.1 on 21.08.2018, he categorically stated that "நான் வருமான வரி கணக்கை தாக்கல் செய்துள்ளேன். மேற்படி வருமானவரி கணக்கில் நான் பிரதிவாதிக்கு பணம் கொடுத்துள்ள விவரம் காட்டப்பட்டுள்ளது. டெப்பாசிட் என்று காட்டப்பட்டிருக்கும். ஆனால் பிரதிவாதியின் பெயர் காட்டப்பட்டிருக்காது" assumes significance.

26. Hence, the trial court has rightly concluded that the plaintiff has successfully discharged the initial burden upon his shoulders. As a result, the presumption is in favor of the plaintiff, and it is upon the defendant to discharge the onus of proof to the level of preponderance of probabilities.

27. In an attempt to discharge the burden of proof, the defendant filed an application to recall P.W.1 for cross-examination. However, he obtained a negative answer, as extracted supra. Additionally, Exs.A14 to A17 were marked to establish that the plaintiff was a man of means. At this juncture, the evidence of P.W.1 assumes significance.

28. In the cross-examination of D.W.1, he categorically admitted that eight cheques were involved in this case. He further acknowledged that all eight cheques belonged to him and that the signatures contained therein were his.

29. There is specific evidence that cheques were issued on their respective dates. However, the individual admitted that he could not recall the exact dates on which the cheques were issued. During cross-examination, he further admitted that a cheque was issued for each amount borrowed. As a result, the trial court disbelieved the added claim that Ex.A6 was issued for a previously borrowed amount rather than at the borrower's request. Consequently, the court concluded that the suit claim is proved.

30. In view of the clear admissions made by D.W.1 during cross-examination that he issued a cheque for each amount borrowed, his subsequent attempt to modify his version by adding an explanation was not accepted. Consequently, the trial court rejected the defendant's case.

31. Upon re-appreciation of the evidence, we find that the trial court's finding is well considered and well merited, requiring no further interference at the appellate stage. Accordingly, **the Appeal Suit is dismissed.** We also find that the defendant has miserably failed to rebut the presumption and, consequently, is liable to pay the amount. No costs.

[T.K.R.,J.] [N.S., J.]
16.04.2025

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To

1.The Principal District Court, Kanyakumari.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

RMT.TEEKAA RAMAN, J.
AND
N.SENTHIL KUMAR, J.

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Judgment made in
A.S.(MD)No.75 of 2021

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