

A.S(MD)No.46 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.10.2024

Pronounced on : 10.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

**A.S(MD)No.46 of 2024
and
C.M.P(MD)No.3066 of 2024**

K.Kamaraj

... Appellant/Defendant

Vs.

B.Rajasekaran

...Respondent/Plaintiff

PRAYER :-

This Appeal Suit is filed under Section 96 r/w Order 41 of the Civil Procedure Code, to set aside the impugned judgment and decree, dated 01.11.2023 passed in O.S.No.12 of 2019 on the file of the Principal District Judge, Tiruchirapalli.

For Appellant : Ms.S.Mahalakshmi

For Respondent : Mr.M.Muthu Geethayan



WEB COPY

A.S(MD)No.46 of 2024



JUDGMENT

This Appeal Suit is filed against the judgment and decree, dated 01.11.2023 passed in O.S.No.12 of 2019 on the file of the learned Principal District Judge, Tiruchirappalli.

2. The appellant is the defendant in O.S.No.12 of 2019 on the file of the Principal District Court, Tiruchirappalli. The respondent is the plaintiff in that suit. The respondent/plaintiff filed the suit for recovery of money based on the promissory note against the appellant/defendant. The appellant/defendant contested the suit. The suit was decreed by the trial Court.

3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4. The brief facts are as below:

(a) The case of the plaintiff is that the defendant borrowed Rs.9,00,000/- (Rupees Nine lakhs only) from the plaintiff on 02.01.2018 and executed a promissory note in favour of the plaintiff agreeing to repay the same with interest at 1% p.m. After borrowal of loan, the defendant has not repaid any amount either towards principal or interest,



in spite of several demands made by the plaintiff. Hence, the plaintiff has filed the suit.

WEB COPY

(b) The case of the defendant is that the defendant asked loan of Rs.2,50,000/- each from the plaintiff for his colleagues one Selvi and Venkatesan for their urgent medical and family expenses. Accordingly, the plaintiff has advanced loans to them. At that time, the plaintiff obtained signature of defendant in an unfilled Rs.50/- stamp paper and white papers. After two months, the husband of Selvi died and the aforesaid Venkatesan had availed loans upto Rs.60 lakhs from various persons. However, the defendant has repaid Rs.9,00,000/- till November, 2017 towards loan and demanded return of signed Rs.50/- stamp paper and white papers and so, the defendant lodged a police complaint. But, the plaintiff has not returned them. By making use of them, the plaintiff has falsely filed this vexatious suit.

5. The trial Court framed the following issues upon the pleadings of both parties:

"(1) Whether the defendant had borrowed a loan of Rs.9,00,000/- from the plaintiff on 02.01.2018 and executed the suit promissory note?

(2) Whether the plaintiff is entitled to the suit claim?



(3) To what other reliefs, the plaintiff is entitled

to?"

WEB COPY

6. The dispute went to trial and during trial, the plaintiff examined himself as P.W.1 and also examined the 2nd attesting witness as P.W.2 and marked Ex.A.1. The defendant entered into the witness box and examined himself as D.W.1 and also examined D.W.2, and marked Ex.B.1.

7. On appreciation of evidence and the submissions made on behalf of the parties, the trial Court has chosen to decree the suit holding that the plaintiff has established his case.

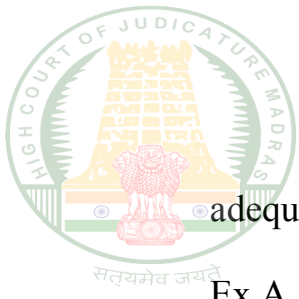
8. The judgment and decree of the trial Court is under challenge in this Appeal Suit.

9. The learned counsel for the appellant/defendant has argued that the defendant is working in railway, he never obtained any loan from the plaintiff and never executed any pronote. He approached the plaintiff asking loan for his colleagues Selvi and Venkatesan, who obtained loan of Rs.2,50,000/- each from the plaintiff. The plaintiff obtained the



signature of the defendant in stamp paper and white papers.

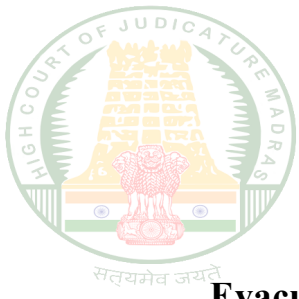
The defendant repaid Rs.9,00,000/- towards the loan obtained by the said Selvi and Venkatesan and demanded the return of signed stamp paper and white papers. Since the plaintiff has not returned, the defendant lodged a police complaint before the Assistant Commissioner of Police, Trichy where the plaintiff was enquired. The plaintiff has given a statement during police enquiry. The defendant disputed the execution of Ex.A.1 - Pronote. Whiles, the plaintiff has to prove the execution of pronote and passing of consideration thereon. It is a settled principle of law that in cases involving financial transactions, especially promissory note, the credibility and impartiality of witnesses play a crucial role in determining the genuineness of the transaction. P.W.2 is the relative of the plaintiff and the alleged scribe of pronote is the father of the plaintiff. The plaintiff has not proved his means to lend money. The plaintiff has also not filed any income tax return to prove the means or to prove the advancement of the loan to the defendant. No independent witness was examined to prove the execution of pronote. Mere possession of a pronote does not establish a valid financial transaction. The plaintiff who asserts the existence of a fact, the burden is on the plaintiff to prove the execution of the pronote and the transaction. But the plaintiff failed to do so and the trial Court has not presumed its correctness without any



adequate evidence. The defendant disputed his signature in the Ex.A.1 - Pronote. Hence, the learned counsel requested to remand back for obtaining expert opinion U/s.73 of the Evidence Act. In support of his contention, the learned counsel relied on the following citations:

1) **(2018) 2 CTC 225 (Ashok Kumar vs, Mrs.Latha)**, wherein it is observed and held as follows:

"17.The circumstances brought out in the cross-examination of P.W.1 clearly show that the defendant has dislodged the legal presumption. Therefore, the burden again shifts on the plaintiff to prove the passing of consideration. Absolutely there is no materials and evidence available on record to show that the plaintiff had capacity to pay the huge amount of Rs.9,75,000/- at the relevant time. No bank account or passbook has been filed to show that in fact he had capacity to mobilize such huge funds. Ex.B1 is the publication issued by one Vetrivel against the defendant in respect of some agreement. This publication was issued on 30.4.2010. Ex.B2 is also a publication issued by the defendant as against Ex.B1. Ex.B3 has been filed to show that one Sampath said to be close friend of Vetrival also filed another case against the defendant. Though these documents were not germane for consideration the admission of P.W.1 that Vetrivel is also interested in the case clearly probabilize the defence theory that the plaintiff is only name lender and he has failed to prove the passing of consideration. Therefore, Ex.A1 cannot be enforceable in the Court of law. The points are answered accordingly."



2) 1961 AIR SC 1316 (**Kundan Lal Rallaram vs. Custodian,**

Evacuee Property), wherein it is held by the Hon'ble Supreme Court as follows:

“Section 118 lays down a special rule of evidence applicable to negotiable instrument. The presumption is one of law and thereunder a court shall presume inter alia, that the negotiable instrument or the endorsement was made or endorsed for consideration. In effect, it throws the burden of proof of failure of consideration on the maker of the note or the endorser, as the case may be”.

3) (2020) 3 CivCC 608 (**E.Vishnu Namoothiri vs,**

V.Balachandran), wherein it is observed as follows:

"3.The expression 'may be compared' in the main portion of Section 73 and the expression 'for the purpose of enabling the court to compare' incorporated in the second paragraph would amply show that a comparison under the section is only a rule of caution and prudence and cannot be substituted in the place of proof. The finding rendered by both the courts below on the sole basis of comparison under Section 73 of the Evidence Act regarding the due execution of disputed promissory note cannot be sustained. The non-examination of an independent witness and absence of an expert opinion under Section 45 of the Evidence Act are fatal to the case of the plaintiff regarding proof of execution of disputed promissory note."



4) 2012 (3) MLJ 658 (Thangarasu vs. Arumugam), wherein it is observed as follows:

WEB COPY

"39. In short, in regard to the manner in which the Suit Pronote came into existence, as to who is the correct person who has recited the versions of Suit Pronote, there is no cogent, consistent, convincing and acceptable evidence of witnesses, i.e. P.Ws.1 to 4. If really, the execution of Ex.A1-Pronote has been made by the Respondent/Plaintiff as projected by the Appellant/Plaintiff, then the witness would have clearly spelt out in a cogent and convincing manner without any doubt. But, in the instant case on hand, the witnesses P.Ws.1 to 4 have not only substantially differed from their evidence in regard to the Revenue Stamps being found in the Suit Pronote and also as to who has recited the details of the Suit Pronote, viz., whether the Appellant/Plaintiff or the P.W.4-Scribe. In this regard, the evidence of P.W.4, Scribe cannot be brushed aside so easily because of the reason that he himself has deposed in his evidence that in the Suit Pronote, recitals have been made mention by the Appellant/Plaintiff.

40. There is no reason to discredit his evidence in this regard by this Court. Therefore, the shroud, cloud or mist surrounding the execution of Ex.A1-Pronote have not been sufficiently discharged on the side of the Appellant/Plaintiff to the satisfaction of this Court. As stated already, the initial onus of execution of the Pronote in favour of the Appellant/Plaintiff will have to be established by the Appellant/Plaintiff himself to the effect that the Pronote has been executed



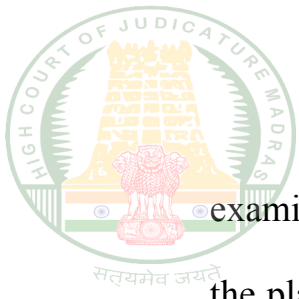
WEB COPY



A.S(MD)No.46 of 2024

by the Respondent/Defendant. Therefore, the normal presumption as per Section 118 of the Negotiable Instruments Act is that Ex.A1 has been executed by the Respondent/Defendant. In the present case, when it has been rebutted by the Respondent/Defendant, the same has not been proved to satisfy the judicial conscience of this Court and the transaction namely, Ex.A1 Pronote, in the considered opinion of this Court, suffers from want of onus in regard to the execution of the document in issue. Looking at from that perspective, this Court comes to an irresistible conclusion that both the Courts have not committed any material irregularity or patent illegality in overlooking the presumption under Section 118 of the Negotiable Instruments Act and the Substantial Question of Law No.1 is answered against the Appellant/Plaintiff.

10. Per contra, the learned counsel for the plaintiff submitted that the defendant has not specifically denied Ex.A.1 - Pronote in his written statement. According to Ex.B.1, both sides admitted to work out remedy before the Civil Court. The plaintiff has not executed any statement during police enquiry that he has obtained the signature of the defendant in stamp paper and white papers. The police complaint was lodged only on the alleged attack against the defendant. The defendant has not issued any legal notice to return back the alleged unfilled signed stamp paper. The plaintiff has established the execution of Ex.A.1 - Pronote by examining himself and P.W.2 - attesor. The wife of the plaintiff was



WEB COPY

examined as D.W.2, who categorically proved the financial capacity of the plaintiff. The defendant has not raised any plea regarding interested witnesses and regarding filing of income tax return by the plaintiff during trial Court proceedings, it is only an afterthought in this appeal. Even as per appeal grounds, the defendant admitted the execution of pronote, specifically grounds Nos.6 and 11. The defendant admitted in his evidence about the source of income of the plaintiff. The defendant admitted his signature but stated that he put his signature in stamp paper and white paper. Though the defendant now disputed his signature he had not taken steps to prove the same for obtaining handwriting expert opinion. No need for remand back. Since the signature on the pronote is proved, the presumption under Section 118 of the N.I Act would come into operate. The plaintiff has proved the presumption whereas the defendant failed to disprove that presumption by letting in rebuttal evidence. Therefore, the learned counsel submitted that there is no necessity to interfere with the finding of the trial Court and he further prayed to dismiss the Appeal Suit.

11. The point for consideration in this Appeal Suit is;

*"Whether Ex.A.1 is not executed by defendant
and it is a forged one?"*

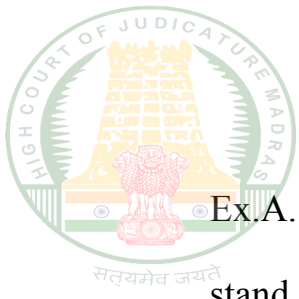


WEB COPY

12. The Point:-

Heard both sides and material records were perused. The defendant admitted that he approached the plaintiff for loan for his colleagues Selvi and Venkatesh. At that time the defendant put his signature in an unfilled stamp paper and white paper. It is the case of the defendant that since Selvi and Venkatesh failed to repay, he settled the loan by paying Rs.9 lakhs till November 2017 and demanded the return of unfilled signed stamp paper and white paper. Though the defendant claimed that he filed the police complaint, on perusal of Ex.B.1, the police complaint was lodged by the defendant alleging the plaintiff assaulted him. On further perusal of Ex.B.1, it is clear that the plaintiff has not given any statement as if he obtained unfilled signed stamp paper from the defendant. Moreover, it is settled proposition that any statement before police enquiry in respect of civil nature did not have any credibility.

13. On perusal of the evidence of P.W.1, P.W.2 and D.W.2, it has clearly substantiated the execution of pronote and financial capacity of the plaintiff. On a totality of evidence adduced on both sides, it is clear that the defendant admitted his signature in an unfilled stamp paper and white paper and it is his case that by making use of them plaintiff created



Ex.A.1 - Pronote. However, the defendant has not substantiated his stand. Except himself as DW.1, no other independent witness was examined to substantiate his case. DW2's evidence strengthens the case of the plaintiff that the defendant received the money from the plaintiff including her money of Rs.4 lakhs.

14. In a suit filed for recovery of money based on the promissory note, once the plaintiff established the execution of the promissory note, the presumption under Section 118 of the N.I. Act will automatically arise. Once the presumption arises, the onus is shifted on the defendant to rebut the presumption by producing acceptable defence to prove that the instrument is not supported by consideration. On the defendant's side, suggestions were put to the plaintiff that the loan was advanced by the plaintiff from the funds of his father and wife. D.W.2 clearly deposed that she has given four lakhs to the plaintiff to lend money to the defendant. Once the defendant took risk and has gone to the extent of examining the plaintiff's wife as his side witness and she was not treated as hostile by the defendant, then her entire evidence is to be believed. The evidence of DW2 strengthens the plaintiff's case. So, as per the case of the defendant, it is established that the plaintiff has sufficient means. When the signature of the defendant on the pro-note is proved with oral



and documentary evidence, the presumption under Section 118 of the Negotiable Instruments Act clearly arises, until the contrary is proved.

WEB COPY

15. Section 118 of the Negotiable Instruments Act reads as follows:

“Section 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 thereon;

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



WEB COPY

A.S(MD)No.46 of 2024



(g) that holder is a holder in due course – that the holder of a negotiable instrument is a holder in due course;

In this case, the defendant contended that he signed an unfilled stamp paper. When the signature in the stamped paper is admitted and when the signatory states that at the time of putting his signature, it was blank, then the law permits the plaintiff to fill the pronote as if the plaintiff was authorised by the signatory of the pronote.

16. This Court had an occasion to deal with a similar issue, in the decision reported in **2002 (4) LW 360 (supra)**, wherein it has been held that when the signature in the pro-note is admitted and the signatory states that he executed the pro-note in blank, it is inchoate pro-note and held that the pronote is proved in the absence of any rebuttal evidence by the defendant, based on the decision of Hon'ble Supreme Court, which is held in paragraph No.7 reads as follows:

"7. The Supreme Court in Mohideenkutty Hajee Vs. Pappu Manjooran (1996 (8) SCC 586), following a number of earlier pronouncements, held that when a suit is based on a promissory note and the promissory note is proved to have been executed, Section 118(a) raises a presumption, until the contrary is proved, that the promissory note was made for consideration. In the case of Kundan Lal Vs. Custodian Evacuee Property (AIR 1961 SC 1316), the Supreme Court has held that the presumption



WEB COPY



A.S(MD)No.46 of 2024

under Section - 118 Negotiable Instruments Act is one of law and a Court shall presume, inter alia, that the Negotiable Instrument was made or endorsed for consideration. Therefore, the said Judgment of the learned Single Judge is not in conformity with the Judgment of the Supreme Court. Under Section-118 of the Negotiable Instruments Act, there is a valid presumption with respect to consideration also. Inasmuch as the learned Single Judge has held that there is no presumption for consideration, it is not a good law.”

17. The Hon’ble Supreme Court has again reiterated the decision in its judgment in Civil Appeal No.5854 of 2022, relied on by the respondent/plaintiff and held in paragraph Nos.6.1 and 7 that

“6.1.At this stage it is required to be noted that as per the provision of Section 118 of the NI Act there is a presumption of consideration in the negotiable instrument [Section 118(a)]. It is true that such presumption may be rebutted. However, no rebuttal evidence is led by the defendant. Under the circumstances also the High Court has erred in allowing the second appeal and quashing and setting aside the decree passed by the learned Trial Court confirmed by the learned First Appellate Court..

7.The judgment and decree passed by the learned Trial Court decreeing the suit confirmed by the learned First Appellate Court is hereby restored. The present appeal is accordingly allowed. No costs.”

Hence, when the plaintiff has filed the suit based on the pro-note and the pro-note also proved to have been executed, Section 118(a) raises

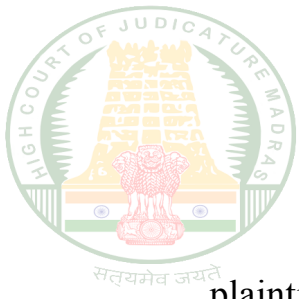


presumption, until the contrary is proved that the pro-note was made for consideration.

WEB COPY

18. In this case, the defendant has not let in any rebuttal evidence. Moreover, during the trial proceeding even the defendant had not taken any steps to get expert opinion regarding his signature. Only at the appeal stage, he raised contention that his signature is forged and so the appeal may be remanded back, which cannot be considered since it is an afterthought.

19. Moreover, the defendant admitted a loan of Rs.5,00,000/- for his friends Selvi and Venkatesh and it is his case that he repaid Rs.9,00,000/-. When the defendant admitted the borrowal of loan and he failed to prove the payment of any amount and discharge of the loan, then he is bound to pay the suit amount. Further, there is no pleading when the amount was paid, there is no pleading why he repaid Rs.9,00,000/- for the principal of Rs.5,00,000/- why he failed to examine his friends Selvi and Venkatesh to prove his case. The non examination of Selvi and Venkatesh would be fatal to the defence case. Much less, the defendant has not taken steps even to summon them as a witness. These aspects strengthen the case of the plaintiff.



WEB COPY

20. Coming to the non-filing of the Income Tax Returns by the plaintiff, the defendant has not taken such a plea in his written statement as well as during his examination as D.W.1. When the defendant has not taken such a specific plea in the written statement, on the unpleaded averments, the Court is not expected to give a finding. It is a settled proposition of law that even if a money transaction is not reflected in the Income Tax Returns it is for the concerned authority to take action. It is only a violation. The defendant cannot take advantage of such violation and cannot claim that the non reflection of loan cannot be recovered by instituting suit. The citations relied on by the appellant/defendant are not applicable to the facts and circumstances of the case.

21. In the above material facts and circumstances, this Court holds that the plaintiff has proved the execution of pronote and receipt of loan amount as mentioned in Ex.A.1. Hence, the Ex.A.1 - Pronote is not a forged one and the point is answered accordingly.

22. The trial Court has correctly appreciated the evidence adduced on both sides and after considering the arguments and citations relied on by both, the trial Court correctly held that the plaintiff has proved his



A.S(MD)No.46 of 2024

case. For all these reasons, the judgment and decree of the trial Court is sustainable in law and the same need not be interfered by way of this Appeal Suit. Thus the Appeal Suit fails.

23. In the result, this Appeal Suit is dismissed with cost. The judgment and decree, dated 01.11.2023 passed in O.S.No.12 of 2019 on the file of the learned Principal District Judge, Tiruchirappali, is confirmed. Consequently, connected Miscellaneous Petition is closed.

10.01.2025

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The Principal District Judge,
Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S(MD)No.46 of 2024

P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
A.S(MD)No.46 of 2024
and
C.M.P(MD)No.3066 of 2024

10.01.2025