

A.S(MD)No.261 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 30.04.2025

Pronounced On : 23.09.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**A.S(MD)No.261 of 2024
and
C.M.P.(MD)No.13586 of 2024**

Nagaraj

.... Appellant / Defendant

Vs.

Mayilsamy

... Respondent / Plaintiff

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to allow the appeal by setting aside the Judgment and decree dated 30.04.2024 made in O.S.No.154 of 2017 on the file of the Additional District Court, Dindigul.

For Appellant : Mr.T.Antony Arulraj

For Respondent : Mr.Mayilsamy



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JUDGEMENT

(Judgment of the Court was made by **G.R.SWAMINATHAN, J.**)

This first appeal is directed against the Judgment and decree dated 30.04.2024 made in O.S.No.154 of 2017 on the file of the Additional District Court, Dindigul. It is a suit for recovery of money.

2. The case of the plaintiff is as follows:-

The defendant had borrowed a sum of Rs.40,00,000/- to meet his urgent expenses on 26.01.2015. He executed Ex.A1-pro note in the presence of the witnesses. He had agreed to repay the same with interest at the rate of 12% per annum. Since he did not pay either the principal amount or the interest in spite of the repeated demands, the suit for recovery came to be filed.

3. The defendant filed written statement denying the whole transaction. He contended that he never borrowed any amount from the plaintiff. He also denied the execution of the suit pro note. The defendant would further state that he had no necessity or need to borrow from the plaintiff. Based on the rival pleadings, the court below framed the following issues:-



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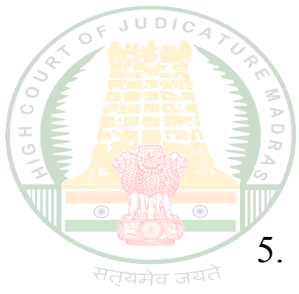
“1. Whether the pronote dated 26.01.2015 was executed by the defendant?

2. Whether the said pronote was supported by passing of consideration?

3. Whether the plaintiff is entitled to recovery the suit amount with interest as prayed for ?

4. To what other reliefs are the parties entitled?”

4. The plaintiff examined himself as P.W.1. The attestors of the pronote were also examined. Thus, totally four witnesses were examined on the plaintiff's side. Pronote was marked as Ex.A1. The defendant examined himself as D.W.1. The handwriting expert was examined as D.W.2 and her opinion was marked as Ex.C1. After considering the evidence on record, the learned trial Judge came to the conclusion that the execution of the pro-note was proved and that it was also supported by consideration. The suit was decreed as prayed for. The defendant was directed to repay the said amount of Rs.52,72,000/- with subsequent interest at the rate of 7.5% per annum on the principal amount of Rs.40,00,000/- from the date of filing of the suit till the date of decree. Interest was to run at the rate of 6% per annum on the principal amount from the date of decree till the date of realization. Aggrieved by the said Judgment and decree, this appeal came to be filed.



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5. When the case was listed in March, we referred the matter for mediation. But mediation failed. Thereafter, the case was taken up on 24.04.2025 and 28.04.2025 and the case was argued on either side. Even though the parties could not arrive at any consensus to resolve the issue, we felt that even though the suit transaction may not be true, there was some other transaction out of which there was some account of liability on the part of the appellant. We therefore called upon the appellant to make the statement before this Court as to whether he would still make any payment to the plaintiff even if this first appeal is allowed in his favour. Pursuant to the nudging given by this Court, the appellant filed an affidavit. He stated that there was a dealing with one person at Usilampatti. The plaintiff is said to have paid a sum of Rs. 10,00,000/- to the said person and settle the appellant's liability. Since difference of opinion arose between the appellant and the plaintiff as to how much he should pay, the present suit came to be instituted.

6. Even while reiterating that the suit pro-note is a fabricated document, the appellant undertook to pay a sum of Rs.20,00,000/- to the plaintiff towards full and final settlement of all claims which the plaintiffs may have against him. We indicated to the learned counsel for the plaintiff that even at this stage if compromise is arrived at, we would direct the registry to refund the Court fee



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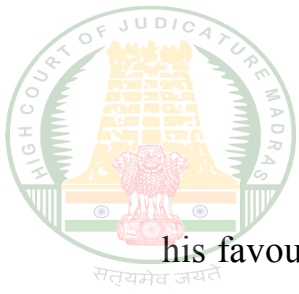
paid by the appellant to the tune of Rs.2,20,000/- to the plaintiff and thus, the plaintiff would get some more amount. The learned counsel for the plaintiff / respondent took time and on 29.04.2025, he reported no instructions. We directed the Registry to print the name of the plaintiff and list the matter today. Today, the plaintiff appeared in person and stated that he wants time to engage another counsel. We made it clear to the plaintiff that the matter had already been argued and that we are not inclined to grant further time. It was obvious that the plaintiff sought adjournment only to avoid this Bench.

7.The point that arises for consideration is whether the plaintiff had proved the due execution of the pro-note. In the written statement, the appellant had categorically stated that he did not borrow a sum of Rs.40,00,000/- as claimed by the plaintiff. He also denied having signed in the suit pro-note. A specific plea was taken in the written statement that the signature found in the pro-note is not that of the defendant. When the suit pro-note has been assailed as a fabricated document, it was incumbent on the plaintiff to prove the same. But interestingly, the defendant took steps to have the pro-note referred for obtaining the handwriting expert's opinion. Accordingly, reference was made and Ex.C1-report dated 17.03.2023 was given by D.W.2.



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8. The expert opinion is to the effect that the questioned signature was compared with the admitted signature and it was opined that the person who wrote the admitted signature is not the author of the disputed signatures. The reasoning sheet was also enclosed along with the opinion. But the trial Court did not go by the expert opinion because comparison was made with the defendant's signature in a sale deed that was executed four years earlier. According to the learned trial Judge, the opinion given by the expert by comparing the signatures after a gap of four years cannot be safely relied upon. The learned trial Judge chose to go by the testimony of P.W.1 to P.W.4 which was to the effect that the defendant signed Ex.A1-pro-note in their presence. The learned trial Judge also invoked the presumption under Section 118 of the Negotiable Instruments Act. The court below also went by the fact that the plaintiff's children are employed abroad and that he had the wherewithal. We are not able to endorse the approach of the trial Court. It is true that the plaintiff and the defendant hail from the same village and that the plaintiff as well as the attestors and also the scribe of the pro-note are known to the defendant. But it is not for the defendant to ascribe reason as to why the attestors as well as the scribe have chosen to support the plaintiff. In civil proceedings, the standard of proof is one of preponderance of probabilities. The defendant by seeking reference to the handwriting expert and by getting opinion from the expert in



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his favour has discharged the onus cast on him. The trial court had summarily brushed aside the testimony of the expert. The pro-note is dated 26.01.2015. But the suit was filed on 21.09.2017. The suit has been filed straight away. It was not preceded by any notice. Of-course, there is no legal requirement or stipulation that the money suit has to be necessarily preceded by issuance of notice. But the fact is that no notice was given.

9. The Hon'ble Supreme Court in the decision reported in **2025 SCC OnLine SC 793 (The Correspondent, RBANMS Educational Institution v. B.Gunashekar & anr)** held as follows :

“(A) Whenever, a suit is filed with a claim that Rs. 2,00,000/- and above is paid by cash towards any transaction, the courts must intimate the same to the jurisdictional Income Tax Department to verify the transaction and the violation of Section 269ST of the Income Tax Act, if any,

(B) Whenever, any such information is received either from the court or otherwise, the Jurisdictional Income Tax authority shall take appropriate steps by following the due process in law,

(C) Whenever, a sum of Rs. 2,00,000/- and above is claimed to be paid by cash towards consideration for conveyance of any immovable property in a document presented for registration, the jurisdictional Sub-Registrar shall intimate the same to the jurisdictional Income Tax Authority who shall follow the due process in law before taking any action,



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(D) Whenever, it comes to the knowledge of any Income Tax Authority that a sum of Rs. 2,00,000/- or above has been paid by way of consideration in any transaction relating to any immovable property from any other source or during the course of search or assessment proceedings, the failure of the registering authority shall be brought to the knowledge of the Chief Secretary of the State/UT for initiating appropriate disciplinary action against such officer who failed to intimate the transactions.

The above decision highlights the importance of carrying on high value financial transactions only through instruments or through banking channels. In this case, according to the plaintiff, cash was kept in his house and then handed over to the defendant. The plaintiff would further claim that the amount was withdrawn from the bank. It was further asserted that the transaction was reflected in the income tax returns. But neither pass book nor the I.T returns were marked. The solitary document marked on the side of the plaintiff was the suit pro-note (Ex.A1).

10.The plaintiff claims that he gave a sum of Rs.40,00,000/- to the defendant. This is a huge sum. The fact that the plaintiff's children are employed abroad is not a sufficient circumstance to come to the conclusion that he had the wherewithal to lend a sum of Rs.40,00,000/-. Even though the defendant might not have challenged the capacity of the plaintiff, if the plaintiff had proved his overall financial resources, that would lend assurance and could



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be one more factor for us to hold that the suit transaction is probable. The appellant/defendant had totally denied the suit transaction. According to him, he had dealing only with a person in Theni. Therefore, no onus lay on the defendant. The burden of proof lay only on the plaintiff. As already noted, the expert report is adverse to the claim of the plaintiff. When the passing of consideration itself is doubtful, the oral testimony of the witnesses cannot fill up the gap. The court below has treated the testimony of the witnesses examined on the side of the plaintiff as gospel truth. We therefore conclude that the due execution of the suit pro-note is not proved. The reasons given by the court below are absolutely unsatisfactory. The impugned Judgment and decree stand set aside. However, in view of the undertaking given by the appellant, we direct the appellant to deposit a sum of Rs.20,00,000/- to the credit of O.S.No.154 of 2017 on the file of the Additional District Court, Dindigul, within a period of eight weeks from the date of receipt of copy of this judgment. If the plaintiff is agreeable to abide by this Judgment and decree, he can withdraw the same towards full and final settlement of all his claims against the appellant. The said amount will lie in court deposit for a period of four months in an interest bearing account. If the plaintiff has not withdrawn the said amount by then, it is open to the appellant herein to take back the amount deposited by him with accrued interest.



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11.This Appeal Suit is disposed of on the above terms. No costs.

Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [M.J.R., J.]
23.09.2025

Index : Yes / No
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To:

The Additional District Court, Dindigul.

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