

S.A(MD).No.171 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

S.A(MD).No.171 of 2018

Rajeswari

... Appellant / respondent /
plaintiff

-VS-

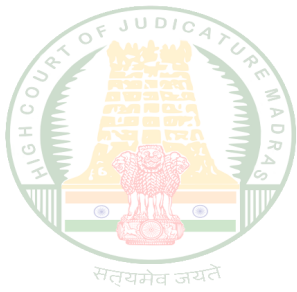
Gopal

.. Respondent / Appellant
/ Defendant

PRAYER: Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 06.07.2015 made in A.S.No.23 of 2013 on the file of the Additional District and Sessions Judge, Theni at Periyakulam, reversing the Judgment and Decree, dated 09.04.2012 made in O.S.No.30 of 2009 on the file of the Sub Judge, Periyakulam.

For Appellant : Mr.R. Suriya Narayanan

For respondent : Ms. T. Shiva Shree
for Mr.J. Bharathan



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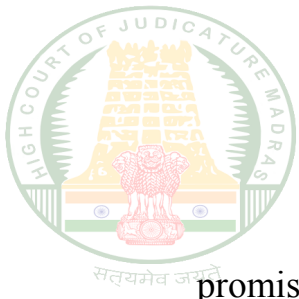
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JUDGMENT

This Second Appeal is filed challenging the Judgment and Decree, dated 06.07.2015 in A.S.No.23 of 2013 on the file of the Additional District and Sessions Judge, Theni, reversing the Judgment and Decree, dated 09.04.2012 in O.S.No.30 of 2009 on the file of the Subordinate Judge, Periyakulam.

2. The plaintiff is the appellant in the appeal and the sole defendant in the suit is the respondent. For sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. It is the case of the plaintiff that the defendant has received a hand loan of Rs.1,50,000/- for the emergency expenses of his daughter on 27.01.2007 and has executed a promissory note in Ex.A1. The loan was advanced for an interest of Rs.1/- for Rs.100/- per month. It is the further case of the plaintiff that on 29.12.2007, the defendant has paid a sum of Rs.100/- towards interest and made an endorsement to that effect in Ex.A1. Thereafter, since the defendant failed to settle the loan as per the

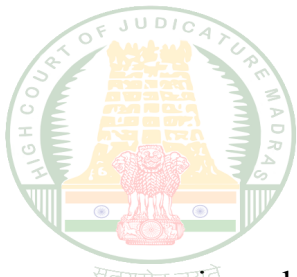


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promissory note, the plaintiff issued a legal notice in Ex.A3. Even though the defendant received a notice on 05.08.2009, he did not choose to reply. Hence, the plaintiff had come out with the suit for recovery of money.

4. The defendant resisted the suit by filing a written statement contending that the plaintiff had earlier given a loan in the year 2005 for a sum of Rs.1,05,000/-, for which, the defendant's wife had also executed a guarantee deed, and again a further loan was received for the same amount in the year 2006 and had executed a separate promissory note and also a power deed by the wife of the defendant guaranteeing the payment to be made. It is the specific case of the defendant that there had been no transaction with the plaintiff after 2006 and the plaintiff gave a complaint before the Thenkarai Police Station in respect of the non-payment of this amount and the defendant had repaid and discharged the loan amount pending due to the plaintiff on 13.07.2009 and the documents executed by the defendant had been returned. However, after settlement and return of the documents, it is the case of the defendant that based on one of the promissory note, which was given in respect of the earlier referred transaction, which was blank and unfilled, the plaintiff fabricated and has



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issued a notice and filed the suit.

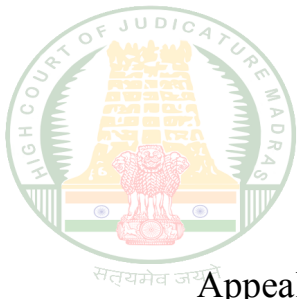
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5. During trial, the plaintiff examined herself as PW.1 and marked Exs.A1 to A4. The defendant examined himself as DW.1 and marked Exs.B1 to B8.

6. The Trial Court after analyzing the evidences came to the conclusion that the plaintiff has proved the execution of Ex.A1 and the defendant has not rebutted the presumption and thereby, decreed the suit.

7. On appeal, the lower appellate Court reappraised the evidences and considering the admission of PW.1 and the documents particularly, Ex.B8 - receipt issued, concluded that the defendant had rebutted the presumption and the plaintiff has not proved the consideration based on Ex.A1 and thereby, allowed the appeal. Assailing which, the plaintiff is before this Court on appeal.

8. This Court by order, dated 08.06.2018, admitted the Second



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Appeal on the following substantial questions of law:

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“1) Whether the presumption of the 1st Appellate Court that the suit promissory note, Ex.A1 is no existence in view of appellant's statement, Ex.B8 before the police station, which is inadmissible in evidence as under Section 23 of Evidence Act.

2) Whether the respondent has rebutted the strong presumption on the pronote, Ex.A1 as under Section 118 of Negotiable Instruments Act, by letting oral documentary and circumstantial evidence.

3. Is it correct to hold that the suit pronote, Ex.A1 is not proved by the plaintiff, when the same is produced and the signature therein is admitted by the defendant and hence, the presumption under Section 118 of Negotiable Instruments Act come into play?”

9. The learned counsel appearing for the appellant argued that when the plaintiff has proved the execution of Ex.A1 and further, the defendant did not choose to reply to the legal notice to the Ex.A3, the trial Court had rightly decreed the suit. It is his further contention that the lower appellate Court had placed reliance on Ex.B8 - the receipt issued by the plaintiff and



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since admittedly, the same was issued at the time of the settlement in the Police Station, the document is in-admissible in evidence. It is the further contention that when the loan in Ex.A1 was independent transaction, the lower appellate Court had mis-directed itself in relying on Exs.B3 to B6 and come to the conclusion that the entire due to the plaintiff has been settled. The learned counsel further contended that the receipt issued in Exs.B1 and B2 are the adjustments made towards interest in the grocery shop run by the defendant. When the plaintiff had proved the execution of the promissory note in Ex.A1, then there is a presumption that the defendant has borrowed the loan and the defendant has to rebut the presumption, which the defendant has miserably failed, particularly, when the defendant has not even chosen to reply to the legal notice. Therefore, the Judgment of the lower Appellate Court in reversing the decree and Judgment of the trial Court is perverse and not based on evidence and prays for allowing the appeal.

10. Per contra, the learned counsel appearing for the defendant by placing reliance on the oral evidence of DW.1 and the documents in Exs.B1 to B8 contended that there were other transactions between the



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plaintiff and the defendant, which is admitted in evidence. It is the further contention that Exs.B1 and B2 are the receipts issued by the plaintiff while the interest were paid and only since there was two loan transactions between the plaintiff and the defendant, for which Exs.B3 to B6 were executed. Apart from this, there was no other transaction. When the plaintiff lodged a complaint, the defendant had come forward and settled the entire amount to the plaintiff, pursuant to which, the documents have been returned. The learned counsel particularly by relying on the cross examination of PW.1 and also receipt issued in Ex.B8 contended that when the plaintiff had admitted that there are other transactions between the parties and there is no amount due, the defendant had successfully rebutted the presumption which has been rightly taken note of by the lower Appellate Court and has allowed the appeal. It is her further contention that while rebutting the presumption under Section 118 of Negotiable Instruments Act, the defendant is not bound to prove the case beyond reasonable doubt and it is sufficient, if the defendant is able to create a doubt based on preponderance of probabilities, even from the evidence of the plaintiff. Then it is for the plaintiff to discharge the burden of proof of consideration having been passed through Ex.A1, which the plaintiff has



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miserably failed. In such event, the lower appellate Court has rightly interfered with the decree of the trial Court, which is based on evidence and does not require any interference by this Court and sought for dismissal of the appeal.

11. Heard the rival submissions made by the learned counsel on either side and perused the materials available on record.

12. The plaintiff had come up with the suit for recovery of money based on Ex.A1 - promissory note. As per Ex.A1, a sum of Rs.1,50,000/- has been advanced on 27.01.2007, for which, the promissory note was issued by the defendant and the endorsement was made in the promissory note on 27.12.2009, which has been marked as Ex.A2. As the money was not repaid on demand, the legal notice came to be issued on 03.08.2009 in Ex.A3 and the notice has been received by the defendant and the acknowledgment card has been marked as Ex.A4. The legal notice has not been replied and the suit for recovery of money came to be filed.

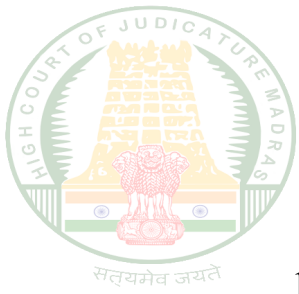
13. The defendant resisted the claim and contended that there was



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two loan transaction between the plaintiff and the defendant one in the year 2005 and another in the year 2006. It is admitted that the first loan was received on 16.03.2005, based on the promissory note in Ex.B3 and the guarantee deed was also issued by the defendant's wife on the same day in Ex.B4, which was settled. Further, the 2nd loan was received from the plaintiff through promissory note, dated 11.01.2006, in Ex.B5 and the same was also supported by a power deed creating a mortgage deed for that amount on the same day, executed by defendant's wife in Ex.B6. It is the specific case of the defendant that except these two transactions there has been no other transaction between the plaintiff and the defendant. The defendant further contended that in respect of these amounts, the plaintiff had lodged a complaint before the police Station in Ex.B7 on 13.07.2009 and in the enquiry before the Police Station, the defendant had repaid a sum of Rs.1,25,000/- towards the entire dues pending payable to the plaintiff and the plaintiff on receipt of the entire amounts issued a receipt in EX.B8, specifically certifying that all the amounts due between the plaintiff and the defendant has been settled and no amount is due between the parties.



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14. It is true that the defendant had not initially replied to the notice issued in Ex.A3. However, after the suit was filed, the defendant has come up with the above explanations denying the issuance of promissory note in Ex.A1. It is his specific case that while the above two referred amounts were advanced and settled, the promissory note which was blank and given to the plaintiff towards that loan was withheld and now it was misused by the plaintiff after the settlement of the amount before the police Station, for which receipt was issued in Ex.B8.

15. At this juncture, the learned counsel for the appellant contends that those two transactions are completely different and that does not have anything to do with the transaction covered in Ex.A1.

16. As per Section 118 of Negotiable Instruments Act, the plaintiff proved the execution of the document. Once the execution is proved, then the burden shifts on the defendant to rebut the presumption. Of course, the rebuttal of presumption need not be proved beyond any reasonable doubt. It is sufficient for the defendant to bring some probable materials to establish that the promissory note is not supported by consideration. If the



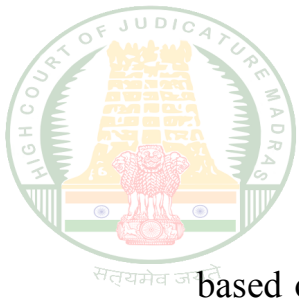
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defendant is successful in rebutting the presumption based on the preponderance of probabilities, then onus shifts on the plaintiff to prove that the promissory note Ex.A1 is supported by consideration. It is useful to refer the Judgment of Hon'ble Supreme Court in ***Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Payrelal*** reported in **1999 (3) SCC 35**.

17. In the instant case, the defendant has filed the document in Exs.B1 and B2, which evidence the receipts issued by the plaintiff, where the adjustments of money towards the interest have been made. In fact, even though initially the plaintiff denied the receipts, however, in the cross examination, these transactions in Ex.B1 and B2 have been admitted. Further the defendant has marked the documents Exs. B3 and B5, which are the promissory notes in respect of the transactions dated, 16.03.2005 and 11.01.2006. The guarantee deeds executed by the defendant's wife in Ex.B4, dated 16.03.2005 and the mortgage deed, Ex.B6 dated 11.01.2006, is also marked.

18. The plaintiff had come up with the suit for recovery of money

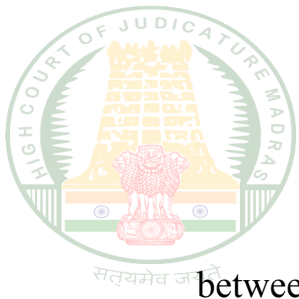


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based on Ex.A1. However, in the cross examination, she admits that there had been two transactions in the year 2005 and 2006 and she only makes a claim that these transactions were between the plaintiff's mother and the defendant and those amounts were not paid. After the plaintiff's mother died, the plaintiff had given a complaint to the Police which alone was enquired and ultimately the amounts came to be settled. It is claimed that only since the loan due to the plaintiff's mother was settled, documents in EXs.B3 to B6 were returned to the defendant.

19. It is relevant to note that the plaintiff had also categorically admitted in the cross examination that absolutely there had been no transaction between the plaintiff and the defendant except the transaction covered in Ex.A1. The plaintiff also admitted that the complaint was lodged before the Police Station in Ex.B7 and the money was settled by the defendant for which the plaintiff has issued a receipt in Ex.B8. It is also categorically stated on the part of the plaintiff that after dues were settled to the plaintiff, as per Ex.B8 absolutely there is no other transaction between the plaintiff and the defendant. It is also relevant to note that the plaintiff has never come out with the claim that there was a transaction

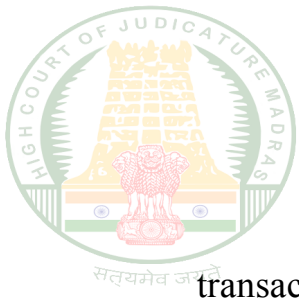


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between the plaintiff's mother and the defendant and that this complaint in Ex.B8 – receipt came to be issued for the dues that were settled for the plaintiff's mother.

20. When the defendant has filed the documents in Exs.B1 to B8, which clearly establish that there had been two transactions between the plaintiff and the defendant, which have been denied by the plaintiff, it shows that the plaintiff has not come to the Court disclosing the entire transaction. But, however, from the said documents the defendant was able to establish that these two transactions came into existence pursuant to Exs.B3 to B6 and the same has been returned also. Further, the complaint was lodged by the plaintiff before the Police in Ex.B7 for which, the receipt in Ex.B8 was issued. In view of the documents filed in Ex.B1 to Ex.B7 and the categorical admission of PW1, the defendant had sufficiently rebutted the presumption under Section 118 of Negotiable Instruments Act, as the defendant was able to create a doubt in respect of passing of consideration in Ex.A1. As referred earlier, once the defendant was successful in rebutting the presumption, the burden shifted to the plaintiff. But the plaintiff has miserably failed to prove that there had been

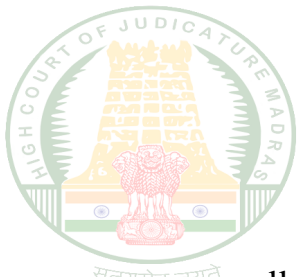


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transactions with the plaintiff's mother and the entire documents in Exs.B3 to B8 were all in respect of the transactions which are not covered in Ex.A1. When Ex.B8, specifically states that there is no other pending dues between the parties, and the defendant had settled the due amount to the plaintiff, the appellate Court has rightly analyzed this aspect and come to the conclusion that the plaintiff has not proved the passing of consideration in Ex.A1, which the trial Court has failed to take note of.

21. The appellant counsel vehemently contended that since Ex.B8 was executed in Police Station, it is in admissible in-law. This Court is not able to appreciate the said contention for the simple reason that the plaintiff had entered into the witness box as PW1 and when cross examined, she has specifically admitted that she had made a complaint and pursuant to the complaint made by the plaintiff, the amount due was also received by her and the entire transaction concluded and pursuant to that, there is no due or any transaction pending between the parties. In such circumstances, the substantial questions of law are answered as against the appellant and in favour of the respondent. Hence, this Court does not find any perversity or illegality in the finding of fact arrived at by the lower



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appellate Court.

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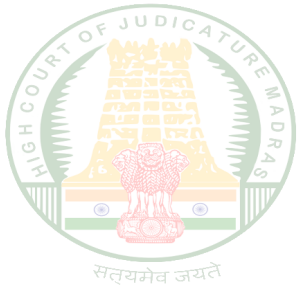
22. In the result, this Second Appeal is dismissed. However, no costs.

11.06.2025

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To

1. The Additional District and Sessions Judge, Theni
2. The Sub Judge, Periyakulam.



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G. ARUL MURUGAN, J.

trp

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