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SA No. 228 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 228 of 2026 and
CMP No.6854 of 2026**

Jayanthi, W/o .Sridhar,
39A, Marappan Street,
Paramathi Road,
Namakkal Town,
Namakkal Taluk and District.

..Appellant(s)

Vs

K.S. Mahalingam, S/O .Subramaniam,
F9, Police Quarters, Paramathi Road,
Namakkal Town, Namakkal Taluk and District.

..Respondent(s)

Prayer: Second appeal is filed under Section 100 of CPC to set aside the Judgement and decree dated 02.04.2025 passed in AS No.28 of 2023 (CNR No.TNNM12-000604-2023) on the file of the Special Court for Trial of Cases Registered under SC/ST (POA) Act and Sessions Court, Namakkal in reversing the judgement and decree dated 14.08.2021 passed in OS No.31 of 2018 (CNR No.TNNM030000752018) on the file of the Principal Sub Court, Namakkal.

For Appellant(s):

Mr.P.Mani



JUDGMENT

The unsuccessful defendant is the appellant. The respondent herein filed a suit in O.S.No.31 of 2018 for recovery of money based on the promissory note and the said suit was dismissed by the Trial Court. The findings of the Trial Court were reversed and the suit was decreed by the first appellate court in A.S.No.28 of 2023. Aggrieved by the same, the defendant has come before this court.

2. According to the respondent/plaintiff, the appellant / defendant borrowed a sum of Rs.2,00,000/- from him on 02.11.2015 and executed the suit promissory note, agreeing to repay the same on demand with interest at the rate of 15% p.a. It was also stated by the plaintiff that the said amount was borrowed by the appellant/defendant to meet the expenses of family business. The respondent/plaintiff further stated that inspite of several demands made by him, the appellant/defendant failed to pay the amount and hence, the suit was laid for recovery of a sum of Rs.2,00,000/- with interest at the rate of 15% p.a.

3. The appellant/defendant filed written statement and denied the borrowal of the amount as well as the execution of suit promissory note. It was the specific case of the appellant that her signature found in the suit promissory note was forged one and hence, prayed for dismissal of the suit.



4. Before the Trial Court, the plaintiff was examined as PW1 and one of the attester in the suit promissory note was examined as PW2. The suit promissory note, the pre-suit notice and the postal acknowledgment card were marked as Ex.A1 to Ex.A3. The defendant was examined as DW1 and one Sakthivel was examined as DW2. On behalf of the defendant, the document relating to the partnership business of her husband and the death certificate of her husband were marked as Ex.B1 and Ex.B2.

5. The Trial Court, on appreciation of evidence available on record, came to the conclusion that the plaintiff is not entitled to the benefit of presumption under Section 118 of the Negotiable Instruments Act and dismissed the suit. Aggrieved by the same, the plaintiff/ respondent preferred an appeal in A.S.No.28 of 2023 and the first appellate court reversed the findings of the Trial Court and decreed the suit. Aggrieved by the same, the defendant has come before this court.

6. The learned counsel for the appellant/defendant would submit that after the death of defendant's husband, two promissory notes were executed in favour of Amman Finance and the defendant has not received any amount from the financier and the same was received only by the plaintiff. It is also stated that the entire borrowed amount has been repaid by the defendant through the plaintiff and one of the pronotes executed by the defendant was returned to her,



however the other one was not returned by the financier and it was handed over to the plaintiff and the same has been utilized to file the present suit. The learned counsel for the appellant by relying upon the evidence of DW1 submitted that the first appellate court has not considered the vital evidence of DW1 and hence, the judgment and decree passed by the first appellate court is liable to be set aside.

7. A perusal of the written statement filed by the defendant would indicate that she had specifically execution of suit promissory note. The borrowal of the amount from Amman Finance, execution of two promissory notes in favour of the Amman Finance and failure of the said financier to return one of the promissory notes to the defendant, etc. were not at all mentioned in the written statement. Therefore, the defendant is not entitled to lead any evidence without pleading.

8. It is also pertinent to mention that the plaintiff issued pre suit notice on 08.12.2017 and it was received by the defendant on 11.12.2017. In order to prove the same, the copy of the pre-suit notice and the postal acknowledgment have been marked as Ex.A2 and Ex.A3. The defendant, after receipt of pre suit notice, failed to give any reply and therefore, the present suit was laid by the plaintiff. If the plea raised by the defendant in her proof affidavit was true, certainly, the defendant would have issued reply notice to the pre suit notice,



mentioning the alleged circumstances, under which the suit promissory note was executed. The failure of the defendant to give reply to the pre suit notice creates a serious suspicion with regard to the stand taken by her in her proof affidavit. Further, in the written statement, there is no mention about the facts, which are raised in the proof affidavit. It is settled law that the evidence, if any produced by the parties cannot be considered, in the absence of pleading. In such circumstances, the new stand taken by the defendant/appellant in her proof affidavit cannot be relied on by the learned counsel for the appellant/ defendant.

9. It is also necessary to mention that though in the proof affidavit filed by the appellant / defendant dated 02.12.2020 she has stated that the suit promissory note was executed in favour of Amman Finance and the same was handed over to the plaintiff, in the additional proof affidavit filed by her on 30.03.2021, she has taken a new stand as if the defendant's husband and plaintiff had engaged in a business and the defendant's husband obtained her signature in the blank promissory note and the same has been used by the plaintiff for the purpose of filing the present suit. Therefore, the stand taken by the defendant in the additional proof affidavit dated 30.03.2021 is diametrically opposite to the stand taken by her in the proof affidavit filed on 02.12.2020. The plea raised by the defendant in her original proof affidavit and additional proof affidavit are mutually destructive in nature. More over, the new pleas raised in the proof affidavit and the additional proof affidavit were not at all



raised in the written statement. In such circumstances, the submission made by the learned counsel for the appellant is not appealable to this court.

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10. The defendant, though denied the due execution of the suit promissory note, in the written statement, during the course of evidence, admitted her signature in the suit promissory note. The plaintiff examined himself and deposed evidence and affirmed the averments made by him in the plaint. One of the attestors in the promissory note, namely Angamuthu has been examined as PW2, who deposed regarding due execution of promissory note. Therefore, the plaintiff by examining himself as PW1 and also by examining the PW2, has proved the due execution of promissory note. Moreover, the signature of the defendant has been admitted by the defendant during the course of evidence. In such circumstances, there is no difficulty in coming to the conclusion that the plaintiff has proved due execution of suit promissory note by the defendant. Once this court comes to the conclusion that the due execution of promissory note is proved, automatically the plaintiff is entitled to a presumption under Section 118 of Negotiable Instruments Act. Therefore, the first appellate court rightly came to the conclusion that the plaintiff has proved the suit claim and decreed the suit. I do not find any question of law much less substantial question of law arising for consideration in the second appeal.



11. Accordingly, the second appeal stands dismissed, confirming the judgment and decree passed by the first appellate court. There shall be no order as to costs. Connected miscellaneous petition is closed.

11-03-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

MST

To

1. The Special Judge for Trial of Cases Registered under SC/ST (POA) Act and Sessions Court, Namakkal.
2. The Principal Sub Judge, Namakkal.



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S.SOUNTHAR, J.

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