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A.S. NO.75 OF 2023**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

JUDGMENT RESERVED ON :	06 / 02 / 2026
JUDGMENT DELIVERED ON :	23 / 02 / 2026

CORAM:**THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR****AND****THE HONOURABLE MR. JUSTICE R.SAKTHIVEL****A.S.NO.75 OF 2023**

L.Rajendran,
S/o.M.N.Lakshmana Gounder,
No.4/12, Flat No.A-2, 1st Cross Street,
First Main Road, Kottiwakkam,
Chennai – 600 041.

Represented by Power of Attorney Agent,
M.C.Ravikumar,
S/o.Muthaiah
No.11-A, Kannadasan Salai,
T.Nagar, Chennai – 600 017.

...Appellant / Plaintiff

Versus

D.Venkatesan,
S/o.Durairajulu Naidu,
Old No.31, New No.95,
Sukuna Apartments,
Valluvar Salai,
Jagannatha Nagar,
Arumbakkam,
Chennai – 600 106.

...Respondent / Defendant

Note: Cause title accepted vide Order
of this Court dated April 13, 2022
made in C.M.P. Nos.2165, 2278 &



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6124 of 2022 in A.S. SR.No.87570 of
2015

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PRAYER: First Appeal filed under Section 96 and Order XLI Rule 1 of the Code of Civil Procedure, 1908, read with Order IV Rule 14 of the Madras High Court Appellate Side Rules, 1965, praying to set aside the Judgment and Decree dated April 21, 2015 passed in O.S. No.10018 of 2010 on the file of the Learned IV Additional Judge, City Civil Court, Chennai and decree the Suit as prayed for with costs throughout.

For Appellant : Mr.K.Shakespeare

For Respondent : Mr.R.Subramanian
for Mr.S.Thiruvengadam

* * *

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Judgment and Decree dated April 21, 2015 passed in O.S. No.10018 of 2010 by 'the IV Additional Judge, City Civil Court, Chennai' ['Trial Court' for convenience], the plaintiff therein has preferred this Appeal Suit under Section 96 and Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for brevity] read with Order IV Rule 14 of the Madras High Court Appellate Side Rules, 1965.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

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PLAINTIFF'S CASE IN BRIEF:

3. Case of the plaintiff is that on December 5, 2006, the defendant borrowed Rs.20,00,000/- from the plaintiff for his family as well as business needs. The defendant agreed to repay the said amount with 12% interest per annum on demand. By January 2007, the defendant had totally paid a sum of Rs.1,50,000/- towards interest as well as principal. But thereafter, the defendant did not pay any amount either towards principal or towards interest in spite of repeated demands made by the plaintiff. The plaintiff issued a legal notice to the defendant on September 27, 2007 demanding repayment. Despite the receipt of notice, the defendant did not pay any amount. Hence, the plaintiff seeks a money decree against the defendant. As on date of the plaint, the defendant is liable to pay a sum of Rs.18,50,000/- towards principal and a sum of Rs.25,900/- towards interest.

DEFENDANT'S CASE IN BRIEF:

4. The defendant filed a written statement. According to the defendant, he did not borrow Rs.20,00,000/- as alleged in the plaint. The defendant is running an old-age home in the name of S.V. Home for Aged as a registered Charitable Trust. In order to meet some expenses for smooth



running of the Trust, the defendant borrowed a sum of Rs.3,00,000/- on September 22, 2006 as a hand loan from the plaintiff, who is doing financial business under the name and style of M/s.R.R. & Co. Out of the said amount, a sum of Rs.75,000/- was deducted as interest at the rate of 25% at the time of borrowal itself, and the defendant received Rs.2,25,000/- as principal from the plaintiff *vide* Cheque No.158112 dated September 22, 2006 drawn on Union Bank of India, Adayar Branch, Chennai. The said loan amount was repaid by way of 10 Cheques drawn on IDBI Bank Ltd., Chennai. At the time of borrowal, the defendant provided a blank promissory note and blank cheques as security. The defendant settled the entire loan amount as early as on December 02, 2006. Immediately thereafter, the defendant insisted the plaintiff to return the blank promissory note and other documents. The plaintiff evaded the same. Later, the plaintiff misused the blank promissory note and falsely instituted the Suit. Accordingly, the defendant prayed to dismiss the Suit.

TRIAL COURT:

5. Based on the above pleadings, the Trial Court framed the following issues:

'1. *Whether the plaintiff is entitled to the suit claim with*



interest as prayed for?

2. *Whether the pronote is proved valid and supported by consideration?*
3. *Whether the defendant has borrowed a sum of Rs.3,00,000/- for the purpose of his Trust as pleaded by the defendant is true?*
4. *Whether the defendant has borrowed and re-paid the sum as stated in the written statement is true?*
5. *Whether the said purpose of hand loan (sic) the defendant gave blank promissory note and blank cheques with his signature as security as pleaded by the defendant is true?*
6. *To what other relief?'*

6. At trial, the plaintiff's Power Agent - Mr.M.C.Ravikumar was examined as P.W.1 and Ex-A.1 to Ex-A.5 were marked on the side of the plaintiff. On the side of the defendant, the defendant himself was examined as D.W.1 and Ex-B.1 to Ex-B.4 were marked.

7. After full-fledged trial, the Trial Court found that the Power Agent has no power or authority to depose on behalf of the plaintiff and hence,



his evidence cannot be taken into account. Further, the plaintiff has miserably failed to discharge his initial burden of proof. Further, the presumption under Section 118 of the Negotiable Instruments Act, 1881 would not be attracted as the defendant has established by direct as well as circumstantial evidence that the promissory note was not supported by consideration. Upon arriving at these findings, the Trial Court dismissed the Suit.

8. Feeling aggrieved by the Decree and Judgment, the plaintiff therein has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.

ARGUMENTS:

9. Mr.K.Shakespeare, learned Counsel appearing for the appellant / plaintiff would submit that the defendant did not deny the financial capacity of the plaintiff. Further, since the plaintiff was suffering from paralysis stroke, he could not come and depose before the Trial Court. Though P.W.1 is the Power Agent of the plaintiff, P.W.1 knew about the transactions held between the plaintiff and the defendant and hence, his evidence has to be taken into account. He would further submit that the Trial Court without considering the facts and circumstances of the Suit in a



proper manner, erroneously dismissed the Suit. Accordingly, he would pray to allow the Appeal Suit, set aside the Decree and Judgment of the Trial Court and decree the Suit as prayed for by the plaintiff.

9.1. He would rely on the following Judgments in support of his contentions:

- (i) ***Kundan Lal Rallaram's Case*** – Judgment of Hon'ble Supreme Court in *Kundan Lal Rallaram -vs- Custodian, Evacuee Property, Bombay* reported in *AIR 1961 SC 1316*;
- (ii) ***M.C.Ravikumar's Case*** – Judgment of this Court in *M.C.Ravikumar -vs- V.Sukuna Venkatesh* reported in *2025 SCC OnLine Mad 6348*.

10. *Per contra*, Mr.R.Subramanian, learned Counsel appearing on behalf of Mr.S.Thiruvengadam, learned Counsel on record for the respondent / defendant would submit that despite denial of borrowal of Rs.20,00,000/- as alleged by the plaintiff, the plaintiff did not enter into the witness box and did not prove his case. The non-examination of plaintiff is fatal to his case. The plaintiff did not produce any medical records to show that he was suffering from paralysis stroke and as such he cannot move out



of his residence. He would further submit that if the plaintiff really has any medical disability, the plaintiff could have filed an application under Order XXVI Rule 4-A of CPC to examine him. But he did not take steps for the same. Further, P.W.1 is the Power Agent who is in no way connected with the Suit transactions. The Trial Court after analyzing the evidence available on record, rightly dismissed the Suit. There is no warrant to interfere with it. Accordingly, he would pray to dismiss the Appeal Suit and sustain the Judgment and Decree passed by the Trial Court. He would rely on ***R.Venkatesan's Case*** [Judgment of this Court in *R.Venkatesan @ Venkatesh -vs- Jitesh Kumar Jain*, reported in 2024 (5) CTC 580] in support of his contentions.

POINTS FOR CONSIDERATION:

11. The points that arise for consideration in this Appeal Suit are as follows:

- (i).Whether the Plaintiff has proved the execution of the Suit promissory note?
- (ii).Whether the Suit promissory note attracts presumption under Section 118 of the Negotiable Instruments Act, 1881?



(iii). Whether the Judgment and Decree of the Trial Court is liable to be interfered with?

DISCUSSION & DECISION TO POINT NOS. (i) to (iii):

12. This Court has considered both sides' submissions and perused the evidence available on record.

13. At the outset, this Court would like to refer ***Kundan Lal Rallaram's Case*** [cited *supra*], wherein the Hon'ble Supreme Court [Full Bench - Three Judges] dealt with the scope of the presumptions under Section 118 of the Negotiable Instruments Act, 1881, rebuttal of the presumptions as well as the meaning of burden of proof as contemplated under Chapter VII of Indian Evidence Act, 1872. It was held that burden of proof can be classified into two types as (i) burden of proof as a matter of law based on pleadings which remains constant and (ii) burden of establishing a case which shifts to the other as soon as a party adduces sufficient evidence to raise a presumption in their favour. In the context of Section 118, it was held that the initial burden to prove the execution of the instrument lies with the plaintiff as per Section 101 of Indian Evidence Act, 1872, and that once the same is proved, the presumption under Section 118 is invoked in favour of the plaintiff and now the burden of



proof shifts on to the defendant to rebut the presumption through direct and circumstantial evidence. Relevant extract reads thus:

"5. This section lays down a special rule of evidence applicable to negotiable instruments. 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. The question is, how the burden can be discharged? The rules of evidence pertaining to burden of proof are embodied in Chapter VII of the Evidence Act. The phrase "burden of proof" has two meanings — one the burden of proof as a matter of law and pleading and the other the burden of establishing a case; the former is fixed as a question of law on the basis of the pleadings and is unchanged during the entire trial, whereas the latter is not constant but shifts as soon as a party adduces sufficient evidence to raise a presumption in his favour. The evidence required to shift the burden need not necessarily be direct evidence i.e., oral or documentary evidence or admissions made by opposite party; it may comprise circumstantial evidence or presumptions of law or fact. To illustrate how this doctrine works in practice, we may take a



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suit on a promissory note. Under S. 101 of the Evidence Act, “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist”. Therefore, the burden initially rests on the plaintiff who has to prove that the promissory note was executed by the defendant. As soon as the execution of the promissory note is proved, the rule of presumption laid down in S. 118 of the Negotiable Instruments Act helps him to shift the burden to the other side. The burden of proof as a question of law rests, therefore, on the plaintiff; but as soon as the execution is proved, S. 118 of the Negotiable Instruments Act imposes a duty on the court to raise a presumption in his favour that the said instrument was made for consideration. This presumption shifts the burden of proof in the second sense, that is, the burden of establishing a case shifts to the defendant. The defendant may adduce direct evidence to prove that the promissory note was not supported by consideration, and, if he adduced acceptable evidence, the burden again shifts to the plaintiff, and so on. The defendant may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling, the burden may likewise shift again to the plaintiff. He may also rely upon presumptions of fact, for instance those mentioned in



S. 114 and other sections of the Evidence Act. Under S. 114 of the Evidence Act, “The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case”. Illustration (g) to that section shows that the court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. A plaintiff, who says that he had sold certain goods to the defendant and that a promissory note was executed as consideration for the goods and that he is in possession of the relevant account books to show that he was in possession of the goods sold and that the sale was effected for a particular consideration, should produce the said account books, for he is in possession of the same and the defendant certainly cannot be expected to produce his documents. In those circumstances, if such a relevant evidence is withheld by the plaintiff, S.114 enables the court to draw a presumption to the effect that, if produced, the said accounts would be unfavourable to the plaintiff. This presumption, if raised by a court, can under certain circumstances rebut the presumption of law raised under S. 118 of the Negotiable Instruments Act. Briefly stated, the burden of proof may be shifted by



presumptions of law or fact, and presumptions of law or presumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law."

14. Further, reference may be made to ***Janki Vashdeo Bhojwani -vs- Indusind Bank Limited***, reported in ***(2005) 2 SCC 217***, wherein Hon'ble Supreme Court held that under Order III Rules 1 and 2 of CPC, the power agent is empowered to depose only in respect of the acts done in pursuance of the Power Deed. He may also depose about acts or transactions he has personal knowledge of. However, he cannot depose in respect of any acts not done by him, acts which fall under the exclusive personal knowledge of the principal, or transactions not involving him. Relevant extract reads as hereunder:

"13. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order 3 Rules 1 and 2 CPC confines only to in respect of "acts" done by the power-of-attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power-



of-attorney holder has rendered some “acts” in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.”

15. Now this Court shall apply the above legal position to the facts of the present case.

16. Case of the plaintiff is that he advanced Rs.20,00,000/- in cash, repayable on demand along with 12% interest per annum under Ex-A.2 - Suit Promissory Note dated December 5, 2006 and that the defendant repaid Rs.1,50,000/- totally by January 2007 and thereafter defaulted in payment.

17. The defendant resisted the plaintiff's claim by setting up a specific defence that he sought for Rs.3,00,000/- from the plaintiff who according to him is a professional money lender, to meet out the expenses of the old age home run by him; that the plaintiff adjusted Rs.75,000/-



towards interest and advanced only Rs.2,25,000/- to him; that the debt of Rs.3,00,000/- [including interest] has been cleared by way of 10 cheques each for Rs.30,000/-; that the present Suit has been filed by misusing the blank cheques and blank promissory note deposited by the defendant as security with the plaintiff at the time of borrowal of the aforesaid Rs.3,00,000/-.

18. As explained in *Kundan Lal Rallaram's Case* [cited *supra*], the initial burden to establish a *prima facie* case generally lies with the plaintiff as per Section 101 of the Indian Evidence Act, 1872. In the facts of this case, the plaintiff must discharge his initial burden by *prima facie* proving the execution of Ex-A.2 - Suit Promissory Note, which would enable him to invoke the presumption under Section 118 of the Negotiable Instruments Act, 1881. Execution of Ex-A.2 could be proved by examining the plaintiff himself *qua* payee, or by examining anyone else who is connected with the Suit transaction and execution of Ex-A.2, or by adducing documentary evidence. Only thereafter, the presumption under Section 118 of the Negotiable Instruments Act, 1881 could be invoked. No doubt that the standard of proof is preponderance of probabilities.



19. In this case, the plaintiff stayed away from the witness box and chose to examine his power agent under Ex-A.5 - Power Deed dated December 30, 2010 as P.W.1. As held in ***Janki Vashdeo Bhojwani's Case*** [cited *supra*], the power agent / P.W.1 is empowered to conduct and oversee the proceedings of the case and not depose on behalf of the principal / plaintiff. He cannot step into his principal's shoes to prove the alleged Suit transactions. Hence, when P.W.1 enters the witness box, he is entering in his personal capacity. P.W.1 does not seem to have any personal knowledge of the Suit loan transaction or the execution of Ex-A.2 - Suit Promissory Note. Any oral evidence from P.W.1 in his personal capacity about the Suit loan transaction and the execution of Ex-A.2, in the absence of direct personal knowledge or involvement, is not acceptable and would not aid the case of the plaintiff. Moreover, even if his evidence is to be accepted as valid in nature and not hear-say, in other words, even while operating under an assumption that his evidence regarding Suit transactions is acceptable, even then, he has not deposed in line with the plaintiff's case and hence, his evidence would not in any manner substantiate the Suit transactions.

20. In this case, the defendant has specifically denied the execution of Ex-A.2 as alleged by the plaintiff and claimed that the Suit Promissory



Note is a fabricated one. Further, the defendant denied the receipt of the Pre-suit Notice in Ex-A.3. He has maintained the same stand in his chief as well as in his cross-examination consistently. From a perusal of Ex-A.4, it is seen that someone else has received Ex-A.3 allegedly for the defendant. In these compelling circumstances, the plaintiff ought to have entered the witness box and subjected himself to cross-examination or ought to have taken steps to otherwise examine him as per law. The reason assigned by the plaintiff for staying away from the witness box is that he suffered from paralysis and therefore, he was disabled from deposing before the Court. However, as rightly pointed out by the Trial Court as well as by the learned Counsel for the respondent / defendant, there is no medical or other evidence adduced to substantiate the plaintiff's alleged illness. Even while operating under the assumption that the plaintiff was disabled from appearing before Court to depose by medical or other legitimate reasons, the plaintiff could have very well filed an application under Order XXVI Rule 4-A of CPC and sought to appoint a commissioner to examine him, but he failed to do so.

21. The plaintiff could have examined anyone else who has personal knowledge of the Suit transactions, but he failed to do so. As stated *supra*, the power agent does not have such personal knowledge and hence, he is



not competent to depose about the Suit transaction in his personal capacity as well.

22. Further, the plaintiff could have adduced any documentary evidence showing passing of consideration or in any other manner proving the Suit transactions. P.W.1 has deposed that the plaintiff is involved in hotel as well as in unlicenced money lending business. It is not in serious dispute that the plaintiff is in money lending business and as such, the plaintiff could have marked any endorsement regarding any payment relating to Suit transactions, his accounts book or any other record maintained in the course of his money lending business to prove passing of consideration but again the plaintiff failed to do so. In fact, in Plaint Paragraph No.5, it is pleaded that the defendant repaid Rs.1,50,000/- by January 2007. The plaintiff could have at least produced statement of accounts or documents to prove the same, but he failed to do so.

23. Further, it is stated that a sum of Rs.20,00,000/- was advanced to the defendant by cash in the year 2006, but it is hard to believe that such a huge amount was lent in cash to the defendant, that too in the year 2006. Further, during trial, the defendant's Counsel sent Ex-B.1 - Notice dated July 31, 2012 to the plaintiff calling upon him to produce his Income Tax



Returns and Assessment Orders, for the years 2006 - 2007 and 2007 -

2008. Though the plaintiff issued a reply to the same in Ex-B.2 - Notice dated September 28, 2012 stating that those documents were with the Auditor for accounting purposes and that the same will be produced once returned by the Auditor, no such documents were marked or put forth in the trial by the plaintiff. A Co-ordinate Bench of this Court in ***Venkatesan's Case*** [cited *supra*] relied on by the learned Counsel for the respondent / defendant, drew an adverse inference against the plaintiff therein *inter-alia* on the ground that though the plaintiff therein claimed to be an Income Tax Assessee, failed to file Income Tax Returns. Similarly, in the case on hand, the plaintiff has failed to produce the documents called for by the defendant's side *vide* Ex-B.1 - Pending Suit Notice. If really the plaintiff had lent Rs.20,00,000/- as alleged, the same would have ideally reflected in the documents called for by the defendant's side. Withholding of such documents indeed causes an adverse inference to be drawn against the plaintiff.

24. The Trial Court observed that no witness or scribe has signed in Ex-A.2 - Suit Promissory Note and that it creates suspicion. However, it is settled law that promissory note does not require an attesting witness to prove its execution and hence, lack of attesting witness is not significant.



25. In these circumstances, upon cumulative consideration of the facts and circumstances of the case, this Court is of the considered view that the plaintiff has failed to discharge his initial burden by adducing evidence to *prima facie* prove the execution of Ex-A.2 - Suit Promissory Note. When the execution of Ex-A.2 is itself *prima facie* not established, the plaintiff is not entitled to invoke the presumption under Section 118 of the Negotiable Instruments Act, 1881. The Trial Court has rightly dismissed the Suit. There is no warrant to interfere with it. The Appeal Suit must fail as devoid of merits. **The points are answered accordingly in favour of the defendant and against the plaintiff.**

26. *M.C.Ravikumar's Case* relied on by the learned Counsel for the appellant / plaintiff is an appeal before this Court arising out of a Suit for money decree based on Promissory Note between the plaintiff herein and the wife of the defendant herein. The appeal ended in favour of the plaintiff herein. Though a case of similar nature between the plaintiff herein and the wife of the defendant herein was decided in favour the plaintiff herein, this Court is of the view that *M.C.Ravikumar's Case* transpired on its own facts, pleadings and evidence and hence, not binding or applicable to the instant case.



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CONCLUSION:

27. In the result, the Appeal Suit is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

[N.S.K., J.] [R.S.V., J.]

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Speaking Order : Yes / No
Neutral Citation : Yes
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To

The IV Additional Judge,
City Civil Court,
Chennai.



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PRE-DELIVERY JUDGMENT MADE IN
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