

S.A.(MD).No.843 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.06.2026

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

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Raveendran Nair
S/o. Madhavan Nair Pangaja Vilasam
T.C.24/1172
Jothipuram Valiasalai Salai Post
Chenganacheri Village
Tirvandrum.

: Appellant

Vs.

Pushpavathi
W/o. Kuttappan Nair
Ayacode Melaveedu
Cheruppalur Post
Arukarai Village
Kalkulam Tk
Kanyakumari District

: Respondent

PRAYER: To prefer this Memorandum of Grounds of SA against the Judgment and decree dt.25.10.2005 and made in AS.121/2004 on the file of the I Addl. Sub Judge, Nagercoil (Camp at Padmanabhapuram), reversing the Judgment and decree and decree dated 28.6.2004 and made in OS.239/2004 on the file of the Principal District Munsif Court, Padmanabhapuram.



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For Appellant : Mr.G. Sridharan
For Respondent : Mr.V.M.Balamohanthambi

J U D G M E N T

The defendant is the appellant in this second appeal.

2. The respondent/plaintiff filed a suit on the ground that on 10.12.1997, the defendant borrowed a sum of Rs.46,000/- from the plaintiff and executed a promissory note (Exhibit A1) and agreed to repay the amount with rate of interest of 18% per annum on demand. The plaintiff demanded for repayment of the money with interest on several occasions and the defendant failed to repay back the amount. A legal notice dated 13.11.2000 (Exhibit A2) was issued calling upon the defendant to repay back the amount borrowed along with the interest. A reply dated 30.11.2000 (Exhibit A3) was sent by the defendant denying the liability on the ground that the amount has already been repaid back. Under such circumstances, the suit came to be filed before the Principal District Munsif Court, Padmanabhapuram.



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3. The trial court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, dismissed the suit by judgment and decree dated 28.06.2004 in O.S.No. 239 of 2004.

4. Aggrieved by the judgment passed by the trial court, an appeal came to be filed before the First Additional Sub Court, Nagercoil, in A.S.No.121 of 2004, by the plaintiff and the appeal was allowed by judgment and decree dated 25.10.2005. Aggrieved by the same, the defendant has filed the present second appeal before this Court.

5. When the second appeal was admitted, notice was ordered on 11.12.2008 and the following substantial question of law was framed by this Court:

“Whether the judgment and decree of the court below is perverse on account of misconstruction of document in Ex.A1?”



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6. This Court carefully considered the submissions made on either side and the judgment passed by both the courts below and the materials available on record.

7. The main ground that was urged by the learned counsel for the appellant is that the defendant had specifically denied the execution of the promissory note in favour of the plaintiff and the plaintiff did not discharge his burden of proving execution of the promissory note and that the appellate court without properly dealing with the finding of the trial court in this regard, erroneously allowed the appeal. The 18% interest that was fixed by the court below was also questioned.

8. The appellate court, while reversing the judgment and decree passed by the trial court, gave a factual finding that the defence taken by the defendant as if the amount that was borrowed from the husband of the plaintiff has been repaid back, has not been proved by the defendant. The appellate court found that the diary entries (Exhibit B1 to B4), that was sought to be introduced by the defendant is not even supported by pleadings. If necessary pleadings are not made in the written statement,



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no amount of evidence can be looked into by the court and the law on this issue is now too well settled. The lower appellate court also found that such a defence was not even taken when the reply notice was given by the defendant.

9. Insofar as the denial of the signature found in the promissory note, the lower appellate court found that on comparison with the admitted signature, it perfectly tallied and therefore, the appellate court gave a finding that the signature found in the promissory note is that of the defendant.

10. It must also be borne in mind that there is a legal presumption under Section 118 of the Negotiable Instruments Act and that legal presumption has not been rebutted by the defendant.

11. In the light of the above discussion, the finding rendered by the lower appellate court regarding the genuineness of the promissory note and the defence taken by the defendant does not suffer from any



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12. The last issue is regarding the interest of 18% that was allowed by the trial court.

13. This Court deems it fit to reduce the interest since 18% is exorbitant and accordingly this Court modifies the interest to 12%. If the interest of 12% is calculated on the principal amount of Rs.46,000/- from the date of execution of the promissory note, it works out to Rs. 2,00,560/- till the end of this month. This Court is inclined to fix this amount as the decretal amount payable by the defendant to the plaintiff.

14. During the pendency of this appeal, the appellant/defendant had deposited a sum of Rs.2,75,000/-, pursuant to the orders passed by this Court, to the credit of O.S. No. 239 of 2004 before the District Munsif, Padmanabhapuram. Out of this amount, the plaintiff will be entitled to withdraw a sum of Rs.2,00,560/-.



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15. A payment out petition shall be filed and it shall be allowed

by the trial court to enable the plaintiff to withdraw the amount.

16. The appellant had earlier deposited 50% of the decree amount pursuant to the conditional order passed by this Court while granting interim stay on 17.09.2007. This amount can be permitted to be withdrawn by the appellant along with the accrued interest. That apart, the balance amount, after the withdrawal of the amount of Rs.2,00,560/- by the plaintiff out of Rs.2,75,000/-, shall also be permitted to be withdrawn by the appellant.

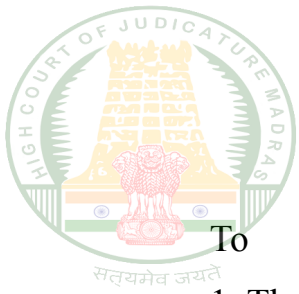
17. The second appeal is disposed of accordingly.

12.06.2026

Index : Yes/No

Internet : Yes/No

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To

1. The I Additional Sub Judge, Nagercoil (Camp at Padmanabhapuram).
2. The Principal District Munsif Court, Padmanabhapuram.
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J

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Judgment made in
S.A.(MD).No.843 of 2007

Dated:12.06.2026