BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.01.2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

A.S(MD)No.128 of 2018
and
C.M.P(MD)No.16351 of 2025

R.Lingasekar

... Appellant/Defendant

-vs-

P.Balakannan

..Respondent/Plaintiff

PRAYER: Appeal Suit is filed under Section 96 of Code of Civil Procedure r/w Order 41 Rule 1 and 2 of C.P.C against the Judgment and Decree dated 27.03.2017 passed in O.S.No.163 of 2013 on the file of the II Additional District Judge, Tiruchirappalli.

For Appellant	...	Mr.Raguvaran Gopalan
For Respondent	...	Mr.Isaac Mohanlal Senior Counsel for M/s Isaac Chambers

JUDGMENT

R.KALAIMATHI, J

This Appeal Suit is preferred by the defendant against the Judgment and Decree dated 27.03.2017 passed in O.S.No.163 of 2013 on the file of the II Additional District Judge, Tiruchirappalli.

2. Parties are indicated herein as per their litigative status and ranking before the trial Court.

3. According to the plaintiff, P.Balakannan, S/o G.Paramasivam Pillai of Trichy, the defendant borrowed a sum of Rs.35,00,000/- (Rupees Thirty Five Thousand Only) on 05.01.2013 from the plaintiff for his urgent family expenses and on the same date, executed a promissory note in favour of the plaintiff agreeing to pay the said sum borrowed on demand with interest at 24% per annum either to the plaintiff or to his order. After repeated demands made by the plaintiff, the defendant issued a post-dated cheque in the first week of July 2013 drawn on Indian Overseas Bank, K.Sathanur Branch for Rs.39,42,000/- inclusive of interest due up to date. The date of the cheque is 12.07.2013. The said cheque was presented to the State Bank of India,

Main Branch at Tiruchirappalli on 12.07.2013 and on 13.07.2013, the cheque was returned with endorsement “Fund Insufficient”. Accordingly, the plaintiff filed a Criminal Complaint against the defendant under Section 138 and 142 of the Negotiable Instruments Act, 1881.

3.1. After the dishonour of cheque, on 25.07.2013, the plaintiff caused to issue legal notice to the defendant herein. The defendant gave a reply through his lawyer on 02.08.2013 with vexatious averments. The proceedings before the Judicial Magistrate is pending in S.T.C.No.1042 of 2013. As the defendant is arranging to alienate his immovable properties, the plaintiff laid the suit for recovery of money due from the defendant.

3.2. The contention of the defendant is that the plaintiff is not known to him and that the plaintiff is a person set up by one Baskar. The suit promissory note is concocted on a blank stamped papers and a blank cheque was signed by the defendant and given to the said Baskar are absolutely false. The plaintiff does not know the said Baskar. The defendant has been close friend of the plaintiff since fifteen years. Hence, the suit is laid for recovery or money based on promissory note.

4. Written statement and additional written statement have been filed, wherein, the defendant would *inter alia* contend that the plaint details are denied as false and incorrect. The defendant borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) on 27.06.2011 with interest at the rate of 48% per annum from one Baskar S/o Venkidachalam and the defendant executed a several unfilled non-judicial stamp papers, unfilled green sheets, unfilled two promissory notes and four unfilled blank signed cheques drawn on Indian Overseas Bank, K.Sathanur Branch, Tiruchirappalli and handed over to the said Baskar. The said promissory notes and the said cheque leaves and other documents as stated above were issued to the said Baskar by the defendant and the same were concocted and fabricated by the plaintiff.

4.1. The defendant settled the amount of Rs.5,00,000/- with interest in the month of October 2012 to the said Baskar at the residence of the defendant in the presence of Murugesan, S/o Veeraiyan and Muthusamy S/o Singaram. When the defendant demanded to the said Baskar to return back the above said blank papers signed by the defendant, it is stated by the him that the documents are kept at his house and promised to return back the above said documents.

4.2. Taking advantage of the same, the said Baskar has misused one of the blank cheques and blank promissory note signed by the defendant and fabricated in the name of the plaintiff and filed vexatious suit to have unlawful gain. There is no consideration passed on, in this case. The defendant has never seen the plaintiff at any point of time and sought for dismissal of the suit.

5. The Trial Court framed relevant issues. Before the Trial Court, to substantiate the plaint details, on the plaintiff's side, three witnesses have been examined (P.W.1/plaintiff, P.W.2/Attestor to the suit pro-note and P.W.3/Scribe of Ex.A1) and five documents have been marked. Ex.A1 dated 05.01.2013 is the promissory note executed by the defendant in favour of the plaintiff for a sum of Rs.35,00,000/-. On the defendant's side, the defendant has examined himself as D.W.1 and his Banker has been examined as D.W.2 and two documents have been marked. Ex.X1 is the copy of the statement of account of the defendant issued by Indian Overseas Bank, K.Sathanur Branch.

6. The Trial Court, upon consideration of evidence and after hearing the arguments advanced by either sides, more particularly, after analysing Exs.A1 to A4, by holding that the plaintiff proved his case and decreed the suit.

7. Aggrieved, the defendant has preferred this Appeal.

8. The learned counsel for the appellant/defendant would vehemently contend that the loan transaction held between the defendant and one Basker. The testimony of P.W.3 is not appreciated properly by the Trial Court. Inconsistency in the evidence of P.W.2 and P.W.3, who have not properly explained about their acquaintance with the plaintiff or the defendant and as to why they acted as witness to the promissory note, is not properly appreciated by the Trial Court.

9. Whereas, the learned counsel for the respondent/plaintiff would strenuously argue that the defendant would state that his signed unfilled promissory note was handed over to one Basker. However, upon application of the defendant, opinion was sought as to the signature found in Ex.A1 promissory note and it supports the case of the plaintiff, as the report was given to the effect that the signature found in Ex.A1/promissory note is that of the defendant. The plaintiff has no economic capacity to issue loan for a sum of Rs.35,00,000/-.

10. Following Points for determination

(1) As per the contention of the defendant that he signed a blank promissory note then Section 118 of the Negotiable Instruments Act would come into play?

(2) If yes, whether the defendant has suitably rebutted the presumption arose in favour of the plaintiff or not?

(3) Whether the contention of the defendant to the effect that suit promissory note is a forged document is correct or not?

(4) Whether the plaintiff is entitled for money decree against the defendant based on suit promissory note?

(5) Whether the Judgment and Decree of the Trial Court are correct in law or not?

(6) Whether the Appeal is to be allowed or not?

11. The sum and substance of the case of the plaintiff is that the defendant is his close friend for the past 15 years and on 05.01.2013, the defendant borrowed a sum of Rs.35,00,000/- from him for his urgent family expenses and executed a promissory note on the same date in favour of the plaintiff. After repeated demands made by the plaintiff, the defendant issued a post-dated cheque drawn on Indian Overseas Bank,

K.Sathanur Branch in the first week of July 2013, for a sum of Rs. 39,42,000/- inclusive of interest. When the cheque was presented for encashment with the plaintiff's banker, it was returned as "Fund insufficient". He laid criminal complaint against the defendant for the same. Upon issuance of legal notice, the defendant gave false reply with vexatious contentions. Hence, the suit.

12. The defendant's case is that he borrowed a sum of Rs. 5,00,000/- from one Basker and he settled the amount in the presence of Murugesan, S/o Veeraian and Muthusamy S/o Singaram and during the execution of the promissory note in the name of Baskar, he signed in several unfilled non-judicial stamp papers, unfilled green papers, two promissory notes and four cheques drawn on Indian Overseas Bank, K.Sathanur Branch and handed over those documents to the said Baskar and one such unfilled signed promissory note is fabricated and the suit is filed through the plaintiff.

13. The defendant has admitted his signature found in Ex.A1/promissory note. However, the plaintiff besides examining himself as P.W.1 has also chosen to examine the Attestor and Scribe of Ex.A1/promissory note (P.W.2/Kumaravelu and P.W.3/Nagarajan) in

order to prove the execution of promissory note. P.W.1/Plaintiff Balakannan has filed his proof affidavit in the line with the contents of the plaint. When a question was posed to P.W.1 during cross-examination to the effect that before advancing loan whether he knew about his family members, he has answered in positive to the effect that "பிரதிவாதி மனைவியும் ஒரு மகளும் இறந்துவிட்டார்கள் என்று தெரியும் மற்றும் ஒரு மகனும் ஒரு மகளும் இருக்கிறார்கள்." would go to show that he knows about the family details of the defendant to some extent. As regards source of money, he would depose that he had then and there drew money from the Bank and gave loan to the defendant.

14. More so, the attestor to the promissory note is examined as P.W.2. It is the evidence of P.W.2/Thiru.Kumaravelu S/o Narayanasamy that he knows the plaintiff and the defendant and he has supported the case of the plaintiff. He would further depose that on 05.01.2013, the defendant received a sum of Rs.35,00,000/- from the plaintiff and executed a promissory note in favour of the plaintiff at that time, along with the plaintiff, the defendant, one Panneer Selvam and Nagaraj were present during the said transaction and on receipt of the amount, the defendant, executed the said promissory note and Nagaraj signed in the promissory note in the capacity as Scribe of Ex.A1.

15. During the cross examination of P.W.2, he would reiterate the fact that at the time of execution of the suit promissory note at the instance of the plaintiff, the plaintiff, defendant, Panneer Selvam and Nagaraj were present. P.W.2 would further depose that "புரோ நோட்டு வெள்ளை பேப்பரில் எழுதப்பட்டு இருந்தது. நான் என்னுடைய நீல நிற இங்க் பேனாவால் கையெழுத்து செய்தேன்.□ He has also deposed that "பிரதிவாதி வா.சா.1ஆ.1ஐ கைபட எழுதிக்கொடுத்தார்.□ Whereas the Scribe of the Ex.A1/ promissory note, Nagaraj S/o Nadarajan would state that when he went to the residence of the plaintiff on 05.01.2013, he saw three persons at residence of the plaintiff and they were introduced to him by Balakannan. The plaintiff told him that he issued loan to Lingasekar and requested him to execute the promissory note. He gave details of both the persons' address, amount, rate of interest, purpose for which the loan is issued to Lingasekar and wrote the model promissory note and showed it to him. He wrote the promissory note based on the same and both the plaintiff and the defendant did read the promissory note and told that the details are correct and then plaintiff affixed stamp on the promissory note and gave it to Lingasekar. It is his further evidence that the plaintiff gave amount to Lingasekar and he counted the same and thereafter, affixed signature on the promissory note and thereafter, two witnesses singed as Attestor and lastly, he signed as Scribe of the promissory note.

16. Moving further, during the cross examination of P.W.3, he would state that he is not a licensed Document Writer, but when he was working as Manager of BHEL, he had prepared documents. He does not know the Attestor. He would reiterate the details as to the fact that it is only the defendant who prepared the model promissory note and based on the same, he prepared suit promissory note. When a specific question was posed to him whether the plaintiff signed in the promissory note, he has answered in negative.

17.The defendant has examined himself as D.W.1. When a question is posted to him during his cross examination, when he repaid the loan amount to Baskar, why he did not receive back the documents, he answered that as his friend, he did not receive back the documents. For other question as to the names mentioned in the written statement viz., Murugesan and Muthusamy, he would answer that he does not know about those persons. Though he has answered that he is going to examine the said Baskar, he did not choose to examine the said Baskar. D.W.2 is the Banker of the defendant: Through him statement of account of the defendant (Ex.X1) has been marked.

18. It is pertinent to note that as the defendant has not denied the signature found in Ex.A1, yet the plaintiff has apart from examining him self has examined Attestor and Scribe to Ex.A1/ promissory note. The only inconsistency between the evidence of P.W.2 and P.W.3 is that as regards execution of promissory note, P.W.2 would state that Ex.A1 was written by the defendant. Whereas P.W.3/Scribe Nagaraj would state that based on the model promissory note written by the defendant, he prepared promissory note after collecting requisite details from the plaintiff as well as the defendant. In such circumstances, the details given by P.W.2 in this regard would not weaken the case of the plaintiff.

19. Though the signature found in Ex.A1 / promissory note is admitted by the defendant, an application was taken out by the defendant to obtain opinion of handwriting expert and the report of the Handwriting Expert was received to the effect that the signature found in Ex.A1 / Promissory note is that of the defendant. During the cross examination of P.W.2 and P.W.3, no details disadvantageous to the plaintiff was elicited by the defendant's side.

20. On a deep perusal of promissory note/Ex.A1, promissory note, it has been written in a causal manner and the defendant has put

his signature upon the non-judicial stamps. In this context, it is relevant to look into the cross examination of D.W.1. After receipt of legal notice issued by the plaintiff, the defendant did not lodge complaint against the defendant. When DW1 was posed a question during his cross examination to the effect that after settling the amount with Baskar, he did not take any steps to return back unfilled promissory note, unfilled green papers, unfilled non-judicial stamps and signed cheques, for which, he has answered that as Basker is his friend. He did not choose to get back those papers would go to show that the said transaction is not true one.

21.When the signature found in Ex.A1/promissory note is admitted and, in addition, the execution of the promissory note has been proved on the plaintiff’s side by examining one of the attestors and the scribe of the promissory note, presumption arises in favour of the plaintiff under Section 118 of the Negotiable Instruments Act, 1881. The said presumption is a rebuttable presumption. The defendant may rebut the presumption through oral or documentary evidence and may even rely upon the evidence adduced by the plaintiff. However, the defendant has failed suitably to rebut the presumption arose in favour of the plaintiff.

22. The Civil Miscellaneous Petition (CMP No.16351 of 2025) was filed under Order XLI Rule 27 CPC, by the Appellant stating that the documents mentioned in the petition could not be produced at the time of trial despite his best efforts. It is further stated that the additional evidence would have a bearing on the case.

23. On behalf of the respondent/plaintiff, it was counteracted by filing counter by stating that the additional evidence can be permitted by the Appellate Court in exceptional circumstances when the Trial Court refused to admit the evidence, when the document was not within the knowledge of the party or could not be produced despite due diligence and sought for dismissal of the application.

24. As per order XLI Rule 27 C.P.C, the petitioner has to establish that the Trial Court did not permit him to admit the evidence: despite his best efforts, the document could not be produced by him before the Trial Court.

25. The documents enclosed with the petition are (i) certified copy of the plaint in O.S.No.46 of 2013 dated 13.12.2013 (ii) certified copy of the written statement of the first defendant filed in O.S.No.46 of 2013

dated 03.04.2014 (iii) certified copy of the written statement of the defendants 2 to 4 in O.S.No.46 of 2013 dated 14.09.2015 (iv) certified copy of the statement of account of plaintiff issued by State Bank of India, Main Branch Trichy dated 06.07.2023 (v) deposition of D.W.1 examined in C.C.No.62 of 2016 on the file of the Judicial Magistrate No.II, Trichy dated 06.07.2023 (vi) Deposition of D.W.2 examined in C.C.No.62 of 2016 on the file of the Judicial Magistrate No.II, Trichy dated 31.10.2022.

26. P.W.1 was examined in O.S.No.163 of 2013 on 10.02.2015. The documents No.1 to 3 could have been filed by the defendant before the Trial Court. The document Nos.5 and 6/depositions are after the suit. As regards document No.4 (statement of accounts of the plaintiff Balakannan) nothing is stated about the source of money of the plaintiff in the written statement. In the absence of the said details in the written statement, the defendant/appellant is not permitted to put forth any evidence to prove the details. Therefore, as the appellant/defendant has failed to fulfil the necessary ingredients adumbrated under Order XLI Rule 27 C.P.C, this petition stands dismissed.

27. The learned counsel for the appellant/plaintiff would strenuously argue about the source of money of the plaintiff. In order to prove the same, CMP is taken out. A careful perusal of the written statement, the said detail are not raised in the written statement. Therefore, now the appellant is not permitted to raise the said defense.

28. Based upon the oral and documentary evidence led by both sides and after hearing the arguments advanced by the learned counsels appearing on either side, it is pellucid that the execution of Ex.A1/promissory note stands proved. Presumption arises in favour of the plaintiff under Section 118 of the Negotiable Instruments Act has not been rebutted suitably by the defendant. Therefore, ultimately, the plaintiff is entitled for money decree as prayed for. Based on the aforestated discussion and observation, we are of the considered view the judgment of the Trial Court does not suffer from any infirmity or perversity. The points for consideration are answered in favour of the plaintiff.

29. Based on the above stated narrative, this Appeal Suit stands dismissed. Sequel to this, the Judgment and Decree dated 27.03.2017 passed in O.S.No.163 of 2013 on the file of the II Additional District

Judge, Tiruchirappalli stands confirmed. There is no order as to costs. CMP(MD)No.16351 of 2025 stands dismissed. Connected miscellaneous petitions, if any, stands closed.

[G.R.S.,J] (R.K.M.,J)
27.01.2026

skn
NCC : Yes/No
Index : Yes / No
Internet : Yes / No

To:

1.The II Additional District Judge, Tiruchirappalli.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

G.R.SWAMINATHAN, J.
and
R.KALAIMATHI, J.

skn

Judgment made in
A.S(MD)No.128 of 2018
and
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27.01.2026