IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE, NAMAKKAL

Present: Thiru. N. Sachidhanantham L.L.M.,

Additional Subordinate Judge, Namakkal

Wednesday, the 15th day of July 2026

திருவள்ளுவராண்டு 2057, பராபவ வருடம், ஆனித்திங்கள் 31ம் நாள்

O.S. No. 2 of 2023

[CNR.No.TNNM03-000007-2013]

Premkumar -Plaintiff

-Vs-

Nallusamy -Defendant

Amended as per order in I.A.No.5/2025, dt:19.09.2025

This suit coming before this court for final hearing on 02.07.2026 in the presence of Thiru.S.Senthil, counsel for the plaintiff and Thiru.A.Prabhu, counsel for the defendant and upon hearing the both side arguments and upon perusing the records and having stood over for consideration till this date, this court delivered the following:-

JUDGMENT

The plaintiff has filed the above suit for recovery of money for a sum of Rs.5,00,000/- and subsequent interest of principal amount of Rs.5,00,000/- against the defendant and costs of the suit.

1. Brief averments made in the amended plaint is as follows: -

The defendant borrowed a hand loan for a sum of Rs.5,00,000/- from the plaintiff on 22.11.2019 for his urgent needs and family expenses. Thereafter, in spite of the repeated demands made by the plaintiff, the defendant failed to repay the loan amount as well as interest to the plaintiff. Thereafter, the defendant issued a post-dated cheque to the plaintiff on 15.06.2022, bearing Reg. No.001616 for Rs.5,00,000/- drawn in favour of the plaintiff by the defendant, drawn on City Union Bank, Namakkal Branch to discharge the liability and the plaintiff had presented the above said cheque for collection with his Karnataka Bank, Namakkal Branch 15.06.2022 and 16.09.2022 and the same was returned and stating the reason of "Funds Insufficient" on 21.06.2022 and 17.09.2022. The The defendant has not come forward to pay suit amount and hence, the plaintiff sent a legal notice to the defendant on 16.10.2022 and the defendant received the legal notice on 18.10.202. Thereafter, the defendant sent a reply notice to the plaintiff on 21.11.2022. Evenafter the issuance of legal notice the defendant never paid the loan amount. Hence this suit.

2. The Brief averments of the written statement filed by the defendant is as follows:-

2.1. The suit is false, frivolous, vexatious and liable to be dismissed. Except as to the facts that are specifically admitted herein to be true this defendant deny all other allegation contained in the plaint are false and untrue. The plaintiff is not a friend of this defendant. The defendant does not known to the plaintiff. The plaintiff has filed this suit by suppressing real facts and contradicting the legal notice sent prior to the suit, dated 16.10.2022. The defendant has no knowledge of the person namely, Balasubramaniam. The plaintiff has filed this suit with the collusion of Balasubramaniam, Veerappan, and Sivamani acting through individuals hostile to this defendant by fraudulently obtaining, signing and filling out the cheque with the intent of making an unlawful gain from the defendant. No loan was obtained from the plaintiff on 22.11.2019, as alleged in the plaint nor was there any necessity to obtain such a loan.

2.2. The suit is barred by limitation. The plaintiff failed to file the suit within the three-year period following 22.11.2019, the date on which the loan was allegedly advanced to the defendant. The plaintiff's wife is employed at a nationalized bank in Namakkal district. The plaintiff has no income of his own and assists his wife he also engages in the unlawful practice of lending out his wife's earnings as usurious loans and collecting the repayments. The plaintiff possesses neither the personal income nor the financial means to advance loans. The defendant has not conducted any transactions in his bank account since 2016. The plaintiff has not approached the Court with clean hands. Therefore, the plaintiff's suit should be dismissed with costs.

<u>3. The Brief averments of the additional written statement filed by the defendant is as follows</u>:-

3.1. It is legally impermissible to amend the plaint after the plaintiff had issued a legal notice and filed the suit stating that the cheque (issued by the defendant to repay a hand loan) was presented for collection on 20.06.2022 and returned on 21.07.2022 due to insufficient funds, and after the plaintiff's affidavit was filed and the defendant had conducted cross-examination by claiming that the date of the cheque's return was 21.06.2022 instead of 21.07.2022, on the grounds that the latter was merely a typographical error. It is legally untenable to amend the original suit based on a petition to correct a typographical error to change the date of the cheque's issuance from 15.08.2021 (which was erroneously typed) to 15.06.2021, given that the original pleading had incorrectly stated the date as 15.08.2021 instead of the actual date of 15.06.2021.

3.2. In the legal notice sent by the plaintiff to the defendant, it was stated that the subject cheque was returned on 21.07.2022 however, the notice also claimed that the defendant had issued the said cheque to the plaintiff on 15.08.2022 a date subsequent to the alleged return. The written statement was filed by the defendant in the original suit, and the plaintiff's witness was cross-examined by the defendant based on that statement. Furthermore, the amendments made to the plaint based on the testimony given by PW1 in favor of this defendant are of such a nature that they completely alter the character of the suit;

3.3. The cheque in question was issued in the capacity of the proprietor of KNS Transport. The plaintiff has not filed this suit against the proprietor of KNS Transport. The defendant is merely a partner in the said KNS Transport firm. The firm is not the defendant's personal business it is a partnership firm. The defendant has no right to personally borrow funds on behalf of the partnership firm. The plaintiff was not a party to the insolvency petition filed by the defendant's son. Therefore, the plaintiff's suit should be dismissed with costs.

4. <u>The following issues were framed for trial</u>;

1.	தாவா காசோலை மோசடியானதா?
2.	காசோலையின் அடிப்படையில் தாவா தொகை பின்வட்டி மற்றும் செலவுத்தொகை ஆகியவை பிரதிவாதியிடமிருந்து கிடைக்கத்தக்கதா?
2.	வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரம் என்ன?

5. To substantiate the case of plaintiff, the plaintiff was examined himself as PW1 and Ex.A1 to Ex.A7 were marked. The plaintiff has examined one another witness as PW2. In order to disprove the case of plaintiff, the defendant was examined himself as DW1 and Ex.B1 and Ex.B2 were marked. Defendant side written arguments filed and perused.

<u>6. Answer for Issue no 1 and 2</u>:-

6.1. Both side arguments heard and records perused. On perusal of records, it is seen that the plaintiff has filed the suit for a sum of Rs.5,00,000/- against the defendant. The plaintiff has marked the vital documents as follows: Ex. A1 is the cheque, Ex.A2 & Ex.A3 are the return memo, Ex.A4 is the legal notice, Ex.A6 is the reply notice, Ex.A7 is the certified copy of petition in I.P.No.41 of 2019. On the defendant side, the certified copies of partnership agreements were marked as Ex.B1 and Ex.B2.

6.2. As per Section 6 of the Negotiable Instruments Act, a " cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form. It is seen that Ex.A1 has complied with the above provision.

6.3. According to Section 118 of Negotiable Instruments Act, presumption arises in favour of the holder of the negotiable instrument ie., the plaintiff herein, that the Ex.A1 Cheque was executed for valid consideration. The oral evidences of PW1 is cogent and acceptable so far in regard to the execution and consideration passed upon Ex.A1 cheque and it raises an initial presumption in plaintiff's favour. Such presumption is a rebuttable one and now it is the duty of defendant to rebut the presumption raised in favor of plaintiff.

6.4. It is mentioned in the plaint the defendant has borrowed a sum of Rs.5,00,000/- from the plaintiff for his urgent family expenses on 22.11.2019 and to discharge the said loan, he issued a cheque on 20.06.2022. The learned counsel for the defendant would submit that the suit relief is barred by limitation citing the above as three years were elapsed. The learned counsel for plaintiff submit that due to Covid-19 pandemic, the limitation for filing all kind of suits had been extended by the Hon'ble Apex Court. This court shall take judicial notice that the Hon'ble Supreme Court excluded the period from 15.03.2020 to 28.02.2022 for computing statutory limitation periods across all courts, and tribunals in India. By applying the same the suit is well within the limitation period.

6.5. It is revealed that the plaintiff has caused pre-suit notice to the defendant under Ex.A4 on 16.10.2022. The defendant has issued a reply notice through his counsel by way of Ex.A6 denying the borrowal and execution of Ex.A1 cheque in favor of plaintiff. In fact, in the reply notice it was stated the defendant did not know the plaintiff at any point of time but has not stated anything about the borrowal and the issuance of cheque to the plaintiff.

6.6. During the oral examination of defendant, he reiterated the stand that he never know the plaintiff and the alleged transaction is nothing but imaginary and the cheque is a forged one. However it is noted the defendant has admitted that he issued the suit cheque, Ex.A1 on behalf of the partnership Firm namely KNS Transport in the capacity of partner and as such he contended the suit filed in the individual capacity cannot be maintained.

6.7. On careful perusal of Ex.A1 it is seen that the cheque was issued by the Proprietor of KNS Transport i.e., the defendant herein. The defendant made a specific plea that he is a partner in KNS Transport and does not reveal the other partners in the said Firm. The Ex.B1 and Ex.B2 partnership deeds were filed. The term Proprietor and partner are completely different and distinct with each other. The present cheque has been issued in the capacity of Proprietor only and not by a partner of the Firm. That being so the defendant is vicariously liable for the Firm KNS Transport as a Proprietor as well as in his individual capacity.

6.8. Another important contention to note here is, it was argued the defendant and his son namely Karthikeyan have filed an insolvency petition jointly in I.P.No.41 of 2019 before the Principal Subordinate Judge at Namakkal. The certified copy of petition is filed as Ex.A7. It may be mentioned here, the present plaintiff was the 18th respondent in the I.P. petition. But such factum was strenuously denied by the defendant stating he did not know anything about the insolvency proceedings and such evidence is unbelievable to accept by this court.

6.9. At this juncture, this court is inclined to take aid of Section 72 of Bharatiya Sakshya Adiniyam 2023 for comparison of defendant's signature said to be allegedly forged and with the admitted one. The signature found in Ex.A7 petition copy and the admitted signatures of defendant in the partnership deeds Ex.B1 and Ex.B2 seems identical and same. Similarly the signature found in Ex.A1 cheque also seems identical and same with admitted signatures of defendant. Hence the denial made by the defendant so far in respect of Ex.A7 insolvency proceedings and the execution of Ex.A1 cheque cannot be sustained. Having known the plaintiff even in the year 2019 and admitted the present suit transaction in the above insolvency proceedings now the defendant has taken an inconsistent stand. The own admission made by the defendant by way of Ex.A7 document is sufficient to arrive the decision for the issues raised.

6.10. The points raised by the defendant in regard to the amendment made by the plaintiff after the cross examination of PW1 does not confer any beneficial right to the defense set out since the court has permitted the plaintiff to do so and it was set right by way of suitable amendment. Further the contention of the defendant that the Ex.A1 cheque has been issued in the capacity of partner, that being so the suit loan cannot bind against the defendant personally, does not absolve the defendant's liability of debt. Hence the plea of non joinder of necessary parties and the limitation raised by the defendant cannot be countenanced. The authority filed by the defendant in *A.S.Sakthivel Vs.M.Perumal (2023 (3) CTC 1 to 7)* discusses about the proving of signature and transaction in a negotiable instrument which is not applicable to the present case facts and circumstances.

6.11. The plea of forgery raised by the defendant has not proved. On the other hand the plaintiff has proved the case with preponderance of probabilities and with necessary evidences that the Ex.A1 cheque was executed for valid consideration. Thus the issue no. 1 is decided accordingly and the issue no.2 is answered in favor of the plaintiff that he is entitled for the suit claim amount from the defendant.

6.12. Therefore from the foregoing discussion, this court is of view, the plaintiff is entitled for recovery of a sum of Rs.5,00,000/- from the defendant with costs. It is noted the plaintiff has not claimed any interest and hence it is appropriate to order interest from the date of suit.

7. **Answer for Issue no 3:-**

Since the substantial issues have been decided and answered in favour of the plaintiff and the suit is decreed for recovery of suit claim amount, no other relief need to be granted to either the plaintiff or the defendant. Accordingly the issue No.3 is answered. The plaintiff is entitled for costs.

In the result, the suit is decreed as follows;

a)	**Thereby, directing the defendant to pay a sum of Rs.5,00,000/- to the plaintiff with interest at the rate of 6% per annum from the date of suit till the date of realization of the decreetal amount.**
b)	**Thereby, the defendant shall bear the costs of the suit.**

Directly dictated to the Steno-typist and directly computerized by him, corrected and pronounced by me in the open court, on this 15th day of July 2026.

N SACHIDHANANTHAM
Digitally signed by N SACHIDHANANTHAM
Date: 2026.07.15 19:37:26 +0530

Additional Subordinate Judge,
Namakkal.

Plaintiff side witnesses:-

PW1 Premkumar

PW2 Balasubramanian

Plaintiff side Documents:-

Sl. No.	Date	Exhibits	Documents
1	20.06.2022	Ex.A1	Cheque - original
2	21.06.2022	Ex.A2	Cheque return memo -original
3	17.09.2022	Ex.A3	Cheque return memo -original

4	16.10.2022	Ex.A4	Legal notice – office copy
5	18.10.2022	Ex.A5	Track Consignment – download load copy
6	21.11.2022	Ex.A6	Reply notice – served copy
7	20.12.2019	Ex.A7	Certified copy of Insolvency petition no.49/2019

Defendant side Witness:-

DW1 Nallusamy

Defendant side Documents:-

Sl. No.	Date	Exhibits	Documents
1	01.04.2003	Ex.B1	Partnership agreement(KNS Transport)- Certified copy
2	01.04.2019	Ex.B2	Partnership agreement(KNS Transport)- Certified copy

N SACHIDHANANTHAM Digitally signed by N SACHIDHANANTHAM Date: 2026.07.15 19:37:32 +0530

Additional Subordinate Judge,
Namakkal.