

IN THE COURT OF THE DISTRICT JUDGE, KARUR
PRESENT:-THIRU R. SHANMUGASUNDARAM, B.Com., L.L.B,
PRINCIPAL DISTRICT JUDGE.

Thursday, the 11th day of January 2024

ORIGINAL SUIT NO.260/2021

CNR.No.TNKR-01-003725-2021

N. Marappan

...Plaintiff

vs.

K. Ponnusamy

...Defendant

This suit coming on before me for hearing on 21.12.2023 in the presence of Thiru R. Ramanathan, advocate for the plaintiff and the defendant having remained absent and was set exparte, upon hearing the arguments on the side of the plaintiff and having stood over for consideration till this day, this Court passed the following

JUDGMENT:-

Suit for recovery of money on the foot the promissory note dated 20.07.2020.

The plaint reads as follows:-

2) The plaintiff submits that on 20.07.2020, the defendant borrowed a sum of Rs.20,00,000/- from the plaintiff for his urgent needs for business purposes and family expenses and executed a promissory note in favour of the plaintiff agreeing to repay it with interest at the rate of Rs.1.50/- per hundred per month either to the plaintiff or to his order on demand. In spite of repeated demands, the defendant did not choose to pay any amount either towards principal or interest. He submits that the property described in the Order 38 Rule 5 petition belongs to defendant and others and the defendant is entitled to 1/5th share of said properties. In order to defeat the plaintiff's lawful claim and malafide intention, the defendant secrete the amount beyond plaintiff's and making hectic attempts to dispose the property some

sham and nominal document. Therefore, the plaintiff has issued a legal notice to the defendant on 09.09.2021 calling upon him to repay the loan amount together with agreed interest. The defendant has received the legal notice on 14.09.2021. In spite of receipt of legal notice, the defendant has failed to repay the amount either towards principal or interest. Hence, the suit.

3) In this case, the defendant entered appearance through his counsel Thiru N. Rajeshkumar and he filed his written statement.

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

4) In the written statement the defendant has denied the borrowal, execution of promissory note and passing of consideration. According to the defendant, the defendant has not borrowed any amount from the plaintiff and executed the suit promissory note. He submits that there is no creditor and debtor relationship between him and the plaintiff. He submits that one Ashok is his sister's husband and one Ramesh is the son in law of the plaintiff. They both are the partners of Alagan Murugan Finance and the defendant has borrowed a sum of Rs.2,00,000/- from the said finance. At the time of borrowal, his signatures were obtained in some blank promissory notes. Subsequently, the defendant has settled the loan amount but unfilled promissory notes were not returned to him. Further, the defendant assured by the said Ramesh that he will hand over the said promissory notes with the above said Ashok. While so, the said finance was closed. Thereafter, the defendant demanded the said Ramesh to return the above said promissory notes. The said Ramesh evaded for some false reasons. Hence, he filed the present suit in the name of his father in law with intention to get unlawful gain. Hence, prays to dismiss the suit.

5) Based on the above pleadings, this Court framed the following issues:-

1. Whether the suit promissory note has been executed by the defendants in favour of the plaintiff?
2. Whether the suit promissory note is true, valid and supported by consideration?

3. Whether the suit promissory note is a rank forged one?
4. Whether the plaintiff is entitled to get the relief as prayed for?

6) The case was taken up for trial and the plaintiff examined himself as P.W.1 and he marked Ex.A1 to Ex.A8 and one M. Senthilsuparayan was examined as P.W.2. When the case was posted for the cross examination of P.W.1, the learned counsel for the defendant was not ready to cross examine PW.1 and informed to call the defendant. The defendant has not appeared before the Court. So, he was called absent and was set ex parte.

ANSWER TO THE ISSUES 1 and 2:-

7) According to the plaintiff, on 20.07.2020 the defendant has borrowed a sum of Rs.20,00,000/- from the plaintiff for his business purposes and family expenses and executed a promissory note in his favour of the plaintiff agreeing to repay the same with interest at the rate of Rs.1.50/- per hundred per month. In spite of repeated demands the defendant did not choose to pay any amount either towards principal or interest and hence, the plaintiff issued a notice to the defendant on 09.09.2021 calling upon him to repay the loan amount together with agreed interest. The defendant has received the notice on 14.09.2021. In spite of receipt of the notice, the defendant has not issued reply notice and failed to repay the amount either towards principal or interest. Hence, the plaintiff has come forward with this suit.

8) In order to prove the same, the plaintiff examined himself as P.W.1 and he marked Ex.A1 to Ex.A8. Further, at request of the defendant's counsel, the case was adjourned to 16.11.2023 for cross examination of P.W.1. On 16.11.2023, again the case was adjourned to 14.12.2023 for cross examination of P.W.1. On 14.12.2023, P.W.1 was present and the defendant counsel was not ready to cross examine P.W.1 and informed the court to call the defendant. Hence, the defendant was called but he has not appeared before this Court. Therefore, the defendant was called absent and he was set ex parte. Further, on the side of the plaintiff the scribe-cum-attesting witness

to the suit promissory note namely one M. Senthilsuparayan has been examined as P.W.2. The Plaintiff has closed his witnesses with P.W.2.

9) On perusal of the evidence and records, in order to prove the borrowal of the suit amount of 20,00,000/- and execution of promissory note in favour of the plaintiff, the plaintiff examined himself as P.W.1 and marked the promissory note as Ex.A1, Copy of the legal notice issued by the plaintiff in favour of the defendant as Ex.A2, Copy of acknowledgment card as Ex.A3, Copy of sale deed dated 23.08.2017 executed by the plaintiff in favour of one M. Sivasamy as Ex.A4, Copy of sale deed dated 24.10.2019 executed by the plaintiff and one Ladan Chettiyar in favour of the P.Murugesan and others as Ex.A5, Copy of the Income Tax Return Acknowledgment of the plaintiff for the year 2020 – 2021 as Ex.A6, Copy of the Income Tax Return Acknowledgment of the plaintiff for the year 2021 – 2022 as Ex.A7 and Copy of patta Nos.979, 240, 977 standing in the name of the plaintiff is marked as Ex.A8. The P.W.1 has stated in his evidence in conformity with the averments made in the plaint. P.W.2 who is the attester of the suit promissory note has corroborated and strengthened the evidence of P.W.1. Therefore, from Ex.A1, the plaintiff has established that the plaintiff has lend a sum of Rs.20,00,000/- to the defendant and it is proved to the satisfaction of the court. So, the presumption u/s.118 of Negotiable Instruments Act automatically arises in favour of the plaintiff. So, the defendant has to rebut the said presumption. In this case, though the defendant has filed the written statement denying the execution and the borrowal of the loan amount, the defendant has failed to cross examine P.W.1 to prove the above contention. On the other hand, he remained ex parte. So, the presumption drawn in favour of the plaintiff u/s.118 of Negotiable Instruments Act was not rebutted by the defendant. Therefore, the evidence of P.W.1 and P.W.2 remains unchallenged. Therefore, the statutory presumption u/s.118 of Negotiable Instruments Act has not been rebutted by the defendant. Therefore, this court finds that the suit promissory note is true and supported by consideration. Hence, this court holds that the plaintiff has proved his

case and this Court has come to the conclusion that the plaintiff is entitled to the suit amount as prayed for and therefore, the issue Nos. 1 and 2 are answered accordingly in favour of the plaintiff.

ANSWER TO THE ISSUE No.3:-

10) The issue No.3 is whether the suit promissory note is a rank forged one. The plaintiff examined himself as P.W.1 and scribe-cum-attesting witness to the promissory note as P.W.2. He has established that the defendant has executed a suit promissory note Ex.A1 in favour of the plaintiff. The defendant in his written statement has raised a plea that the suit promissory note is fabricated and rank forged one. Therefore, the defendant who takes the plea in his written statement that the suit promissory note is a forged one has to established the same. Therefore, the burden of prove lies on defendant that the suit promissory note Ex.A1 is rank forged one. In this case, the defendant remains ex parte and hence, the plea taken by the defendant is that the suit promissory note is a forged one is not established by the defendant. Therefore, issue no.3 is answered against the defendant. Further, the plaintiff has filed Ex.A4 to Ex.A8 to established that he has wherewithal to lend the above said loan amount of Rs.20,00,000/-. From Ex.A4 and Ex.A5, it is established that the plaintiff has executed a sale deed dated 23.08.2017 in favour of one M. Sivasamy for a sum of Rs.9,39,500/- and further, the plaintiff and one Ladan Chettiya have executed a sale deed dated 24.10.2019 in favour of one P.Murugesan and others for a sum of Rs.13,17,000/-. Therefore, the plaintiff has proved that he has sufficient income to lend the loan amount.

ANSWER TO THE ISSUE No.4:-

11) In view of the findings arrived at issue No.1 to 3, the plaintiff is entitled for the suit claim as prayed for. Accordingly, the issue No.4 is answered in favour of the plaintiff.

In the result, the suit is decreed as prayed for with costs and the defendant is directed to pay the plaintiff the sum of Rs.25,09,000/- with interest at 9% p.a. on the principal sum of Rs.20,00,000/- from the date of suit till the date of decree and thereafter at 6% p.a. till the date of realization. The defendant is directed to pay the amount within three months from the date of decree, failing which the plaintiff is entitled to enforce the decree as per law.

Dictated to the Steno-typist, transcribed by him, corrected and pronounced by me in open Court on this the 11th day of January 2024.

PRINCIPAL DISTRICT JUDGE,
KARUR.

LIST OF WITNESSES AND EXHIBITS:-

PLAINTIFFS' SIDE WITNESS:-

P.W.1. N. Marappan (Plaintiff)

P.W.2. M. Senthilsuparayan

PLAINTIFFS' SIDE EXHIBITS:-

- Ex.A1. 20.07.2020 Promissory note executed by the defendant in favour of the plaintiff for a sum of Rs.20,00,000/-.
- Ex.A2. 09.09.2021 Legal notice issued by the plaintiff in favour of the defendant.
- Ex.A3. 14.09.2021 Served acknowledgment card.
- Ex.A4. 23.08.2017 Copy of the Registered Sale deed executed by the plaintiff in favour of one M. Sivasamy.
- Ex.A5. 23.10.2019 Copy of the Registered Sale deed executed by the plaintiff and one Ladan Chettiya in favour of one P.Murugesan and others
- Ex.A6. --- Copy of the Income Tax Return Acknowledgment of the plaintiff for the year 2020 – 2021.

- Ex.A7. --- Copy of the Income Tax Return Acknowledgment of the plaintiff for the year 2021 – 2022.
- Ex.A8 03.05.2023 Copy of patta Nos.979, 240, 977 standing in the name of the plaintiff.

PRINCIPAL DISTRICT JUDGE,
KARUR.