

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
SALEM.**

Present: **Tmt.S.Sumathy, M.L.,**
Principal District Judge,
Salem.

Monday, the 08th day of July, 2024.

O.S.No.184/2016
(CNR.No.TNSA010007562016)

S.Selvaraj

...Plaintiff.

-vs-

S.Palaniappan

...Defendant.

This suit came up on 25.06.2024 for final hearing before me in the presence of Thiru.K.T.Rajan and Thiru.E.Kannan, Advocates for the Plaintiff and of Thiru.S.P.Venkates and Thiru.S.Thiruvenkatanathan, Advocates for the defendant, subsequently, the defendant was called absent and set exparte, and upon hearing the plaintiff's side arguments and upon perusing the documents and having stood over till this day for consideration, this Court passed the following,

JUDGMENT

The plaintiff has filed this suit for recovery of Rs.13,42,500/- from the defendant along with interest at the rate of 18% per annum on Rs.10,00,000/- from the date of suit till realization and for costs.

2) Averments made in the plaint are in brief:

The defendant had borrowed a sum of Rs.10,00,000/- from the plaintiff for his family and business requirements on 15.09.2014 and

executed a promissory note in favour of the plaintiff agreeing to repay the amount along with interest at the rate of Rs.1.50 per hundred per month on demand by the plaintiff or by his order. The defendant, in spite of several demands has not paid the loan amount to the plaintiff. The defendant is a business man and therefore, he is not entitled to the benefits of Agriculturist Debt Relief Act. Hence, he is liable to pay the interest at the contract rate of Rs.1.50 per Rs.100/- per month i.e 18% p.a. The plaintiff has made personal demands on the defendant on several dates demanding payment of the loan amount with interest. The plaintiff has finally made a demand on the defendant on 09.08.2016 to pay the loan amount along with interest, but he has not paid the amount and he is hastily making arrangements to sell away his valuable properties with a view to delay and if possible to defeat the lawful claims of the plaintiff. Hence the suit.

3) **Averments made in the written statement are in brief:**

The suit is not maintainable either in law or on facts. It is absolutely false to allege that the defendant had borrowed a sum of Rs.10,00,000/- from the plaintiff for his family and business requirements on 15.09.2014 and executed a promissory note in favour of the plaintiff agreeing to repay the amount along with interest at the rate of Rs.1.50 per hundred per month on demand by the plaintiff or by his order. It is false to allege that the defendant, in spite of several demands has not paid the loan amount to the plaintiff. The defendant never borrowed any money from the plaintiff and

executed the suit pronote. He did not have any transaction with the plaintiff. The plaintiff is a distant relative to the defendant and except the relationship, the defendant has no other dealings with the plaintiff. Attester and scribe are unknown persons to the defendant. The defendant never met either the attester or the scribe. The scribe is living at Salem and the attester is living at Trichengode as per the suit pronote which speaks the truth of the case. It is utter false to allege that the plaintiff has made personal demands to the defendant on several dates demanding payment of the loan amount with interest and the plaintiff has finally made a demand to the defendant on 09.08.2016 to pay the loan amount with interest. It is absolutely false to allege that the defendant is making arrangements to sell away his properties. The defendant has not made any attempts as alleged. The defendant has no necessity to borrow any money from the plaintiff and he had not executed the alleged pronote and the same is rank forgery. The plaintiff has no means or capacity to lend such a huge amount to the defendant. The signature and LTI found in the pronote is denies. The defendant came to the conclusion that some of the third party insisted the plaintiff to file the suit on the basis of fraudulently pronote. The defendant is a farmer doing agricultural work. The plaintiff has wantonly failed to issue legal notice before ever filing of the suit and that alone proves the false case of the plaintiff. There is no cause of action for the suit arose and the alleged one is false. Hence, this suit is to be dismissed.

4) **Based on the averments in the plaint and the written statement, the following issues are framed:**

1. Whether the suit promissory note was executed by the defendant for the consideration mentioned thereon?
2. Whether the plaintiff is entitled for suit claim amount?
3. For what relief the plaintiff entitle?

5) After receipt of suit notice, though the defendant made appearance through his Counsel and filed written statement denying the averments made in the plaint, subsequently, he has not chosen to contest the suit and he was set exparte.

6) In order to prove the plaintiff's case, the plaintiff himself was examined as P.W.1, one Thiru.P.Selvan, who is the witness to the execution of Ex.A1 pronote, was examined as P.W.2 and Ex.A1 to Ex.A3 documents were marked. On the other hand, the defendant was set exparte.

7) **Issue Nos.1 and 2:-**

The plaintiff has filed this suit for recovery of Rs.13,42,500/- from the defendant along with interest at the rate of 18% per annum on Rs.10,00,000/- from the date of suit till realization and for costs.

8) The plaintiff himself has been examined as P.W.1. and he has deposed that on 15.09.2014 the defendant has borrowed a sum of Rs.10,00,000/- for his family and business requirements from the plaintiff and executed Ex.A1 promissory note infavour of the plaintiff in the presence of one P.Selvan agreeing to repay the amount with interest at the

rate of Rs.1.50 per Rs.100/- per month and the promissory note has been written by one Mohanraj. Further P.W.1 has deposed that in spite of several demands made by the plaintiff, the defendant has not chosen to repay the amount towards the principal or the interest.

9) Further P.W.1 has deposed that suit promissory note and the left thumb impression of the defendant were sent for getting expert opinion, but the finger print Expert sent a report stating that since the disputed finger impression of the defendant is unfit for comparison, he did not give opinion based on the said unfit disputed finger impression, hence, on 11.03.2021 the plaintiff sent a legal notice to the defendant under Order 12 Rule 8 of C.P.C., to produce the General Power of Attorney executed by one G.Rajakumar infavour of the defendant before the Court, but till date, the defendant did not produce the said document before the Court and if the defendant produced the said document before the Court, the said document would have been sent for expert opinion to prove the signature of the defendant in the promissory note. Further he has deposed that when he demanded the defendant to repay the amount, the defendant gave Ex.A2 cheque bearing No.490305 of Indian Bank, Kondalampatty Branch for the part amount of loan amount i.e. Rs.5,00,000/-. Further he has deposed that the defendant is having property and in order to cheat the plaintiff, he is trying to alienate the property and hence the plaintiff has come forward with this suit for recovery of money with interest from the defendant.

10) The plaintiff has also examined one Thiru.P.Selvan as P.W.2, who is a witness to the execution of Ex.A1 pronote. P.W.2 in his evidence has deposed that in his presence, the defendant borrowed a sum of Rs.10,00,000/- from the plaintiff agreeing to repay the same with interest at Rs.1.50 per hundred per month and executed Ex.A1 promissory note in favour of the plaintiff. Further he has deposed that he signed as first witness in the Ex.A1 promissory note. The signature of P.W.2 in Ex.A1 promissory note is marked as Ex.A3.

11) Ex.A1 is the promissory note executed by the defendant. Wherein it is mentioned that the defendant has borrowed a sum of Rs.10,00,000/- from the plaintiff on 15.09.2014 towards his family and business need and the defendant also agreed to pay the interest at the rate of Rs.1.50 per month per Rs.100/-. Ex.A2 is the cheque for the part amount of loan amount issued by the defendant to the plaintiff. Further the oral evidence of P.W.1 and P.W.2 and the documentary evidence of Ex.A1 to Ex.A3 clearly reveals that the defendant has received the loan of Rs.10,00,000/- from the plaintiff on 15.09.2014 and agreed to repay the same with interest at the rate of Rs.1.50 per hundred per month.

12) After receipt of suit notice, though the defendant made appearance through his Counsel and filed written statement denying the averments in plaint, subsequently, he has not come forward to disprove the evidence adduced by the plaintiff's side. In the absence of any rebuttal

evidence, this Court accepts the evidence of the plaintiff's side that the promissory note was executed after receiving Rs.10,00,000/- by the defendant. For the aforesaid reasons, this Court is of the opinion that the plaintiff has proved his case and therefore the plaintiff is entitled to get the relief as prayed for and the Issue Nos.1 and 2 are answered accordingly.

13) **Issue No.3:**

In view of the above said conclusion arrived in Issue Nos.1 and 2, this Court is inclined to hold that the plaintiff is entitled to get the relief as prayed for in the suit and the suit is liable to be decreed as prayed for and the Issue No.3 is answered accordingly.

14) Finally, the suit is decreed with cost. The defendant is directed to pay a sum of Rs.13,42,500/- to the plaintiff with subsequent interest at the rate of 9% p.a. on the principal amount of Rs.10,00,000/- from the date of suit till the date of decree and thereafter at the rate of 6% p.a. till the date of realization.

Dictated to the Steno-typist directly, computerized by her, corrected and pronounced by me in Open Court, this the 08th day of July, 2024.

Sd./S.Sumathy,
Principal District Judge,
Salem.
08.07.2024

Plaintiff's side evidence:-

P.W.1: Thiru.S.Selvaraj (Plaintiff)

P.W.2: Thiru.P.Selvan

Plaintiff's side exhibits:-

Ex.A1:	15.09.2014	Promissory note executed by the defendant in favour of the plaintiff – Original.
Ex.A2:	-NIL-	Cheque issued by the defendant for Rs.5,00,000/- bearing No.490305 – Original.
Ex.A3:	-NIL-	The signature of P.W.2 in Ex.A1 promissory note.

Sd./S.Sumathy,
Principal District Judge,
Salem.
08.07.2024

