IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, NAMAKKAL.

Present : Thiru K. Dhanasekaran, B.A.,B.L.,L.L.M.,
Principal District Judge, Namakkal.

Thursday, the 18th day of January 2021

ORIGINAL SUIT No.303/2019

S. Suresh .. Plaintiff

/vs/

C. Chandran .. Defendant

This suit is coming on 17.2.2021 before me for the final hearing in the presence of Thiru. A. Gunasekaran, counsel appearing for the plaintiff and Thiru. R. Tamilselvan, Counsel appearing for the defendant and upon hearing both sides and on perusal of case records this court delivers the following

JUDGMENT

The suit has been filed by the plaintiff against the defendant to direct the defendant to pay the suit amount a sum of Rs.22,50,000/- with subsequent interest for the principal amount Rs.16,00,000/- with cost.

2. Brief facts of the plaint averments would run is as follows:-

The defendant has borrowed loan a sum of Rs.16,00,000/- on 20.6.2017 for his urgent and business expenses (Contract Business) from the Plaintiff at Kattoor, Paramathi Velur Taluk, Namakkal District and executed a promissory note agreeing to repay the above said loan amount with subsequent interest @ Rs.1.50/- for each Rs.100/- either on demand of the Plaintiff or his order. Thereafter, the plaintiff has made several demand to repay the loan amount with interest and the defendant did not paid any amount. Hence, the plaintiff is constrained to file the present suit.

3. **Brief facts of the Written Statement filed by the defendant would run is as follows:-**

The suit is false, frivolous and vexatious in law and on facts. All the plaint averments are denied, except those that are specifically admitted herein. It is false to allege that the defendant has borrowed loan a sum of Rs.16,00,000/- from the plaintiff and executed Promissory Note agreeing to repay the same with subsequent interest @ Rs.1.50/- for each Rs.100/- per month. In fact, this defendant never borrowed any loan from the defendant and the defendant has no necessity to borrow such huge loan amount from the plaintiff. The defendant has not executed any pro note in favour of the plaintiff. The suit pro note is a forged one and the signature and thumb impression found in the pro note is not that of this defendant. In order to achieve illegal gain, the plaintiff has created the suit pro note and filed the present suit. Since the defendant was not borrowed any loan amount from the plaintiff, the suit pro note was not made for valid consideration. There is no cause of action to the suit. The alleged cause of action is false. The suit has to be dismissed.

4. **Upon perusing the plaint and written statement, the following issues have been framed by this Court:-**

(1) Whether the Plaintiff is entitled to receive a sum of Rs.22,50,000/- from the defendant along with interest @ 18% per annum for the principal amount Rs.16,00,000/- from the date of filing suit to till the realization?

(2) Whether the suit pro note has been forged by the plaintiff as

alleged by the defendant ?

(3) To what other relief the Plaintiff is entitled to?

5. On the plaintiff's side PW.1 and PW.2 have been examined and Ex.A.1 to A.7 have been marked and on the defendant's side DW.1 examined and no document has been marked.

6. Answering to the issues 1 and 2 :-

Heard the plaintiff's side. I have gone through the material available on records.The case of the plaintiff is that the The defendant has borrowed loan a sum of Rs.16,00,000/- on 20.6.2017 for his urgent and business expenses (Contract Business) from the Plaintiff at Kattoor, Paramathi Velur Taluk, Namakkal District and executed a promissory note agreeing to repay the above said loan amount with subsequent interest @ Rs.1.50/- for each Rs.100/- either on demand of the Plaintiff or his order. Thereafter, the plaintiff has made several demand to repay the loan amount with interest and the defendant did not paid any amount.

7. The case of the defendants is that the defendant has not borrowed loan a sum of Rs.16,00,000/- from the plaintiff and never executed Promissory Note agreeing to repay the same with subsequent interest @ Rs.1.50/- for each Rs.100/- per month. In fact, this defendant never borrowed any loan from the defendant and the defendant has no necessity to borrow such huge loan amount from the plaintiff. The defendant has not executed any pro note in favour of the plaintiff. The suit pro note is a forged one and the signature and thumb impression found in the pro note is not that of this defendant. In order to achieve illegal gain, the plaintiff has created the suit pro note and filed the present suit. Since the defendant was not borrowed any loan amount from the plaintiff, the suit pro note was not made for valid consideration.

8. Out of the submissions made on behalf of both parties in issue, it would reveals that the plaintiff has filed the suit for recovery of money to the tune of Rs.22,50,000/- together with interest on the basis of the Ex.A.1 promissory note for which he has stated that the defendant had borrowed loan amount of Rs.16,00,000/- from the plaintiff for his contract business purpose. Whereas the defendant replied that he had never borrowed any amount alleged in the plaint and he had never been put his signature and thump impressions mentioned in the promissory note. In this connection, the counsel for the plaintiff would draw the attention of this court to look into the cross examination of DW 1 which would runs as follows:

நான் சுமார் 20 வருட காலமாக காண்ட்ரேக்ட் தொழில் செய்து வருகிறேன். வருடத்திற்கு சுமார் நான்கு கோடி அளவில் காண்ட்ரேக்ட் எடுத்து வேலை செய்து வருகிறேன். எனக்கு வங்கியில் வரவு செலவு உண்டு. என்னுடைய சொந்த பணம் சுமார் ரூபாய் 50 லட்சம் முதல் 1 கோடி 2 கோடி வைத்து காண்ட்ரேக்ட் தொழில் செய்வேன். காண்ட்ரேக்ட் தொழிலில் முன்னரே என் பணத்தை வைத்து செலவு செய்ய வேண்டும் என்றால் சரிதான். வங்கியில் 40 லட்ச ரூபாய் கடன் வாங்கியுள்ளேன்.

9. On perusal of the above said evidence, the defendant himself admitted that he is doing contract business whereby he has borrowed to the

tune of Rs.2 crores for which he is maintaining bank account and he himself admitted that for his work of contract he needs adavance amount to do the contract work. The plaintiff himself stated in the plaint that the defendant had borrowed the amount for his contract business as such the defendant is doing contract business and he would have need advance amount before doing contract work. In this scenario, the counsel for the plaintiff would draw attention of this court to look into the cross examination of the DW 1 and the relevant portion runs as follows: வாசாஆ.1 புரோநோட்டில் உள்ள கையொப்பம் என்னுடையது அல்ல என்பதை நிரூபிக்க நடவடிக்கை எடுத்தேனா என்றால் வாதி அந்த நடவடிக்கையை எடுப்பார் என்று நான் நடவடிக்கை எடுக்கவில்லை. வாசாஆ.1 புரோநோட்டில் உள்ள கையொப்பம் சிருஸ்டனை செய்யப்பட்டது என்பதை நிரூபிக்க நடவடிக்கை எடுக்க தயாராக இருக்கிறேன்.

10. On reading of the admitted version of the defendant it would reveals that though the defendant had denied his signature found in the Ex.A.1 as if such signature is forged one, but he had never taken any steps to send the signature allegedly forged signature found in the Ex.A.1 and admitted signature either in the vakalath or in the summon for which he himself admitted in his cross examination stating that he is waiting for steps would be initiated by the plaintiff. In this legal aspect I would looked into the **Illustration (b) of Section 102 of Indian Evidence Act which reads as follows:**

102. On whom burden of proof lies.-The burden of proof in a suit or

proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustration (b)

(b) A sues B for money due on a bond. The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies. If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore the burden of proof is on B.

11. On reading of the above said illustration, it is crystal clear that if a person stated that his signature is forged one, but another person denies it, if no evidence has been given such another person will succeed by applying the legal scenario. In the present case where the defendant alleged that his signature found in Ex.A.1 but the plaintiff denied the same however both parties in issue had never been taken any steps to send the alleged signature found in Ex.A.1 that it is the admitted signature of the defendant only and thereby the plaintiff would succeed.

12. The next contention raised by and on behalf of the defendant is that there is no possibilitty to give loan amount of Rs.16,00,000/- to the defendant because that period is demonitization period. But none of the evidence is let in to show that the denomination of Rs.2,000/- is not fluctuated or prohibited. Moreover this court has compared the signature found in Ex.A.1 and admitted signature of the defendant in Ex.A.6, i.e., the signature of the defendant in summons as per the Section 73 of the Indian Evidence Act. On comparing both signatures, I am of the

view that both signatures are one and the same. From the above said discussions and facts and circumstances of the case, it is clear that the plaintiff has proved the case with prepondarance of probabilities.

13. It is seen that in this case, it is established that the signature in the pronote in Ex.A.1 is that of the signature of the defendant only. The presumption u/s.139 of N.I Act can be taken into consideration and it is for the defendants to place the materials to rebut the presumption. The law is well settled that the defendant can also rely upon the circumstances and materials placed by the plaintiff to rebut the presumption.

14. In this regard, I would like to mention the ***Sec 20 of Negotiable Instrument Act which reads as below:***

"Inchoate stamped instruments- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable Instrument then in force in"(India), and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid there under."

In the decision reported in 2008 (1 CTC 491) at page 494, it has been held that though section 20 of the Negotiable Instruments Act does not appear to cover a case of a blank cheque, there is no specific bar in the Act for a cheque to be filled up by any person other than the drawer. The payee or holder in due course, has authority to fill up the blanks is the cheque and such instrument is valid in law.

"Under section 20 of the Negotiable Instruments Act, a person who signed a blank stamped paper relating to a negotiable instrument is made liable upon such instrument in the capacity in which he signed it to any holder in due course."

"The instrument may be wholly blank or incomplete in any particular, in either case, the holder has the authority to make or complete the instrument as a negotiable one."

"Bills and notes are often executed with the name of the payee left in blank to be afterwards filled by actual holder, the object being to enable the owner to pass it off to another without incurring the responsibility as an indorser and any bonafide holder for value may fill it up, with his own name and sue upon it."

While so, as discussed above, in the EXP 1 cheque herein the name of the complainant i.c.K.P. Arunachalam only shown as payee.

Even if it is taken for consideration that the accused herein has executed the EXP 1 cheque herein with the names of the payee left in blank to be afterwards filled, then it enables the bonafide holder for value to fill it up, and the person who signed a blank cheque i.c.the accused is made liable upon such instrument in the capacity in which she signed it to any holder in due course, as per sec.20 of Negotiable Instruments Act, as discussed above.

In the decision reported in 2012 (2) MWN (Cr.) (DCC) 33 (SC), the division bench of our Hon'ble apex court in para 18 held as below:

"We may also refer to the Judgment delivered by this court in the case, ICDS ltd., V.Beena Shabeer and Anr.2002 (2) MWN (Cr.) DCC 68 (SC). In the said judgment this court has referred to the nature of liability which is incurred by the one who is a drawer of the cheque. If the cheque is given towards any liability or debt which might have been incurred even by someone else, the person who is a drawer of the cheque can be made liable under section 138 of the Act.

15. However, in this case, it is admitted that the signature therein is that of the defendant. Further, the defendant has not come forward to adduce sufficient evidence to prove that the pronote was not issued for any consideration and it was forged and misused.

16. When it is the contention of the defendant that pronote has not been given by

him then the burden is on the defendant herein to rebut the above said presumptions as available u/s 118 of N.I Act.

17. **The Section 118 of N.I Act reads as follows**

Until the contrary is proved, the following presumptions shall be made:-

(a) of consideration : that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration ;

(b) as to date : that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of transfer : that every transfer of a negotiable instrument was made before its maturity

(d) as to time of transfer : that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements; that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon ;

(f) as to stamps: that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due court :- that the holder of a negotiable instrument is a holder in due course; provided that, where the instrument has been contained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

18. **The illustraction (c) of the Section 114 of Evidence Act reads as follows:**

114 . Court may presume existence of certain facts.

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustration (c) - that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

Since, the defendant would not rebut the presumption available u/s 118 of Negotiable Instrument Act and Presumption not rebutted under 114(C) of the Evidence Act, the defendants miserably failed to rebut the evidence available as contemplated u/s 118 of Negotiable Instrument Act and u/s 114 © of Evidence Act. Thus, I answered to the issues 1 and 2 that the plaintiff is entitled for the suit amount with interest from the defendant.

19. **Answering to the issue No.3:-**

As given findings to the above issue, I hold that the plaintiff is not entitled for any other relief. Accordingly, these issues are answered.

In the result, the original suit is decreed with cost and the defendant is directed to pay the suit amount a sum of Rs.22,50,000/- with subsequent interest @ 9% P.A. for principal amount a sum of Rs.16,00,000/- from the date of filing suit to date of decree and thereafter @ 6% P.A. till realization of amount.

Dictated to the Steno typist, typed by her directly on computer, corrected and pronounced by me in the open court on the 18th day of February 2021.

Sd/- K.Dhanasekaran

Principal District Judge,
Namakkal.

Appendix:-

Plaintiffs' side Witnesses:-

PW.1 - S. Suresh

PW.2 - Sugavanam

Defendant's side Witnesses:-

DW.1 - Chandran

Plaintiffs' side Exhibits:-

Ex.A.1	20.6.2017	Suit Pro note (No Endorsement)(Original)
Ex.A.2	30.11.2006	Sale Deed in favour of the defendant (Regn. copy)
Ex.A.3	19.2.1992	Sale Deed in favour of (1) C. Govindaraju (2) C. Manoharan (3) C. Chandran (Regn. copy)
Ex.A.4	17.9.2019	Encumbrance Certificate (Computerized Copy)
Ex.A.5	18.9.2019	Encumbrance Certificate (Computerized Copy)
Ex.A.6	--	Signature of the defendant found in the Witness Summon
Ex.A.7	--	Signature of the defendant found in the Written Statement

Defendants' side Exhibits:- NIL

Sd/- K.Dhanasekaran

Principal District Judge,

Namakkal.

/ True copy/

Principal District Court,
Namakkal.

FAIR / DRAFT
Judgment

in

O.S. 303/2019

Dt. 18.2.2021

	<u>O.S. 303/2019</u> Dt 18.2.2021 Judgment pronounced in the open court. In the result, the original suit is decreed with cost and the defendant is directed to pay the suit amount a sum of Rs.22,50,000/- with subsequent interest @ 9% P.A. for principal amount a sum of Rs.16,00,000/- from the date of filing suit to date of decree and thereafter @ 6% P.A. till realization of amount. PDJ, Namakkal.
