



S.A.No.235 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.10.2025
Pronounced on	21.01.2026

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.235 of 2023 and

C.M.P. No.6730 of 2023

K. Sundararaj

...Appellant

Vs.

K. Periyasamy

...Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 r/w Order XXXXII Rule 1 & 2 against the decree and judgment dated 09.02.2022 passed in A.S. No.90 of 2018, on the file of the III Additional District and Sessions Court, Tiruppur at Dharapuram, confirming the Judgment and decree dated 06.12.2006 passed in O.S. No.117 of 2002, on the file of the Subordinate Court, Dharapuram.

For Appellant : Mr.C.K.M. Appaji

For Respondent : Mr. N. Manoharan



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JUDGMENT

The present Second Appeal is preferred against the decree and judgment dated 09.02.2022 passed in A.S. No.90 of 2018, on the file of the III Additional District and Sessions Court, Tiruppur at Dharapuram, confirming the Judgment and decree dated 06.12.2006 passed in O.S. No.117 of 2002, on the file of the Subordinate Court, Dharapuram.

2. The respondent as plaintiff filed the above suit for recovery of money. The unsuccessful defendant has preferred the present Second Appeal.

3. According to the respondent / plaintiff, the appellant / defendant borrowed a sum of Rs,2,00,000/- from the plaintiff for his urgent family needs and for business expenses, executed the suit promissory note in favour of the plaintiff agreeing to repay the same with interest at 12% per annum on demand. In spite of repeated demands made by the plaintiff, the defendant failed to repay the borrowed amount with interest and was trying to dispose his properties. Hence the suit.



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4. The claim of the plaintiff was resisted by the defendant stating that on 31.07.1995, he borrowed a sum of Rs.90,000/- from one Muthusamy and executed an agreement for Rs.1,00,000/- and also handed over 5 signed unfilled pro notes to Muthusamy. The said Muthusamy filed a suit in O.S. No.137/98 and the same was dismissed on 22.09.2000. The plaintiff and the said Muthusamy are closely related. The said Muthusamy has instigated the plaintiff to file the present suit. The defendant has not borrowed any amount from the plaintiff. No pre suit notice was issued by him. The attestors to the pro note are close relatives of the plaintiff. Hence, prayed for dismissal of the suit.

5. The trial court has framed necessary issues. Three witnesses were examined on the side of the plaintiff and one document was marked. On the side of the defendant, the defendant was examined as D.W.1 and 11 documents were exhibited. After an elaborate trial, the trial court decreed the suit in favour of the plaintiff.

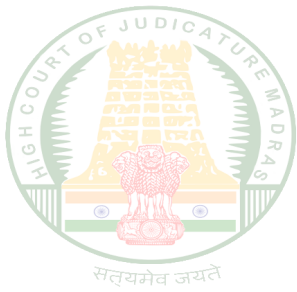
6. Aggrieved by this, the defendant preferred the appeal suit in A.S.No.90/2018. Based on the materials on record, the first appellate



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WEB COPY court, dismissed the Appeal Suit. Challenging the same, the present Second Appeal is preferred by the defendant.

7. Mr. C.K.M. Appaji, the learned counsel appearing for the appellant / defendant would submit that the financial capacity of the plaintiff was not established and no issue was framed in this regard by the trial court. The plaintiff has no means to lend a sum of Rs.2,00,000/- to the defendant and that, once the defendant shows preponderance of probabilities to dislodge legal presumption, burden shifts upon plaintiff. In the present case, the defendant has produced necessary oral and documentary evidences thereby dislodging the legal presumption under Section 118 of the Negotiable Instruments Act. If once presumption under Section 118 has been rebutted, then it becomes the burden of the plaintiff to prove that the promissory note, was supported by consideration. The present suit has been filed by the plaintiff only under the instigation of one Muthusamy, who failed in a suit filed against this defendant. The plaintiff had no source of income to lend money to the defendant and that the suit promissory note was not supported by consideration. He would further submit that Ex.B9 to B11 would amply



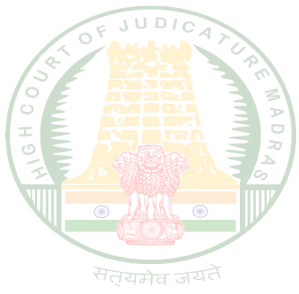
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prove that the plaintiff was a chronic defaulter of bank loans and hence, it is highly improbable for him to lend a loan of Rs.2,00,000/- to the defendant at that relevant point of time. The said Muthusamy failed to reply the legal notice of the defendant sent on 05.06.2002 for return of promissory note is sufficient to conclude that he was instrumental for filing the above suit by the plaintiff. His further contention is that the plaintiff by attesting the gift settlement executed by father of Muthusamy in favour of Muthusamy's son is sufficient to conclude that the said Muthusamy and the plaintiff are closely associated. He would further submit that the first appellate court failed to follow the provisions under Order 41 Rule 31 CPC by framing necessary points for consideration and to consider evidences independently and assign its own reason for its conclusion. Hence, prayed for setting aside the judgment and decree passed by the first appellate court and to remand back the matter for fresh consideration by the first appellate court. To support his contention, he has relied upon the following judgments:

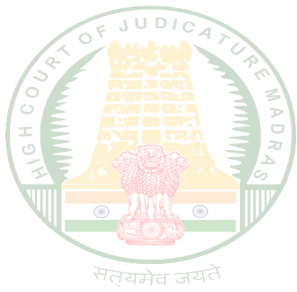
1. Ashok Kumar vs. Latha reported in 2018(2) CTC 225

2. V. Ramasamy Naidu vs. S.P. Damodaran reported in 2012-3-L.W.66.



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WEB COPY 8. On the other hand, the learned counsel appearing for the respondent / plaintiff would submit that, the initial burden lies on the defendant to prove non existence of consideration by bringing on record such facts and circumstances which may lead the Court to believe non existence of consideration or non existence so probable that a prudent man would act upon the plea that it did not exists. This can be done either by direct evidence or by preponderance of probabilities showing that existence of consideration was improbable, doubtful or illegal. If burden is discharged, onus shifts on plaintiff to prove passing of consideration as a matter of fact and failure to prove dis-entitle him to relief. In the present case, the defendant failed to discharge the initial burden and therefore, the plaintiff is entitled to the benefit of presumption under Section 118(a) of the Negotiable Instruments Act, even if plaintiff's evidence was not believed. He would further contend that, the interference with concurrent findings of fact of courts below or re-appreciation of the evidence in the Second Appeal under Section 100 CPC is impermissible. A Second Appeal can be filed only if a substantial question of law is involved. The questions of law raised in this Second Appeal will not be considered as substantial questions of law. On considering the oral and documentary



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evidences on record, the courts below rightly decreed the suit in favour of the plaintiff, which warrants any interference by this Court. To support his contentions he relied on the following judgments:

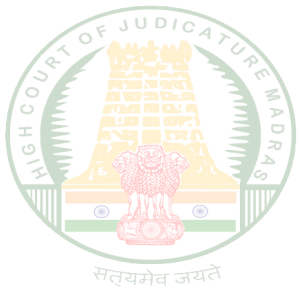
1. Bharat Barrel & Drum Manufacturing Company vs. Amin Chand Payrelal reported in (1999) 3 Supreme Court Cases

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2. Hero Vinoth (Minor) vs. Seshammal reported in (2006) 5 SCC 545

9. Heard on both sides. Records perused.

10. It is the definite case of the plaintiff that the defendant has borrowed a sum of Rs.2,00,000/- from the plaintiff on 02.10.2001 for which he has executed a pro note in favour of the plaintiff agreeing to repay the same on demand with interest at 12% per annum. In spite of several demands made by the plaintiff, the defendant did not make payment. Hence, the suit was filed for recovery of Rs.2,13,799/- together with future interest for the value of Rs.2,00,000/- from the date of suit at the rate of 12% per annum.



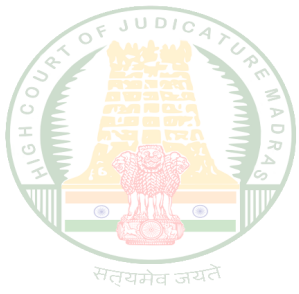
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11. The claim of the plaintiff was resisted by the defendant stating that the suit promissory note is not supported by consideration and that he had borrowed a sum of Rs.90,000/- from one Muthusamy and entered into an agreement for Rs.1,00,000/- and also handed over unfilled pro notes to the said Muthusamy. Since the suit filed by Muthusamy against the defendant was dismissed, he had instigated the plaintiff to file the above suit.

12. As per Section 20 of the Negotiable Instruments Act, “Where one person signs and delivers to another a paper stamped in accordance with the law relating to Negotiable Instruments then in force in India, and either wholly blank or having written thereon and incomplete negotiable instrument, shall be liable to pay the amount to any holder in due course for such amount.”

13. A fair and careful reading of Section 20 of the Negotiable Instruments Act, would make it very clear that when the defendant sign and delivers to another a paper stamped in accordance with the law, he

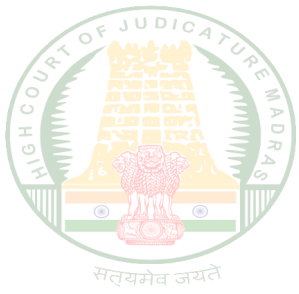


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shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount.

14. In the present case, the defendant had stated that he had only borrowed money from one Muthusamy and at that time he had handed over unfilled promissory notes. Since the plaintiff and the said Muthusamy are closely associated, he had instigated the plaintiff to file the present suit by using the unfilled promissory note tendered by the defendant to the said Muthusamy. As per Section 118 of Negotiable Instruments Act, “Unless the contrary is proved, the presumption shall be made that every negotiable instrument was made or drawn for consideration”. Therefore, once the execution of the promissory note is admitted, then the presumption under Section 118 of Negotiable Instruments Act, arises. But the defendant may also dislodge the statutory presumption.

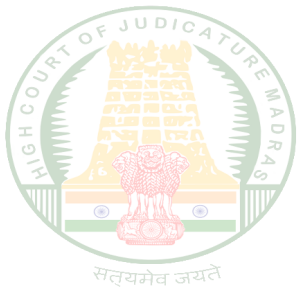
15. To cap it all, it is also found that though the defendant has taken various defences to stifle the plaintiff's suit, having admitted that the signature found in Ex.A1 has been put up by him and when it is also



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found that the plaintiff has established his case beyond reasonable doubt through his evidence and through the evidences of P.W.2 and P.W.3, one could have expected the defendant to repudiate the case of the plaintiff by tendering acceptable evidences. No evidence, whatsoever, has been placed by the defendant to dis believe the plaintiff's case. The attestor and the scribe of the instrument examined as P.W.2 and P.W.3 have categorically deposed about the said borrowal and execution of the suit Promissory Note by the defendant. There is nothing on record to discredit their evidences. The mere fact that they are closely related to the plaintiff, cannot be a ground to disbelieve their evidences. Moreover, the documents on the side of the defendant also do not support the defence put forth by the defendant. The defendant has marked Ex.B1 to B11 to disprove the financial capacity of the plaintiff. According to the defendant, the plaintiff was a chronic defaulter in repaying the bank loans. However, that alone cannot be a reason that the plaintiff was not having sufficient sources of income to lend money to the defendant. Once execution of promissory note is proved, the presumption under Section 118 of Negotiable Instruments Act, can be drawn and the same is not rebutted by the defendant by any tangible evidence. The defendant failed

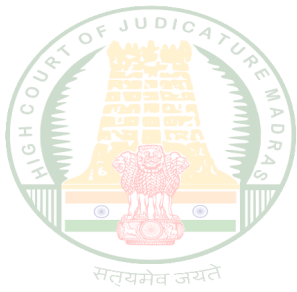


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to prove that the promissory note is not supported by consideration. As such, the defendant is liable to repay the amount due by him to the plaintiff under the suit promissory note. The defendant failed to dislodge the statutory presumption. Therefore, the courts below are justified in getting aid from Section 20 of the Negotiable Instruments Act, while drawing presumption in favour of plaintiff under Section 118 of Negotiable Instruments Act. The plaintiff was able to establish his case by cogent and acceptable evidence for lending of money and execution of suit promissory note. Moreover, it is not established by the defendant that there is interpolation in the suit promissory note after signing the same. The plaintiff has established his case of borrowal of the suit amount by the defendant from him and also the execution of Ex.A1 promissory note in his favour in connection with the said borrowal. On the other hand, the defendant has failed to establish his defence version and in such view of the matter, it has to be held that the defendant has failed to discharge the burden resting upon him as per law.

16. The first appellate court has framed necessary points for consideration and has given a clear decision on each point and has also



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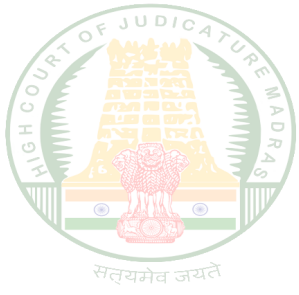
WEB COPY independently re-evaluated the evidence on record including the financial capacity of the plaintiff.

17. In view of the above, I hold that the reasons afforded by the courts below in decreeing the suit does not suffer from any legal infirmity and consequently, I uphold the judgment and decree passed by the courts below and this Second Appeal is to be dismissed.

18. In the result,

- i. the Second Appeal is dismissed with costs. Consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 09.02.2022 passed in A.S. No.90 of 2018, on the file of the III Additional District and Sessions Court, Tiruppur at Dharapuram, confirming the Judgment and decree dated 06.12.2006 passed in O.S. No.117 of 2002, on the file of the Subordinate Court, Dharapuram, is upheld.

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Index: Yes/No

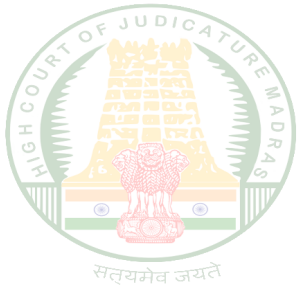
Internet: Yes/No

Speaking/Non-Speaking order

bga

To

1. The III Additional District and Sessions Judge, Tiruppur, Dharapuram
2. The Subordinate Judge, Dharapuram
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.

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Pre delivery judgment in

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