

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 10.01.2022

JUDGMENT DELIVERED ON : 02.03.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.Nos.142 of 2012

and

M.P.No.1 of 2012

1.R.Barathbaran (Died)	.. Appellant/Respondent/Plaintiff
2.Kalavathy	
3.P.Vedhabaskaraguptha	
4.P.Gnanaabaskaraguptha	.. Appellants

Vs.

R.Nallathambi	.. Respondent/Appellant/Defendant
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[Appellant 2 to 4 brought on record as
LRs of the deceased sole appellant vide
order dated 16.11.2021 made in CMP.
2977/2021 by TKRJ]

PRAYER : This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 02.06.2011 made in A.S.No.4 of 2009 on the file of the Principal District Court, Namakkal, in reversing the judgment and decree, dated 20.04.2009 made in O.S.No.295 of 2008 on the file of the Sub Court, Rasipuram.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.C.Prakasam

JUDGMENT

The successful plaintiff is the appellant herein.

2. For the sake of convenience, the parties are referred to as per the ranking before the trial Court.

3. The plaintiff has filed the suit in O.S.No.345 of 2006 on the file of the Sub Court, Namakkal, later transferred and renumbered as O.S.No. 295 of 2008 on the file of the Sub Court, Rasipuram against the respondent herein for recovery of money of Rs.1,00,000/- each, borrowed by him on

18.02.2004, 10.03.2004 and 05.04.2004 respectively, and executed Ex.A1 to Ex.A3, promissory notes in favour of the plaintiff for consideration. After issuing pre-suit notice, dated 15.11.2006, the plaintiff filed the suit for recovery of the suit claim of Rs.4,59,000/- along with subsequent interest.

4. Resisting the suit, the defendant filed written statement *inter alia* admitting the execution of the suit promissory notes. However, the defendant raised plea that the above mentioned promissory notes had been executed towards security for the loan borrowed, and that the loan due was settled by way of execution of a sale deed, dated 12.11.1999 in the name of the plaintiff's wife. It is further alleged that the suit promissory notes were not supported by consideration and the blank promissory notes were filled up for the purpose of filing the suit in the year 2004. On the above pleadings, the trial Court framed six issues.

5. On the plaintiff's side, the plaintiff has examined three witnesses besides marking Ex.A1 to Ex.A8. On the side of the defendant, DW1 to DW3 were examined besides marking Ex.B1 and Ex.B2. More so, Ex.C1 to

C5 and Ex.X1 to X5 were marked at the instance of the respective parties to prove their case.

6. Upon consideration of oral and documentary evidence and also taking note of the admission as to the execution, the trial Court considered the statutory presumption under Section 118 of the Negotiable Instruments Act and the authority of the holder in due course to fill up the promissory notes under Section 20 of the Act, decreed the suit by the judgment and decree, dated 20.04.2009.

7. Aggrieved by the decree of the suit, the defendant filed A.S.No.4 of 2009 before the Principal District Court, Namakkal. First Appellate Court has neither considered the admissions made in the pleadings and evidences nor taken note of the statutory presumptions in favour of the plaintiff, but, erroneously allowed the appeal holding that the thumb impression of the defendant was not obtained in Ex.A1 to Ex.A3 and that the signature in each of the promissory notes is different from each other on comparison by a naked eye. Accordingly, lower Appellate Court reversed the judgment of the

trial Court and dismissed the suit by the judgment and decree, dated 02.06.2011. Being aggrieved by the reversal findings of the first Appellate Court, the plaintiff filed this second appeal before this Court and the plaintiff had the benefit of an order of attachment before judgment in I.A.No.42 of 2007 in O.S.No.295 of 2008.

8. The above second appeal is admitted on the following Substantial Questions of Law:

“1.Whether the first Appellate Court erred in law in not considering the scope of Section 118 of the Negotiable Instruments Act and the legal presumptions arising under it before dismissing the suit by reversing the well considered reasonings of the trial Court?

2. Whether the first Appellate Court erred in law in rejecting the plaintiff's right to fill up the suit promissory notes under Section 20 of the Negotiable Instruments Act whereupon the holder is

authorized to fill up the blanks and to negotiate the instrument for a certain amount?

3. Whether the first Appellate Court is correct in dismissing the suit on the basis of a comparison by naked eye particularly when the defendant has categorically admitted the “execution” and “issuance” of Ex.A1 to Ex.A3 in his written statement and in evidence before the Court?”

9. Heard the learned counsel Mr.N.Manokaran, appearing for the appellants/plaintiffs and the learned counsel Mr.C.Prakasam appearing for the defendant/respondent.

10. The suit is based upon Exs.A1, A2 and A3 each one lakh.

11. In the written statement, the execution of the pro-note, signature in the pro-note and issuance of the pro-note are not in dispute. The

trial court has rightly invoked the presumption under the Negotiable Instruments Act and called upon the defendant to repay the presumption and is filing decreed the suit. However, I find that the lower Appellate Court/learned Principal District Judge, Namakkal, has not even considered the presumption under the Negotiable Instruments Act and not followed even burden of proof or onus of proof as stated in the Indian Evidence Act.

12(a). On perusal of the evidence of PW1 and PW2 and the written statement filed by the defendant and the oral evidence of PW1, I find that the execution and issuance of the pro-notes, viz., Ex.A1 to Ex.A3 are not in dispute. In fact, the defendant has categorically admitted the same in the written statement as well as in his evidence. However, the first Appellate Court has committed an error in giving findings as to the execution. Once the signature found in the suit documents have been admitted, there is no need or necessity for the plaintiff to give explanation for not obtaining the thumb impression in the suit promissory note. There is no such law to get the thumb impression in the suit promissory note. There is no such law to get the thumb impression also in the promissory note, particularly, when the

execution and issuance of Ex.A1 to Ex.A3 were not in dispute.

12(b). When there was no dispute as to the execution of Ex.A1 to Ex.A3, the first Appellate Court ought not to have compared the suit documents by naked eye, as if, the defendant has denied execution and therefore, based upon the above evidence both in oral and documentary pleaded and evidence of the plaintiff side, I find that in terms of Section 4 of the Indian Evidence Act, whenever it is provided by the Act that the Court shall presume a fact, it shall record such fact as proved unless and until it is disproved. Applying the said definitions of “proved” or “disproved” under Section 5 of the Indian Evidence Act to the principle behind Section 118 (a) of the Negotiable Instruments Act, the Court shall presume that Ex.A1 to Ex.A3 were supported by consideration.

13. It remains to be stated that once the execution of the suit pro-notes are admitted by the plaintiff and the defendant's signature is admitted and issuance of cheque is admitted and as per Section 20 of the Negotiable Instruments Act, the authority implied by the signature in the blank pro-note

that the defendant so signing was bound to be the faultier in due course but as authored to fill the document.

14(a). In this regard, it is trite in law that in the case of mandatory presumption, the burden of proof on the defendant in such a case would not be as light. As the presumption is raised under Section 114 of the Indian Evidence Act and cannot be held to be discharged merely on the fact that the explanation offered by the defendant is reasonable. When there is a statutory presumption in favour of the plaintiff, it has to be rebutted by proof and not by a bare explanation. Unless the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted.

14(b). Presumption under Section 118 of the Negotiable Instruments Act is one of law, and thereunder, the Court below shall presume *inter alia* that the promissory notes were made for consideration. Once statutory presumption is raised, onus of proving absence of consideration is on the executant and hence, I find that the lower Appellate Court has miserably failed to consider the pleading and evidence in the

proper prospective and has wrongly thrown the burden of proof on the plaintiff with gross ignorance of legal presumption. The defendant had admitted the execution of Ex.A1 to Ex.A3.

15. The discussion carried on by the lower Appellate Court, particularly, at the end of the part of the judgment clearly shows that the learned Appellate Judge has nor even understood the facts of the case and has applied wrong preposition of burden of the proof forgetting the presumption under the Negotiable Instruments Act and it is the onus of the proof by the defendant to discharge the burden.

16(a). It remains to be stated that certain contradictions said to have been noted by the lower Appellate Court basing upon the evidence of PW1 and DW3-wife of PW1. It appears from the lower Court records that on Court summons, the wife of PW1 was examined as DW3, it could have been Court witness not the defendant witness. Secondly, she had deposed regarding certain transaction taken between herself and defendant for the construction of the house and the selling of the lands. Those transactions

cannot be mixed up with the alleged pro-note. The defendant having admitted the signature in Ex.A1 to Ex.A3. Having admitted the factum of handing over the document has not disputing the signature, however, for the reasons best known the lower Appellate Court has entertained a suspicion for not obtaining the thumb impression of the defendant in Ex.A1 to Ex.A3, when that is not the case of the defendant.

16(b). There is no mandatory provision under the Negotiable Instruments Act that both the signature and thumb impression has to be obtained for a pro-note and the lower Appellate Judge has totally misguided and misused the provision of the Negotiable Instruments Act, regarding burden of proof and not even followed basic rudimentary of Section 20 of the Negotiable Instruments Act.

16(c). Pending suit, in IA, the plaintiff has obtained attachment before judgment. On erroneous application, the lower Appellate Court has allowed the suit and granted suspension of order for attachment before judgement.

17. Thus I find that the lower Appellate Court has erred in law in rejecting the plaintiff's right to fill up the suit promissory notes under Section 20 of the Negotiable Instruments Act, whereupon the holder is authorized to fill up the blanks and to negotiate the instrument for a certain amount and the "execution" of cheque and "issuance" of cheque, viz., Ex.A1 to Ex.A3 in his written statement and in his evidence before the Court, the lower Appellate Court is not right in raising suspicion with regard to the execution merely on the ground that the thumb impression of the defendant was not obtained in Ex.A1 to Ex.A3, particularly, when the defendant has not denied the execution.

18. Accordingly, this Court comes to the conclusion that the evidence of DW3 is too inform to discharge onus of proof as stated, the statutory provision under Section 118 of the Negotiable Instruments Act. The approach adopted by the lower Appellate Court is condemnable. The finding rendered by the lower Appellate Court that suit pro-note is not valid in the absence of thumb impression is sustainable in law, more so, when the

defendant has not disputed the signature and hence, all the Substantial Questions of Law are answered in affirmative in favour of the appellant/plaintiff against the defendant/respondent.

19. In the result, this second appeal stands allowed. The judgement and decree of the lower Appellate Court/Principal District Court, Namakkal, dated 02.06.2011 in A.S.No.4 of 2009 is set aside and O.S.No.295 of 2008 is restored and the trial Court decree of attachment before judgment order made in I.A.No.42 of 2007 in O.S.No.295 of 2008 is restored. No Costs. Consequently, connected miscellaneous petition is closed.

02.03.2022

Internet : Yes/No

Index : Yes/No

PJL

To

- 1.The Principal District Judge, Namakkal.
- 2.The Sub Judge, Rasipuram.
- 3.The Section Officer, V.R.Section, High Court, Madras.

S.A.No.142 of 2012

RMT.TEEKAA RAMAN,J.,

PJL

**Pre-Delivery Judgment in
S.A.No.142 of 2012**

02.03.2022