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Court : Chennai

Decided On : Nov-17-1999

Reported in : 2000(1)CTC148

Judge : K. Natarajan, J.

Acts : [Negotiable Instruments Act, 1881](#) -- Sections 43 and 118

Appeal No. : S.A. No. 140 of 1988

Appellant : Chinnasamy

Respondent : Perumal

Advocate for Def. : Mr. V. Raghavachari, Adv.

Advocate for Pet/Ap. : Mr. P. Sreenivasalu, Adv.

Judgement :

ORDER

1. This appeal has been preferred against the judgment and decree of the learned subordinate judge, Tindivanam passed in A.S. No.52 of 1986, dated 4.3.1987, reversing the judgment and decree of the learned District Munsif, Gingee, dated 11.12.1985. The plaintiff is the appellant. The parties will hereinafter be referred as per their rank in the trial court for the sake of convenience. The circumstances which has given rise to this second appeal may be stated briefly as follows:-

The plaintiff is the correspondent of St. Annammal School, Cuddalore. He instituted the suit in O.S. No.204 of 1984 for recovery of money with interest, on the allegation that on 15.7.1981, the defendant borrowed a sum of Rs.3,000 in cash. agreeing to pay interest at 12% per annum and executed a promissory note, Ex.A.1. In spite of several demands, the defendant did not pay any amount. As the defendant is an agriculturist, interest is claimed at 9% per annum. It is also alleged, the defendant is owning more than five acres of wet land and, therefore, he is not entitled to the benefits of Tamil Nadu Acts 13 of 1980 and 50 of 1982. The defendant resisted the suit stating he applied for a teacher's job in a school, in which the plaintiff was the correspondent. He demanded a sum of Rs. 2,000 to give him the job. Since he had no money and was not in a position to pay the amount, the plaintiff wanted the promissory note, Ex.A.1 which he had executed and no consideration passed. Since no job was given to him, he demanded for the return of the promissory note. When he demanded the return of the promissory note through panchayat and the Teacher's association, the plaintiff filed the suit falsely, which is liable to be dismissed.

2. On the above pleadings of the parties, the learned District Munsif, Gingee framed the necessary issues. The plaintiff examined himself and one of the attestors to the promissory note, Ex.A.1 on his side and marked the promissory note as Ex.B.1. The defendant examined himself and two other witnesses to substantiate his contention that the plaintiff is in the habit of demanding money from persons who applied for teacher's job in school and when they are not in a position to pay cash immediately he used to get promissory notes from them. He had also marked Exs.B1 to B.8 on his side.

3. During the trial, the defendant admitted that he executed the promissory note, Ex.A1 and the signature found in Ex.A.1 is his signature. Relying on the above and also on the presumption under section 118 of the [Negotiable Instruments Act, 1881](#) (hereinafter referred to as the 'Act' for short), the trial court rejected the defence raised by the defendant and decreed the suit with costs as prayed for.

4. Aggrieved with the above judgment and decree of the trial court, the defendant preferred A.S.No.52 of 1986 on the file of the learned Subordinate Judge,

Tindivanam. The first appellate court, on a re-appraisal of the evidence, reached the conclusion that the defendant has rebutted the presumption under section 118 of the Act and the evidence adduced on his behalf, both oral and documentary, proves that no consideration passed for the promissory note Ex.A.1 and the plaintiff miserably failed to prove his case that he withdrew Rs.3,000 from his account in the State Bank of India and paid the amount of Rs.3,000 to the defendant. The learned first appellate judge also held that the plaintiff took special interest in getting an appointment to the defendant and wrote to the employment exchange Officer, Cuddalore to send his name for consideration. The learned first appellate judge drew an adverse inference against the plaintiff as he was unable to produce the bank pass book and also his account number. Ultimately, the learned first appellate judge reversed the judgment and decree of the trial court and dismissed the suit, against which the present second appeal has been directed.

5. The learned counsel for the appellant/ plaintiff contented that the trial court has correctly applied the principles of law under section 118 of the Act and has decreed the suit. The learned first appellate judge erroneously concluded that the reasoning of the trial court is incorrect, and reversed the judgment and decree of the trial court, which is not justified. It was argued that in a suit on a promissory note, once the execution of the promissory note is admitted by the defendant, the court has to presume that consideration passed and the suit has to be decreed and, therefore, the reasoning of the learned first appellate judge has to be set aside.

6. Per contra, the learned counsel for the respondent/defendant pointed out the presumption under section 118 of the Act is not an absolute presumption but a rebuttable presumption and if acceptable evidence has been adduced by the defendant to prove that the promissory note is not supported by consideration, the principles of law under section 43 of the Act will come into consideration and the court is duty bound to find out whether the defendant has successfully rebutted the presumption under section 118 of the Act. The learned Counsel for the defendant took me through the oral evidence of the plaintiff. In the cross-examination, the plaintiff had clearly admitted that he withdrew the amount of Rs.3,000 and paid it to the defendant and the promissory note was written on the pail of the defendant's

house. However, he is unable to give the date on which he withdrew Rs.3,000 for the purpose of advancing money for the promissory note Ex.A.1 or his savings bank account number in the State Bank of India, Atleast, he could have produced the bank pass book from which the Savinga Bank account number and the date on which the plaintiff withdrew Rs.3000 could have been ascertained, but unfortunately, the plaintiff was unable to furnish the bank account number or the date on which he withdrew Rs.3,000 while he gave evidence in court. It will be pertinent to mention that summons was taken on behalf of the defendant to the Manager, State Bank of India, Gingee to produce the account in respect of the plaintiff. The bank Manager gave evidence as D.W.3. Before giving evidence, D.W.3 has written a letter that for want of particulars, he is not in a position to produce the account of the plaintiff. It is important to bear in mind that the evidence of the plaintiff had not been completed on the same day. He was examined in part on one day and by that time summons were taken and he was cross-examined later. In the mean while, the summons on the bank manager was served and he sent the reply stating proper particulars have not been furnished and, therefore, he is not in a position to produce the account relating to the plaintiff. In the above circumstances, it is the duty of the plaintiff to have furnished the correct particulars to the court to enable D.W.3 to produce the bank account relating to him. It has not been done. In another portion of the cross- examination the plaintiff has admitted, before advancing money on Ex.A.1 to the defendant, he paid loans of Rs 20 and 30 and for that purpose, he pledged his watch and raised money. It is pointed out that if the plaintiff has to pledge his watch for raising Rs 20 or 30 it would be impossible for him to advance a sum of Rs. 3,000 on one day claiming that he has got an account in the bank and he withdrew money. It is argued that the plaintiff was not holding any account an he is not in a position to advance Rs. 3,000 considering his earlier evidence which appears to be acceptable.

7. In the decision reported in Arumugham v. Sundarambal, : [1999]2SCR950 it has been observed: -

'from the aforesaid judgment of the three judges bench in Ramachandra Ayyar's case, : [1963]3SCR604 , it is clear that this court held that second appellate Court

cannot interfere with the judgment of the first appellate court on the ground that the first appellate court had not come to grips with the reasoning of the trial court. It is open to the first appellate court to consider the evidence adduced by the parties and give its own reasons for accepting the evidence on one side or rejecting the evidence on other side. It is not permissible for the second appellate court to interfere with such findings of the first appellate court only on the ground that the first appellate court had not come to grips with the reasoning given by the appellate trial court the aforesaid judgment of this Court in Ramachandra Ayyar's case, : [1963]3SCR604 , specifically distinguished Rani Hemanta Kumar Debi v. Maharaja Jagagindra Nath Roy Bahadur, 1906 (16) M.L.J.272 rendered by the privy council on the ground that was a case wherein the High Court was dealing with a first appeal. The observations made by the Privy Council in that context would not be applicable to cases where the second appellate court was dealing with the correctness of the judgment of the first appellate court which reversed the trial court

15. It is to be noted that in the case S.V.R. Mudaliar (dead) by Lrs. v. Rajabu Buhari (dead) by Lrs, : [1995]3SCR312 , the two judges bench of the Court took a contrary view without noticing the three judge bench decision of this Court in V.Ramachandra Ayyar' case, : [1963]3SCR604 , where this Court had specifically referred to Rani Hemanta Kumar Debi's case, 1906 (19) M.L.J.272 and distinguished the same. The two judge bench could not have therefore relied upon the Privy Council case of Rani Hemanta Kumari Debi. We therefore, prefer to follow the view of the judgment of the three judge bench of this Court in V.Ramachandtra Ayyar's case, : [1963]3SCR604 rather than the judgment of two judge bench in S.V.R Mudaliar's case, : [1995]3SCR312 .'

The fact that he wrote the letter Ex.B.6 is not denied by the plaintiff. The other evidence on behalf of the defendant shows that all is not well with the plaintiff and he was in the habit of demanding money from intending teachers who applied to his school for getting the job and on complaints the teacher's association had reported the matter to the higher officials and also conducted dharna. In any event, it is for the plaintiff to establish his case by cogent and acceptable evidence and he cannot pick holes in the case of the defendant and ask the court to accept his

case. The learned first appellate Judge, in my opinion, has given cogent and acceptable reasons for coming to the conclusion that the presumption under section 118 of the Act has been satisfactorily rebutted by the defendant and the promissory note Ex.A.1 is not supported by consideration and the same has been executed in the circumstances stated by the defendants in the written statement. Therefore, I find no firm ground to differ from the reasoning of the learned first appellate judge and there is no merits in the appeal.

8. In the result, the judgment and decree of the first appellate judge are confirmed and the second appeal is dismissed. Parties are directed to bear their own costs.

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