
N. Sekar and S. Jamuna Rani Vs V. Mohanasundaram

**Civil Revision Petition (NPD) No. 1377 of 2005 and C.M.P. No. 10545/05 and
V.C.M.P. No. 8 of 2006**

Court: Madras High Court

Date of Decision: Dec. 11, 2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 37 Rule 1, Order 37 Rule 3#Evidence Act, 1872
– Section 101#Negotiable Instruments Act, 1881 (NI) – Section 118

Hon'ble Judges: A.C. Arumugaperumal Adityan, J

Bench: Single Bench

Advocate: M. Sathyanarayanan, for the Appellant; P.C. Hari Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.C. Arumugaperumal Adityan, J.

This civil revision petition has been preferred against the order passed in I.A.No. 2915 of 2004 in

O.S.No. 6115 of 2003 on the file of the Court of II Assistant City Civil Judge, Chennai. The suit was filed by the plaintiff for recovery of Rs.

1,75,000/- from the defendants on a promissory note dated 19.10.2000. The defendants filed I.A.No. 2915 of 2004 under Order XXXVII Rule

3 CPC to grant unconditional leave to defend the suit and the said application was dismissed by the learned trial Judge. Aggrieved by the said

order of dismissal, the defendants have preferred this revision petition.

2. The learned Counsel appearing for the revision petitioners would contend that they have got a valid defence in the suit. To substantiate this

contention, the learned Counsel would rely on the promissory note filed by the plaintiff dated 19.10.2000, According to the learned Counsel in the

corner of the said document, the document number has been mentioned as 0654 dated 15.3.2000 but the promissory note is said to have been

executed only on 19th October 2000. This cannot be a ground to grant leave to defend the defendant in the suit because admittedly both the

defendants have signed in the suit promissory note dated 19.10.2000 which has been superscribed as "on demand promissory note". Under the

said promissory note, the defendants have agreed to pay a sum of Rs. 1,00,000/- with interest at the rate of 36% per annum to the plaintiff on

demand, which satisfies all the requirements which are needed for a "promissory note" under Negotiable Instruments Act.

3. The learned Counsel relying on a decision reported in V. Samuel v. Thabak Finance Corporation rep. By its Partner S. Madanchand and

Jhabak 2001 (3) CTC 420 would contend that this Court has granted leave to the defendant to defend the suit in a similar situation. But a careful

reading of the facts of the case will go to show that the claim in the said case was made by the plaintiff basing on a voucher for a sum of Rs.

20,000/- dt 27.6.1990 and it has been contended in the said case by the defendant that no consideration was passed under the said voucher. Only

under such circumstances under Order 37 Rule 3 CPC, this Court has granted permission to the defendant to defend the suit but that is not the

case herein.

4. Herein, the suit promissory note is under ten rupees stamp paper signed by both defendants. The presumption under such document follows the

passing of consideration under the document. Even this proposition of law has been reiterated in Sri Khetramohan Ray Vs. Udayanarayan Panda

and Another, . The facts are not similar to the present facts of the case because the unsuccessful defendant in the suit for recovery of Rs. 15,000/-

with 12% interest per annum after losing his case before the trial Court has preferred the said appeal. The defence raised by the defendant in the

said suit is that no consideration passed under the suit promissory note. While rejecting the contention of the defendant the learned Judge has

observed as follows:

Normally, a person desiring a Court to give a Judgment as to any legal right or liability has to prove the facts on which such right or liability is to be

fastened on the other party. This is the principle provided in Section 101 of the Evidence Act. When plaintiff claims that defendant has taken a loan

and has executed a promissory note, he is to prove that defendant executed the same, if defendant would have admitted he executed the

promissory note, such fact is not necessary to be proved. On such admission, presumption u/s 118(a) of the Negotiable Instruments Act would

have been attracted and it is to be presumed that consideration passed. This is a presumption of law as has been held in AIR 1961 SC 1316

(Kundan Lal Rattaram v. Custodian, Evacuee Property, Bombay) and defendant has to prove to the satisfaction of the Court that there was

payment of the amount under the promissory note. Scope of such presumption and the manner in which it is to be rebutted was analysed by

Supreme Court in the aforesaid decision.

The plaintiff has been filed under Order XXXVII Rule 1 CPC on the basis of the suit promissory note. The case of the defendant is that he has

signed the suit promissory note thinking that it is only a rental agreement. But on a perusal of the suit promissory note itself will go to show that it is

a demand promissory note. Under such circumstances, after admitting the signature in the suit promissory note, the defendant cannot be heard to

say that they have signed in a rental agreement and not in a suit promissory note. The learned Trial Judge after considering all those points has

rightly come to a conclusion that it is not a fit case in which leave to defend can be granted and accordingly dismissed the application under Order

XXXVII Rule 3 CPC and decreed the suit but with only 9% per annum interest. I do not find any reason to interfere with the well considered

order of the learned trial Judge in I.A.No. 2915 of 2004 in O.S.No. 6115 of 2003.

5. In the result, this civil revision petition is dismissed.

No costs. Consequently, connected CMP No. 10545 of 2005 and VCMP. No. 8 of 2006 are also dismissed.