(2011) 09 MAD CK 0351

Madras High Court

Case No: Second Appeal No. 741 of 2003 and C.M.P. No. 10264 of 2004

V. Ramasamy Naidu		APPELLANT
	Vs	
S.P. Damodaran		RESPONDENT

Date of Decision: Sept. 29, 2011

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 118, 138, 20, 43

Hon'ble Judges: S. Nagamuthu, J

Bench: Single Bench

Advocate: T.R. Rajaraman, for the Appellant; V.J. Latha, for the Respondent

Final Decision: Dismissed

Judgement

The Honourable Mr. Justice S. Nagamuthu

1. The plaintiff in O.S.No.1062 of 1992 on the file of the learned Subordinate Judge, Coimatore is the appellant. The respondent is the defendant.

2. The suit was filed for recovery of a sum of Rs. 1,43,500/ with subsequent interest at the rate of 18% p.a. for a sum of Rs. 1,00,000/-The suit was decreed in part directing the defendant to pay a sum of Rs. 1,01,000/-and interest at the rate of 18 % p.a. from the date of filing of the suit for Rs. 1,00,000/-together with 6% interest from the date of decree till date of realization of the amount. Aggrieved over the same, the defendant preferred an appeal in A.S.No.227 of 2000 before the II Additional District Judge, Coimbatore. The lower appellate Court allowed the appeal and set aside the decree and judgment of the trial Court and dismissed the suit. As against the same, the plaintiff is before this Court with this appeal.

3. The case of the plaintiff is as follows: The defendant is the transport operator and he had regular business transactions with the plaintiff. On many occasions, the defendant borrowed various amounts from the plaintiff for his urgent business needs. On 24.04.1982 he borrowed a sum of Rs. 26,850/-by means of a cheque.

Similarly on 16.07.1987 he borrowed another sum of Rs. 9,650/-by means of a cheque. The defendant agreed to repay the said amounts with interest at the rate of 18% p.a. In respect of the above, the defendant executed a bond for a total sum of Rs. 36,500/-on 16.07.1987 thereby promising to repay the amount to the plaintiff. Subsequently, the defendant borrowed a sum of Rs. 32,000/-by means of two Demand Drafts each for Rs. 16,000/-for the purpose of payment of motor vehicles tax. For this amount also, the defendant agreed to pay interest at the rate of 18% p.a. Consolidating all the above stated three transactions, the defendant executed a promissory note for Rs. 68,500/-on 01.10.1989, thereby promising to repay the same together with interest at the rate of 18% p.a. Thereafter on 16.03.1990, he borrowed another sum of Rs. 20,000/-Thus, the total principal amount which was due from the defendant was Rs. 88,500/-The defendant had fallen in arrears of payment of interest for a period of five months. Calculating the interest and adding the same to the principal amount of Rs. 88,500/-the net amount was Rs. 1,00,000/-For the same, the defendant executed a fresh promissory note thereby agreeing to repay the said amount with interest at the rate of 18% p.a. The said amount was not paid despite the demand. It is on the basis of the said promissory note dated 16.03.1990, the present suit was filed by the plaintiff.

4. In the written statement, the defendant denied the execution of the promissory note. He has admitted that he borrowed a sum of Rs. 26,850/-on 24.04.1982 and another sum of Rs. 9,650/-The incorporation of acknowledgment of the time barred debt and discharged debt in the alleged 1987 bond is false. It is a fraudulent entry of the plaintiff. According to the defendant, he approached the plaintiff on 30.01.1988 and borrowed a sum of Rs. 50,000/-on executing a blank signed general stamp paper of Rs. 3/-and blank signed revenue stamp affixed paper and a printed blank signed revenue stamp affixed promissory note for the purpose of pledging RC Book of Motor vehicle bearing Registration NO.TDC 1377 and "A" permit of the above vehicle. One revenue stamp affixed blank paper signed for the personal liability and another revenue stamp affixed printed promissory note in blank signed by the defendant as Managing Director with seal of the Sri Raja Transport for the liability of the transport company. The 1987 loan of Rs. 9,650/-with interest and the tax payment of Rs. 16,000/-for the vehicle TDC 1377 is deducted from the borrowed amount of Rs. 50,000/-and the balance amount alone was paid to the defendant on 30.01.1988. Thus, the defendant is not liable to pay the above said sum of Rs. 50,000/-. The promissory note dated 01.10.1989 was not really executed by the defendant. The said promissory note has been created on the stamped blank paper on 30.01.1988. On 16.03.1990 the defendant has not borrowed a sum of Rs. 20,000 in cash. On 16.03.1990, on demand of account and all the signed blank papers and the document pledged from the plaintiff both the parties arrived to a settlement that a sum of Rs. 19,905/-alone was due to the plaintiff by the defendant. Sine the defendant was not able to settle the amount and due to the urgent need of the pledged permit, he again in full and final settlement the plaintiff obtained a blank

cheque for the said amount of Rs. 19,905/-Thus the defendant never executed the promissory note for Rs. 1,00,000/-and the contrary allegations are false. The blank signed printed stamped paper which was dated 30.01.1988 has been pressed into service by filling up the same. Therefore, the defendant is not liable to pay the amount under the Promissory Note.

5. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff two witnesses were examined and as many as thirteen documents were exhibited. On the side of the defendant two witnesses were examined and as many as five documents were exhibited.

6. Having considered all the above materials, the trial Court by decree and judgment dated 28.04.2000 decreed the suit. As against the same, the defendant filed an appeal before the learned II Additional District Judge, Coimbatore, which was allowed thereby setting aside the decree and judgment of the trial Court and dismissed the suit. Aggrieved by the said decree and judgment, the plaintiff is before this Court with this Second Appeal.

7. When the Second Appeal is admitted, this Court framed the following substantial questions of law:

i. Whether issuance of cheque subsequent to the filing of the suit towards part payment of the suit claim would result in full satisfaction of the claim made in the plaint?

8. I have heard the learned counsel on either side and also perused the records carefully.

9. From the stands taken by the parties, it is crystal clear that the promissory note dated 01.10.1989 (Ex.A.5) was signed by the defendant. The learned counsel for the plaintiff would submit that the admission of the signature in Ex.A.5 would amount to execution of the document. In my considered opinion, it is not so. At the most, it can be stated from the said admission that the said instrument is an inchoate stamped instrument wherein it can be held that the defendant had given prima facie authority to the plaintiff to make or complete upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the instrument. In view of the said provision, it is possible to hold that the defendant had given authority to the plaintiff to fill up the same.

10. Now turning to Section 118 of the Negotiable Instruments Act, sub Section (a) states that until the contrary is proved, there shall be a presumption that every negotiable instrument was made or drawn for consideration. Relying on this, it is contended that in the instant case, there shall be a presumption that Ex.A.5 promissory note was made for consideration of Rs. 1,00,000/-In my considered opinion, Section 118 of the Negotiable Instruments Act will be applicable if only the negotiable instrument was made by the person who executed the same. In case of

inchoate stamped instrument, the promissory note is not made by the person who signed the document, but it is made only by a person to whom it is handed over with implied authorisation u/s 20 of the Act to make the same. Therefore, in the instant case, the presumption u/s 118 of the Act cannot be drawn in favour of the plaintiff.

11. Assuming that the evidence of P.Ws 1 and 2 are acceptable so as to hold that Ex.A.5 was not an inchoate stamped instrument and it was really executed by the defendant, then, there shall be a presumption u/s 118 of the Act in favour of the plaintiff. But such presumption is not unrebuttable. The defendant is at liberty to rebut the said presumption. The rebuttal of legal presumption can be made either by oral evidence or by documentary evidence or by any other circumstance brought on record. Now, it is to be seen as to whether the defendant has rebutted the said presumption or not. On facts, it is the case of the plaintiff as found in paragraph 5 of the plaint that as on 01.10.1989 under the previous transactions together with interest, the defendant was liable to pay a total sum of Rs. 68,500/-,for which, Ex.A.4 was executed by him, thereby promising to repay the same with interest. Subsequently, he borrowed a sum of Rs. 20,000/-on 16.03.1990. Assuming that the same is true, even according to the plaintiff, the principal amount due from the defendant as on 16.03.1990 was only Rs. 88,500/-In paragraph 5 of the plaint, it is stated that as on 16.03.1990, for the amount of Rs. 68,500/-the defendant had fallen in arrears of interest for a total period of five months at the rate of 18% p.a. If this is calculated, the interest will come to Rs. 5,138/-and if this amount is added to the principal amount of Rs. 88,500-/, it works out to Rs. 93,638/-. Thus, even according to the plaint allegation in paragraph 5, the total amount which was due from the defendant was only Rs. 93, 638/-. But the promissory note under Ex.A.5 was alleged to have been executed for Rs. 1,00,000/-The learned counsel for the plaintiff is not in a position to explain as to how for Rs. 93,638/-, the promissory note was executed for Rs. 1,00,000/-. A perusal of the evidence of P.Ws 1 and 2 would also go to show that there was absolutely no explanation. This creates doubt in the veracity of the plaintiff. Had it been true that a sum of Rs. 93,638/-alone was due from the defendant, the defendant would have executed the promissory note either for the said sum or by rounding of the same to Rs. 93,700/-or even Rs. 94,000/-In any event, the defendant would not have executed the promissory note for Rs. 1,00,000/-Thus, the plaintiff has not come forward with clean hands. This circumstance clearly rebuts the presumption raised u/s 118 of the Negotiable Instruments Act. If once the said presumption u/s 118 of the Negotiable Instruments Act has been rebutted, then it becomes the burden of the plaintiff to prove that the promissory note, namely Ex.A.5 was supported by consideration. In this regard, I may refer to Section 43 of the Negotiable Instruments Act, which reads as follows:

43. Negotiable Instrument made, etc. without consideration: A negotiable instrument made, drawn, accepted, indorsed, or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the

parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

12. A reference to the said provision would go a long way to show that if the plaintiff fails to prove that a sum of Rs. 1,00,000/-was due from the defendant as on 16.03.1990, then there will be no obligation to the defendant to pay any amount under Ex.A.5. Thus, the burden is heavily upon the plaintiff to prove that Ex.A.5 is supported by consideration.

13. But the learned counsel for the plaintiff would submit that from Exs. A.1 to A.13, and from the evidence of P.Ws 1 and 2, the plaintiff has proved that Ex.A.5 is supported by consideration. One another aspect which needs mention is that on 20.06.1992, the defendant issued a cheque for a sum of Rs. 1,00,000/-under Ex.A.7 and the same was dis-honoured. Based on the same, the plaintiff u/s 138 of Negotiable Instruments Act, instituted a complaint against the defendant on the file of the learned Judicial Magistrate No.VI, Coimbatore in C.C.No.85 of 1995 under Ex.B.5 dated 26.12.1998 and later on the same was withdrawn. It is the contention of the learned counsel for the appellant that had it been true that a sum of Rs. 1,00,000/-was not due from the defendant, he would not have issued Ex.A.7, cheque. From all these circumstances, it is the contention of the plaintiff that the plaintiff has proved that Ex.A.5 is supported by consideration.

14. But, it is seen from the records that the complaint was withdrawn under Ex.B.5 by the plaintiff. It is not known as to why it was withdrawn. Had it been true that the said cheque was issued for any enforceable liability, the plaintiff would not have withdrawn the said complaint. Thus, the withdrawal of the said complaint would only go to indicate that there was no legally enforceable liability on the part of the defendant. Thus, it is obvious that the cheque itself was not issued in discharge of any legally enforceable liability. In these circumstances, the arguments advanced on the basis of the said cheque cannot be countenanced.

15. The lower appellate Court has meticulously considered the above aspects and has come to the conclusion that the promissory note in question was not supported by consideration. This is essentially a finding on facts. Unless the same is shown as perverse, this court cannot interfere with the same. In this case, on a perusal of the evidence, as I have already concluded, it is very clear that the promissory note in question is not supported by consideration. Therefore, there is no obligation on the part of the defendant to pay any amount.

16. The substantial question of law framed in this case is in respect of issuance of cheque subsequent to the filing of the suit towards part payment of the suit claim. This question, in my consideration, need not be answered. In view of the fact that the promissory note itself is not supported by consideration and so, there is no

obligation on the part of the defendant to discharge the same. Thus, I do not find any merit in the appeal.

17. In the result, the appeal fails and the same is, accordingly, dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Connected miscellaneous petition is closed.