
(2011) 10 MAD CK 0096

Madras High Court

Case No: S.A. No. 587 of 2005

A. Raju

APPELLANT

Vs

S. Raju

RESPONDENT

Date of Decision: Oct. 21, 2011

Acts Referred:

- Evidence Act, 1872 - Section 114, 73
- Negotiable Instruments Act, 1881 (NI) - Section 118

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: D. Malaichamy, for the Appellant; K. Periasamy, for the Respondent

Judgement

M. Venugopal, J.

The Appellant/Respondent/Plaintiff has filed the present appeal before this Court as against the Judgment and Decree dated 14.10.2004 in A.S. No. 168 of 2002 passed by the Learned Principal Judge, Madurai.

2. PLAINT AVERMENTS :

The Respondent/Defendant has borrowed a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) for meeting out his urgent family expenses and for urgent expenses, in cash on 24.04.2000 from the Appellant/Plaintiff and executed a suit promissory note, agreeing to pay interest at Rs. 2/- per Rs. 100/- . In support of the suit amount, the Respondent/Defendant has handed over his house site allotment order with the Appellant/Plaintiff. The Respondent/Defendant has not paid either the principal or the interest amount to the Appellant/Plaintiff till date. Though the Appellant/Plaintiff has demanded the payment of principal and interest amount from the Respondent/Defendant, on numerous occasions in person and through his men, yet the Respondent/Defendant has deliberately not paid the amount and procrastinating the matter. The Appellant/Plaintiff through his lawyer issued a notice dated 25.08.2001 to the

Respondent/Defendant and the Respondent/Defendant sent a reply dated 29.09.2001. But, after receipt of the notice, the Respondent/ Defendant has not paid any amount to the Appellant/ Plaintiff.

3. The Respondent/Defendant is not entitled to get the benefits under the Tamil Nadu Debt Reliefs Acts. The Appellant/Plaintiff even though in the suit promissory note has claimed interest of Rs. 2/- per Rs. 100/- , he has filed the present suit restricting his claim of interest of Re.1/- for Rs. 100/- .

4. The Respondent/Defendant, for the receipt of loan of principal amount of Rs. 25,000/- , till date, has to pay the interest of Rupee 1/- for Rs. 100/- amounting to Rs. 4,333/- and aggregating in a sum of Rs. 29,333/- to the Appellant/Plaintiff. Hence, the Appellant/Plaintiff has filed the present suit for recovery of sum of Rs. 29,333/- (Principal and Interest) with interest at 12% per annum till date of realisation together with costs.

5. WRITTEN STATEMENT PLEAS :

The Respondent/Defendant has not borrowed a sum of Rs. 25,000/- from the Appellant/plaintiff on 24.04.2000. He has not executed a promissory note for the said amount in favour of the Appellant/Plaintiff. Therefore, the Respondent/Defendant is not entitled to pay any amount to the Appellant/Plaintiff. In fact, the Respondent/ Defendant, on 24.04.2000, has received a sum of Rs. 10,000/- as loan on instalment basis from the Appellant/Plaintiff. The Respondent/Defendant till 26.07.2000 has paid a sum of Rs. 6,600/- on instalment basis and also obtained the document from the Appellant/Plaintiff. Since the Respondent/Plaintiff has failed to pay the balance amount of Rs. 3,400/- with an ulterior motive, the Appellant/Plaintiff creating the promissory note fraudulently like that of the signature of the Respondent/Defendant and has filed the present suit.

6. The Appellant/Plaintiff on 25.08.2001, has not sent any notice. The Appellant/Plaintiff has sent a notice dated 12.09.2001 specifying the wrong details. The Respondent/Defendant has sent a reply notice on 29.09.2001 to the Appellant/Plaintiff mentioning that he is prepared to pay the balance amount of Rs. 3,400/- . The Appellant/Plaintiff without accepting the reply notice sent by the Respondent/Defendant has suppressed the state of affairs and with a view to drag the Respondent/Defendant, with a bad intention has filed a false case. The suit filed by the Appellant/Plaintiff is contrary to the fact. The cause of action mentioned in the plaint is incorrect. The suit promissory note filed by the Appellant/Plaintiff against the Respondent/ Defendant is not legally sustainable one. The Appellant/Plaintiff has no prima facie case to project the plaint as against the Respondent/Defendant. As such, the suit plaint is not maintainable in law and justice. The suit has to be dismissed in limini.

7. Before the trial Court, in the main suit, three issues have been framed for trial. On the side of Appellant/Plaintiff, witnesses PW.1 and PW.2 have been examined and Exs. A1 to A5 have been marked. On the side of the Respondent/Defendant, witness DW.1 has

been examined and Exs.B1 has been marked.

8. The trial Court, on appreciation and on scrutiny of the entire oral and documentary evidences available on record, has come to a resultant conclusion that the Respondent/Defendant has received the suit amount from the Appellant/Plaintiff and executed the promissory note and found that the suit promissory note is a true one and consequently, granted the decree in favour of the Appellant/Plaintiff as prayed for with costs. However, it granted two months time to the Respondent/Defendant to make payment.

9. Feeling aggrieved against the Judgment and Decree dated 20.06.2002 in O.S. No. 191 of 2001 passed by the trial Court, the Respondent/Defendant before the First Appellate Court viz., the Principal Sub-Judge, Madurai has preferred A.S. No. 168 of 2002 is an aggrieved person.

10. The First Appellate Court, viz., The Principal Sub-Judge, Madurai in A.S. No. 168 of 2002 on 14.10.2004 has observed that the Plaintiff has not established the execution of Ex. A1 promissory note dated 24.04.2000 by the Defendant through relevant witnesses and has come to the resultant conclusion that the Plaintiff has not established that the Respondent/Defendant has executed the promissory note in his favour after receiving a sum of Rs. 25,000/- as loan and further that the trial Court without considering the documents has delivered the judgment in the suit and consequently, interfered with the Judgment and Decree of the trial Court in O.S. No. 191 of 2001 by allowing the appeal. Accordingly, the First Appellate Court viz., the Principal Sub-Judge, Madurai has set aside the Judgment and Decree passed by the trial Court in O.S. No. 191 of 2001 dated 20.06.2002 and allowed the appeal by directing the Appellant/Plaintiff to pay the suit costs.

11. Being dissatisfied with the Judgment and Decree dated 14.10.2004 in A.S. No. 168 of 2002 passed by the learned Sub-Judge, Madurai the Appellant/Plaintiff has filed the present Second Appeal before this Court as an aggrieved person.

12. At the time of admission of the Second Appeal this Court has framed the following substantial questions of law for determination:

1. Whether the Lower Appellate Court is justified in dismissing the suit when the evidence of PW.2 clearly establishes the execution of Ex. P1 promissory which would sufficient to draw presumption u/s 118 of Negotiable Instruments Act, in favour of the Appellant?

2. Whether the Lower Appellate Court is justified in coming to the conclusion that Ex. P1 was not executed since PW.2 has not signed as witness?

13. The Contentions, Discussions & Findings on Point No. 1 :

The Learned Counsel for the Appellant/Plaintiff submits that the First Appellate Court, viz., the the Principal Sub-Judge, Madurai, has committed an error in coming to the conclusion that the money has been paid through PW.2 and the same has not been disclosed in the plaint, without appreciating the other material evidence available on record.

14. The Learned Counsel for the Appellant/Plaintiff urges before this Court that the First Appellate Court viz., the Principal Sub-Judge, Madurai has gone wrong in holding that in the absence of signature by the witness, promissory note, the evidence of PW.2 cannot be considered to prove the execution of the suit pro-note.

15. Advancing his arguments, it is the contention of the Learned Counsel for the Appellant/Plaintiff that the First Appellate Court is not correct in coming to the conclusion that though the Respondent/Defendant admits the receipt of Rs. 10,000/- , it cannot be pleaded that on the same day another sum of Rs. 25,000/- has been lent on a promissory note. Lastly, it is the submission of the Learned Counsel for the Appellant/Plaintiff that the First Appellate Court has erred in coming to the conclusion that the signature in the suit promissory note and consequently the execution of suit promissory note has not been proved.

16. Per contra, it is the contention of the Learned Counsel for the Respondent/Defendant that the First Appellate Court namely the Principal Sub-Judge, Madurai, has considered the entire oral and documentary evidence on record and on facts and circumstances of the case has come to a consequent conclusion that the Appellant/Plaintiff has not established through proper witnesses that Ex. A1-promissory note dated 24.04.2000 has been executed by the Respondent/Defendant and further held that the fact that the signature in Ex. A1 promissory note belongs to the Respondent/Defendant has also not been established by the Appellant/Defendant and resultantly, allowed the appeal by interfering with the Judgment and Decree of the trial Court in the suit, which do not require any interference in the hands of this Court in Second Appeal.

17. For fuller and better appreciation of the merits of the case it is just and necessary for this Court to refer to the evidence of PW.1, PW.2 and DW.1.

18. PW.1(Appellant/Plaintiff) in his evidence has deposed that he is presently running the Finance business under the name "Kasinathan" and he is conducting finance business in his residence at Bharatahiyarpuram and that he knows the Respondent/Defendant for the past 25 years and that on 24.04.2000 the Respondent/Defendant received a sum of Rs. 25,000/- from him for his personal and sundry expenses for which he executed Ex. A1-promissory note and also in support of the loan, the Respondent/Defendant handed over his House site patta-Ex. A2 to him.

19. The further evidence of PW.1 is to the effect that the Respondent/Defendant has promised to repay the loan amount within six months but in spite of demand made by him

on numerous occasions, the Respondent/Defendant though promised to pay the amount and not paid the amount and therefore he has issued a lawyer notice to the Respondent/Defendant which is Ex. A3 and the acknowledgement card is A4 and apart from the loan amount taken on promissory note the other loan has been repaid in instalment by the Respondent/Defendant and Ex. A5 is the reply sent by the Defendant and that the Respondent/Defendant receives a monthly income of Rs. 25,000/- and his wife employed as a teacher.

20. PW.1 goes on to add that he paid the suit amount to the Respondent/Defendant in his house and that Jeyaraman knows the money deals given by him and that the said Jeyaraman received the money from him and given the same to the Respondent/Defendant and that he has filed the present suit for recovery the suit amount from the Respondent/Defendant.

21. PW.2-Jeyaraman, in his evidence has deposed that he received a sum of Rs. 25,000/- from the Appellant/Plaintiff and has given it to the Respondent/Defendant and that the said amount of Rs. 25,000/- has been paid to the Respondent/Defendant at the house of the Appellant/Plaintiff and the said amount has been given on the basis of promissory note for monthly interest and in instalment, a sum of Rs. 10,000/- has been paid by the Respondent/Defendant and that the Respondent/Defendant has not paid the money to the Appellant/Plaintiff.

22. The evidence of PW.2 is that Ex. A1 promissory note is the one executed by the Respondent/Defendant and the Respondent/Defendant has also given his house site patta and the signature seen in Ex. A1 promissory note is that of the Respondent/Defendant.

23. PW.2 in his cross-examination, has stated that in the suit promissory note he has not signed and the money given by the Appellant/Plaintiff has been handed over to the Respondent/Defendant and even a sum of Rs. 10,000/- paid in instalment has been received by him from the Respondent/Defendant and handed over to the Appellant/Plaintiff.

24. DW.1(Respondent/Defendant) in his evidence has stated that it is correct to state that he received a sum of Rs. 25,000/- as loan on 24.04.2000 from the Appellant/Plaintiff and the signature found in Ex. A1 promissory note is not his signature and that he received a sum of Rs. 10,000/- on daily instalment basis from one Jeyaraman and when he received the said money he has not executed a promissory note and for the money he received from Jeyaraman, Jeyaraman informed him that he has to pay a sum of Rs. 100/- to the Appellant/Plaintiff and he has paid a sum of Rs. 6,600/- on instalment basis and he has to pay a sum of Rs. 3,400/- . Further it is the evidence of DW.1 that Ex. B1 is the Account Book(Pocket note book) written by the Appellant/Plaintiff and when he received a sum of Rs. 10,000/- from Jeyaraman, the said Jeyaraman has taken a sum of Rs. 1,500/- towards interest and there has occasioned the delay in regard to the payment of

instalment balance amount and that Jeyaraman brought two persons and threatened that he would lock the shop and further if the amount is not paid, he informed that, a case will be filed for Rs. 50,000/- and later, a notice was given as if he received a sum of Rs. 25,000/- and since he has not repaid a sum of Rs. 3,400/- , the Appellant/Plaintiff has filed the present case falsely and that he has not received a sum of Rs. 25,000/- from the Appellant/Plaintiff.

25. According to DW.1(Respondent/Defendant), he has no connection with the Appellant/Plaintiff and he is not liable to pay the amount to the Appellant/Plaintiff.

26. DW.1 in his cross-examination, has deposed that the signature in Ex. A1 promissory note does not belong to him and that he has not taken any steps to send the promissory note for handwriting expert examination.

27. Continuing further, it is the evidence of DW.1 that there is no connection for the money given by Jeyaraman and the Appellant/Plaintiff and that the signature in the written statement and his signature shown in vakalath and summons belonging to him.

28. Ex. A1 promissory note dated 24.04.2000 for Rs. 25,000/- is a printed one in Tamil. A perusal of Ex. A1 promissory note shows that the preamble portion of the pro-note are left blank and filled up in Tamil. Over the Revenue Stamps in Ex. A1, promissory note the signature of one S.Raju is seen. Significantly, on the left hand side of Ex. A1 pro-note under the caption "witnesses" no one has signed. Even the name of the scribe who has written Ex. A1 pro-note is not mentioned and the same is left blank.

29. Ex. A2 is the House site order dated 31.08.1996 in favour of the Respondent/Defendant. Ex. A2 is said to have been handed over by the Respondent/Defendant to the Appellant/Plaintiff at the time of receiving the suit amount of Rs. 25,000/- .

30. Ex. A3 is the lawyer's notice of the Appellant/Plaintiff dated 25.08.2001 addressed to the Respondent/Defendant. In the said notice, it is mentioned that on 24.04.2000, the Respondent/Defendant for his family expenses and sundry expenses, has received a sum of Rs. 25,000/- from the Appellant/Plaintiff and has executed a pro-note and also handed over the house site sanctioned order to the Appellant/Plaintiff. The rate of interest in the suit promissory note is also mentioned as Rs. 2/- for Rs. 100/- per month. In short, the Appellant/Plaintiff through Ex. A3 lawyer's notice has demanded the payment of the suit promissory note amount with interest at 24% per annum along with the lawyer's fee of Rs. 500/- .

31. Ex. A5 is the reply notice dated 29.09.2001 issued by the Respondent/Defendant's Advocate addressed to the Appellant/Plaintiff's Advocate. In the said reply notice -Ex. A5, the Respondent/Defendant has stated that he has not received a sum of Rs. 25,000/- as loan from the Appellant/Plaintiff and that he has also not signed in any promissory note and handed over the same etc. But, in the reply notice -Ex. A5, the

Respondent/Defendant had admitted that on 24.04.2000, he received a sum of Rs. 10,000/- from the Appellant/Plaintiff and till 26.07.2000, he has paid a sum of Rs. 6,600/- on instalment basis and also obtained the proper document thereto. Since, the Respondent/Defendant has not paid the balance amount with ulterior motive, the Appellant/Plaintiff has created the promissory note and filed the present suit. Moreover, the Respondent/Defendant in Ex. A5 has clearly stated that at any time, he is ready to pay the balance amount of Rs. 3,400/- to the Appellant/Plaintiff and has also asked for the return of promissory note from the Appellant/Plaintiff on receipt of the balance of Rs. 3,400/- from him.

32. It is to be noted that Section 118 of the Negotiable Instruments Act, prescribes certain presumptions to be attached to a Negotiable Instrument until the contrary is established. Before these presumptions can be drawn, execution of the instrument should be either admitted or proved in the manner known to law. There is no presumption about execution of a negotiable instrument and in case of a denial by the other side, the party basing its claim on such instrument should fully prove its execution as per the decision in *Visvanata RaghunathAudi V. Mariano Colaco* reported in AIR 1976 GDD 60.

33. Once the execution of the promissory note is admitted, then the presumption u/s 118(a) of Negotiable Instruments Act, arises. The said presumption is rebuttable one either by means of a circumstantial evidence or by presumption of fact as per Section 114 of the Evidence act as per the decision of *Raja Kishore Chhapotra V. Lakshman Rout* reported in (1991) (7) CCC 254 (Ori).

34. The issue whether a statutory presumption is rebutted by the rest of the evidence is a question of fact. As per the decision in AIR 1930 91 (Privy Council) at page 93, the presumption is not left to the discretion of the Court. It is essential on the part of the defendant who desires to dispute the Plaintiff's title to recover the money on the ground of want of consideration, to allege and prove the same as per the decision in *Shanmugha Rajeswara V. Chidambaram* reported in ILR (1938) Mad. 646 (PC) .

35. A promissory note is a negotiable instrument. There is a statutory presumption of consideration in respect of the promissory note as per Section 118 of Negotiable Instrument Act, 1881. The said presumption casts an onus of proving a case on the Defendant. As a matter of fact, the Defendant can let in direct evidence to prove that the promissory note is not supported by consideration. The circumstantial evidence may be relied upon if the circumstances are compelling the burden may once again shift to the Plaintiff. The Plaintiff can place reliance upon presumptions of fact, for e.g mentioned in Section 114 and other sections of the Indian Evidence Act.

36. It is the evidence of PW.1 (in cross-examination) that in his presence, Jeyaraman (PW.2) has given the money to the Respondent/Defendant and in the reply notice, the Respondent/Defendant has stated that he has received a sum of Rs. 10,000/- on 24.04.2000 on instalment basis which is correct and that the said loan has been repaid

and which it is not known till 26.07.2000 for Rs. 10,000/- the Respondent/Defendant has paid a sum of Rs. 6,600/- and he can tell only looking after the accounts.

37. PW.1 has further stated that Ex. B1 (Pocket note book) says about the credit for Rs. 6,600/- . It cannot be gainsaid that the Respondent/Defendant has taken a specific plea in the written statement that on 24.04.2000 he has not received a sum of Rs. 25,000/- from the Appellant/Plaintiff and further he has not executed any promissory note and he has not paid any amount to the Appellant/Plaintiff. Furthermore, it is the categorical stand of the Respondent/Defendant that on 24.04.2000, he received a sum of Rs. 10,000/- only from the Appellant/Plaintiff on instalment basis and in this regard, he has paid a sum of Rs. 6,600/- to the Appellant/Plaintiff till 26.07.2000 and only a balance of Rs. 3,400/- remains to be paid.

38. Admittedly, PW.2(K.Jeyaraman) has not signed in Ex. A1, promissory note dated 24.04.2000 for Rs. 25,000/- as a witness. In Ex. A1, no one has signed as witness. Even the name of the scribe who has written the Ex. A1 promissory note, has not been made mention of in the said document. When the Respondent/Defendant (DW.1) has denied his signature in Ex. A1 promissory note, then it is the duty of the Appellant/Plaintiff to send the promissory note for getting the opinion of the handwriting experts. But such an endeavour before the trial Court has not been made on behalf of the Appellant/Plaintiff. Though as per Section 73 of the Indian Evidence Act, a Court of Law is entitled to compare the signature of person with that of his admitted signature through naked eye, yet the said comparison is an hazardous one, in the considered opinion of this Court.

39. In the present case, it is the evidence of PW.1 (Appellant/Plaintiff) that he paid a sum of Rs. 25,000/- to the Respondent/Defendant on 24.04.2000 and that the Respondent/Defendant has received the said amount towards his personal and sundry expenses and executed the Ex. A1 promissory note. It is also the evidence of PW.1 that in his presence, Jeyaraman (PW.2) paid the money to the Respondent/Defendant.

40. At this stage, this Court pertinently points out that PW.2 in his cross-examination has candidly stated that he only received a sum of Rs. 10,000/- from the Appellant/Plaintiff and paid the same to the Respondent/Defendant, on instalment basis and the said amount of Rs. 10,000/- has been paid on the same day of Rs. 25,000/- being paid to the defendant. Although, PW.2 in his evidence has stated that he has paid the instalment amount of Rs. 10,000/- to the Respondent/ Defendant and executed Ex. A.1 -promissory note dated 24.04.2000 for a sum of Rs. 25,000/- etc. The same does not inspire the confidence of this Court. The Appellant/Plaintiff has not established through relevant witnesses that the Respondent/Defendant has executed Ex. A.1 -promissory note in his favour after receiving a sum of Rs. 25,000/- . As per Ex. B1, entries beginning from 26.04.2000 till 26.07.2000, a sum of Rs. 6,600/- has been paid in all and amounts ranging from Rs. 100/- , Rs. 200/- , Rs. 300/- and Rs. 400/- have been given credit by the Appellant/Plaintiff. The Appellant/Plaintiff is a person who is lending money in the habit of instalment basis. PW.1 has stated that in Ex. B1-packet note book, the

Respondent/Defendant has paid a sum of Rs. 6,600/- . In short, the Appellant/Plaintiff has not proved to the satisfaction of this Court that he lent a sum of Rs. 25,000/- in cash to the Respondent/Defendant on 24.04.2000 and that the Respondent/Defendant after receipt of Rs. 25,000/- has executed Ex. A1 promissory note in question.

41. Per contra, the Respondent/Defendant in his evidence has clearly stated that the signature found in Ex. A1 promissory note is not a signature and that he has not received a sum of Rs. 25,000/- as per Ex. A1 promissory note and that he only received a sum of Rs. 10,000/- on instalment basis from one Jeyaraman, who has been examined as PW.2 in the case. Moreover, out of Rs. 10,000/- loan received him from Jeyaraman, he has paid a sum of Rs. 6,600/- as per Ex. B1 and that he has to pay the balance amount of Rs. 6,600/- and also that when Jeyaraman paid him a sum of Rs.10,000/- as instalment basis he has deducted a sum of Rs. 1,500/- towards interest. The said evidence of DW.1(Respondent/Defendant) is cogent, coherent and convincing one and therefore, this Court accepts the same as worthy of credence. Ex. B1-pocket note book indicates that a sum of Rs. 6,600/- has been paid till 26.07.2000 beginning from 26.04.2000 and probablises the case of the Respondent/Defendant that he received only a sum of Rs. 10,000/- from PW.2 (Jeyaraman) on instalment basis and he has paid a sum of Rs. 6,600/- towards the said loan of Rs. 10,000/- and only balance of Rs. 3,400/- remains to be paid by him. Though PW.2 has stated that he received a sum of Rs. 10,000/- from the PW.1 and paid the same to the DW.1(Respondent/ Defendant).

42.In the present case, it is not established on behalf of the Appellant/Plaintiff that the Respondent/Defendant has received a consideration of Rs. 25,000/- on 24.04.2000 and executed the said Ex. A.1 -promissory note in question. Also, when the Respondent/Defendant has denied the signature over the Revenue Stamp only Ex. A1 promissory note, the Appellant/Plaintiff has not made endeavour to take necessary steps to prove before the trial Court by sending the said promissory note for expert examination and that it is only the Respondent/Defendant has executed the promissory note in question. This is clearly an adverse circumstance which goes against the case of the Appellant/Plaintiff, in the considered opinion of this Court.

43.Therefore, in the light of the aforesaid detailed discussions and also on an overall assessment of the entire conspectus of the case in an integral manner, this Court holds that the First Appellate Court is perfectly justified in dismissing the suit holding that the Appellant/Plaintiff has not established that the Respondent/Defendant has executed the Ex. A1 promissory note dated 24.04.2000, after receiving the consideration of Rs. 25,000/- and further, it is held by this Court that the evidence of PW.1 ipso facto does not lead to draw sufficient presumption as per Section 118 of the Negotiable Instruments Act and that Ex. A1 promissory note dated 24.04.2000 has been executed in favour of the Appellant/Plaintiff by the Respondent/Defendant and accordingly, the point No. 1 is so answered against the Appellant/Plaintiff.

44.The Contentions, Discussions &Findings on Point No. 2 :

Nowhere in the plaint, the Appellant/Plaintiff has averred that he has paid a sum of Rs. 25,000/- to the Respondent/Defendant at his house. Though PW.1 in his evidence has stated that PW.2 witness knows about that the sum of Rs. 25,000/- is paid to the Respondent/Defendant, the said fact has not been made mention of in the plaint. These are all essential averments and nonmentioning of these, is fatal to the case of the Appellant/Plaintiff, as opined by this Court. Ordinarily, a plea without pleading cannot be accepted by a Court of law. When in the Ex. A1-promissory note dated 24.04.2000, the signature of the witnesses are not seen and when they are blank, the factum of the payment of Rs. 25,000/- made to the Respondent/Defendant by the Appellant/Plaintiff at his house has not been mentioned in the plaint. Then, the First Appellate Court is quite justified in coming to an inevitable conclusion that Ex. A.1 suit promissory note dated 24.04.2000, has not been executed by the Respondent/Defendant and it is also further rightly held that the signature as seen in Ex. A1 has not been proved that it is the signature of the Respondent/Defendant and accordingly, Point No. 2 is answered as against the Appellant/Plaintiff.

45. In the result, the Second Appeal is dismissed. Consequently, the Judgment and Decree of the First Appellate Court, viz The Principal sub-Judge, Madurai, in A.S. No. 168 of 2002 dated 14.10.2004 are affirmed by this Court for the reasons assigned in this Second Appeal. Since, the Respondent/Defendant as DW.1 in his evidence has admitted that out of sum of Rs. 10,000/- (Rupees Ten Thousand only) which he has received as loan, on instalment basis from the Appellant/Plaintiff, he has paid a sum of Rs. 6,600/- (Rupees Six Thousand and Six Hundred only) and the balance sum of Rs. 3,400/- (Rupees Three Thousand and Four Hundred only) remains to be paid. It is made clear by this Court that the dismissal of the Second Appeal will not preclude the Respondent/Defendant to pay a sum of Rs. 3,400/- (Rupees Three Thousand Four Hundred only) to the Appellant/Plaintiff in the manner known to law and in accordance with law if he is so advised. Having regard to the facts and circumstances of the case the parties are directed to bear their own costs in this Appeal.