BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 04.06.2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA

A.S.(MD)No.162 of 2018

P.Palanikumar ... Appellant / Plaintiff

Vs.

R.Selvi ... Respondent / Defendant

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code praying this Court, against the Judgment and Decree dated 28.06.2018 made in O.S.No.143 of 2017 on the file of the IV Additional District Judge, Madurai.

For Appellant : Mr.Raghuvaran Gopalan for Mr.L.Siva

For Respondent : Mr.J.Lawrance

JUDGMENT

(By G.R.SWAMINATHAN, J.)

The plaintiff in O.S No.143 of 2017 on the file of the IV Additional District Judge, Madurai is the appellant herein. The suit was for recovery of a sum of Rs.31,54,167/- with subsequent interest at 12% per annum from the date of the plaint till the date of realization. The suit was dismissed by the court below vide judgment and decree dated 28.06.2018. Aggrieved by the same, this appeal has been filed.

2.The case of the plaintiff is as follows:-

The defendant approached him for loan for meeting family expenses and discharging sundry debts. The plaintiff advanced a sum of Rs.25,00,000/- on 05.06.2015 to the defendant. The defendant executed Ex.A1-promissory note on 05.06.2015. She agreed to repay the same with interest at the rate of 12% per annum. The defendant also deposited the original sale deed of her property dated 10.02.2006 with the plaintiff. Since the defendant did not repay the principal amount nor paid any interest, the plaintiff sent legal notice on 19.06.2017 (Ex.A3). The

defendant received the same and sent the reply notice on 03.07.2017 (Ex.A4). The defendant did not comply with the demand set out in the notice. Hence, the plaintiff instituted the suit for recovery of the aforesaid sum with interest.

3.The defendant did not file any written statement. The Court below framed the following three issues:-

1.Whether the plaintiff has proved the sources of income to lend loan to the defendant?

2. Whether the plaintiff has proved the mode of payment of such huge amount?

3. Whether the plaintiff has proved the execution of promissory note with the best available evidence?

4.The plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A4. On the side of the defendants, no evidence was adduced. The defendant not having filed any written statement could not have adduced evidence. The defendant also did not cross-examine the plaintiff (P.W.1). The Court below answered all the three issues against the plaintiff.

5.The learned counsel for the appellant submitted that the dismissal of the suit by the court below was without any justification especially when the defendant had not even filed the written statement or cross-examined the plaintiff. He submitted that undue importance was attached to the financial wherewithal of the appellant when there was no dispute regarding the same. He contended that the court below failed to appreciate the admissions of the defendant in the reply notice. He reiterated all the other contentions set out in the grounds of appeal and called upon this Court to set aside the impugned Judgment and decree and grant relief as prayed for.

6.On the other hand, the learned counsel for the respondent submitted that the trial Judge has to be complimented for not having mechanically dealt with the matter even though the defendant remained ex-parte throughout. The Hon'ble Supreme Court in ***Maya Devi v. Lalta Prasad (2015) 5 SCC 588*** held that the absence of the defendant does not absolve the trial court from fully satisfying itself of the factual and legal veracity of the plaintiff's claim. A greater responsibility and an onerous obligation is cast on the trial court in such cases. No automatic decree

can be passed merely because the defendant remained exparte. According to the learned counsel, the trial court had conducted itself with utmost responsibility. He would submit that the impugned judgment is well reasoned and that it does not call for interference.

7. The points that arises for determination are as follows:-

(I) Whether the Court below was justified in holding that the plaintiff did not prove due execution of the suit promissory note.

(II) Whether the Court below was justified in dismissing the money suit on the ground that the plaintiff failed to prove his wherewithal.

8.The Court below had come to the conclusion that the plaintiff did not have the means to advance such a huge sum of Rs.25,00,000/- to the defendant. It is true that the plaintiff did not mark his I.T returns. There is nothing on record to show that the suit transaction was reflected in the plaintiff's IT returns. Merely because a particular transaction was not reflected in one's IT returns, it cannot be concluded that the transaction did not take place. (vide ***R. Singaravadivelan v. Durai Senthil, 2024 SCC OnLine Mad 12874)***

9.We went through the testimony of the plaintiff. The defendant no doubt had been set exparte because he had not filed written statement. A person who has not filed written statement cannot be allowed to lead evidence. This is because of the principle that one's evidence must have foundation in one's pleadings. No amount of evidence can be looked into in the absence of pleadings (vide ***Siddik Mahomed Shah v. Saran, 1929 SCC OnLine PC 79).*** This well settled principle was reiterated by the Hon'ble Supreme Court in ***Manjusha v. United India Assurance Co. Ltd. (2025 SCC OnLine SC 1512***). That is why, the defendant who has not filed written statement cannot be permitted to adduce evidence. But he can very well participate in the proceedings by cross-examining the witnesses for the plaintiff (vide ***Modula India v. Kamakshya Singh Deo (1988) 4 SCC 619)***. But the defendant did not even cross-examine the plaintiff. If the court had any doubt regarding the plaintiff's capacity to lend such a huge sum, it ought to have posed questions to the witness. Section 165 of the Indian Evidence Act, 1872 enables the Judge to ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant and may order the production of any document or thing. This cannot be objected. When

such a sweeping power was available, the trial Judge was obliged to have exercised the same. The Judge should not sit like a sphinx. He must engage in a dialogue with the Bar. He must pose questions to the witness to disabuse his mind of lingering suspicions. This is also a facet of the principles of natural justice. The litigant cannot be taken by surprise. Our adjudicatory system contemplates laying all cards on the table. There can be no ace up the Judge's sleeve. The outcome of the judgment may be a bolt from the blue but its substance must not. In the sense, it should contain nothing that was not discussed during the course of the proceedings or during the interface of the bar and bench. If the judgment were to rest on an adverse element, the litigant concerned should have been put on notice.

10.The learned trial Judge not having put even a single court question could not have rendered an adverse finding on a point that was not challenged. Order 10 Rule 2 of CPC enables the court to orally examine any party appearing in person or present in court any material question relating to the suit. Rule 3 mandates that the substance of the examination must be reduced into writing by the Judge and shall form

part of the record. This is mandatory. While Order 10 Rule 2 employs the expression "may", Order 10 Rule 3 employs the expression "shall" twice. The imperative tenor of the word "shall" in the present context is obvious. It is more to aid the administration of justice. The Judge should not rely on his memory in such cases. The substance of the examination must be contemporaneously recorded. Only then, the advocate or the party will be in a position to note as to whether the response to the court question was correctly noted down.

11.In the case on hand, the record does not indicate that such an exercise was undertaken by the court. Hence, the finding of the court that the plaintiff did not have the wherewithal must be considered as perverse as it is based on no evidence.

12.If the plaintiff had been challenged in this regard, the necessity to mark the IT returns might have arisen. What is most important is the defendant had not formally questioned the plaintiff's capacity to lend the amount. It is true that in the reply notice (Ex.A4), the defendant had taken a stand that the plaintiff had been set up by a third party. She has

taken a stand that she had dealings with one Shanthanakrishnan and that she was ready to repay a sum of Rs.75,00,000/- to him. In other words, the receipt of money was not denied by the defendant. Her only stand was that the plaintiff had been a front for the said Santhanakrishnan. Order 8 Rule 5 CPC reads as follows:

> "5. Specific denial.— (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability."

The rule of non-traverse would apply. The plaintiff's claim that he had advanced the said amount and that the defendant had executed the suit pro-note must be deemed to be admitted in the circumstances of this case. The Hon'ble Karnataka High Court in ***M. Jeetendar Gandhi v. Huthappa, 1999 SCC OnLine Kar 225*** was dealing with exactly a similar set of facts. The defendant/borrower therein had also neither filed written statement nor subjected himself to cross-examination. It was held therein as follows:

> "The case of the plaintiff is unchallenged and undenied as the defendants have not filed any written statement denying the plaintiff's case. This circumstance also goes in favour

of the plaintiff-revision petitioner. Apart from that when the plaintiff's own statement proves the execution of the promissory note and consideration receipt by the defendants, it clearly shows that it was executed in his presence and signed in his presence.

13.Since the suit claim rested on pro-note which is a negotiable instrument, the presumption under Section 118 of the Negotiable Instruments Act, 1881 will kick in. The said Section reads as follows:

> **"118. Presumptions as to negotiable instruments.—**
>
> Until the contrary is proved, the following presumptions shall be made:—(a)of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;"

There is a presumption under law with respect to passing of consideration. It was for the defendant to rebut the said presumption. The defendant failed to do so. The Court below erred in not appreciating the presumption in favour of the plaintiff under Section 118 of the NI Act, 1881. A learned single Judge of this court in ***Kuppayammal Vs. A.***

Sitheswaran (S.A. No.280 of 1998 vide order dated 30.06.2011) observed as follows:

> "17. On the other hand, the defence of the defendants was that they only signed in blank promissory notes and they have not executed the documents. **Therefore, when the plaintiffs filed the suits on the promissory notes stating that the promissory notes were executed by the defendants and when the defendants contended that they only signed in the blank promissory notes, which were later filled up, the initial burden is on the defendants to prove that they have only signed in the blank promissory notes, which were later filled up by the plaintiffs.** Without discharging the initial burden that the blank promissory notes with only signatures were given, the defendants are not entitled to contend that the plaintiffs are not entitled to draw presumption under section 118 of the Negotiable Instruments Act."

In the case on hand, the respondent herein in her reply notice does not dispute her signatures on the promissory note. She claims that blank promissory note was obtained from her husband and herself. The onus is thus on the defendant to show that no consideration passed. She failed to

discharge the onus cast on her. We can understand if the defendant had completely denied the transaction. She took the defence that the plaintiff had been set up by one Santhanakrishanan. If that be so, this assertion should have been substantiated by the defendant by getting into the witness box. She failed to do so.

14.It is true that as per the provisions of Section 269SS of the Income Tax Act, any transaction beyond Rs.20,000/- should be through an instrument. In this case, the plaintiff claimed that he had advanced a sum of Rs.25,00,000/- in cash. Obviously, the plaintiff has breached the provisions of the Income Tax Act,1961. The Income Tax authorities are very much at liberty to take action against the plaintiff in this regard. But then, the fact that the transaction was carried out in breach of Section 269 SS of the Income Tax Act will not render the transaction illegal or disentitle the plaintiff to seek recovery on that basis. The Hon'ble Supreme Court in its recent decision reported in **2025 SCC OnLine SC 2069 (vide *Sanjabij Tari v. Kishore S. Borcar)*** held as follows :

> "**20.** However, this court is of the view that any breach of section 269SS of the Income-tax Act, 1961 is subject

to a penalty only under section 271D of the Income-tax Act, 1961. Further neither section 269SS nor 271D of the Income-tax Act, 1961 states that any transaction in breach thereof will be illegal, invalid or statutorily void. **Therefore, any violation of section 269SS would not render the transaction unenforceable under section 138 of the Negotiable Instruments Act, or rebut the presumptions under sections 118 and 139 of the Negotiable Instruments Act,** because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction above Rs. 20,000 (rupees twenty thousand) is illegal and void and therefore does not fall within the definition of "legally enforceable debt" cannot be countenanced.

15.It is not as if the plaintiff had straightaway filed the suit for recovery of money. The suit was preceded by a notice (Ex.A3). The defendant also offered her reply.(Ex. A4). We can understand if the defendant had completely denied the transaction. She took the defence that the plaintiff had been set up by one Shanthanakrishnan. If that be so, this assertion should have been substantiated by the defendant by getting into the witness box. She failed to do so.

16.What clinches the issue in favour of the plaintiff is that the title documents of the defendant had been marked by the plaintiff. The plaintiff had referred to handing over of the documents in his legal notice itself. The defendant had not explained as to how her title documents could have reached the hands of the plaintiff. The impugned judgment makes no reference to Ex.A2 sale deed. The court below did not also refer to Ex.A4 reply notice.

17.It is true that the plaintiff did not examine any attestor. But there is no requirement that a promissory note must be attested (vide ***Eswari Ammal vs Vallimayil 2021 SCC OnLine Mad 1739***). The plaintiff was not obliged to examine the attestor. Non-examination of the attestor could not have been put against the plaintiff when the defendant has not disputed the passing of consideration (vide ***Rani Vs. Arokiyammal in Second Appeal No. 49 of 2009 vide order dated 06.11.2014).*** When the signature in the pro-note is not in dispute, non-examination of the witnesses is not fatal to the case of the appellant.

18. The approach of the Court below is utterly unsatisfactory and the reasons given by the Court below are clearly unsustainable.

19.The impugned judgement and decree are set aside. The Appeal Suit stands allowed and the suit is decreed as prayed for. After the defendant satisfies the decree, he can apply to the Court below and take back the original title document (Ex.A2). No costs.

(G.R.S., J.) & (R.P., J.)
04.06.2026

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
rmi/skm

To

The IV Additional District Judge, Madurai.

G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

rmi/skm

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