

A.S(MD)No.119 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.04.2026

Pronounced on : 29.06.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

A.S(MD)No.119 of 2024

and

C.M.P(MD)No.6342 of 2024

R.Sudalaiyandi,
S/o. Ramasamy,
Roll No.20, TDCHD Section,
Thoothukudi VOC Port Trust,
Thoothukudi.
Residing At
Door No.35/1, 5th Street,
Anna Nagar, Toovipuram West,
Thoothukudi.

... Appellant/1st Defendant

Vs.

1.M.V.P.Mariappan
Proprietor of
M/s. Sri Venkatachalapathy Bankers,
S/o.M.V.Pattamuthu,
Money Lending Business
At Door No.64-F,
Parthasarathi Street,
Thoothukudi Town.

...1st Respondent/Plaintiff

S.Joseph (Died)



A.S(MD)No.119 of 2024

2. J.Maria Jancirani,
W/o. Late. Joseph,
Residing At
Door No.4/138-3/3,
2nd Street, Krishna Nagar,
Muthaiahpuram Post,
Thoothukudi.

...2nd Respondent/3rd Defendant

PRAYER:- This Appeal Suit is filed under Order 41 Rule 1 r/w Section 96 of the Civil Procedure Code, to allow this appeal with costs by setting aside the judgment and decree in O.S.No.35 of 2016, dated 19.07.2019 on the file of the Principal District Judge, Thoothukudi and dismiss the suit with costs.

For Appellant : Mr.A.Haja Mohideen
For R1 : Mr.M.P.Senthil
for Mr.A.Mohamed Haneef
R2 : Ex-parte

JUDGMENT

This Appeal is directed against the judgment and decree, dated 19.07.2019 passed in O.S.No.35 of 2016 on the file of the learned Principal District Judge, Thoothukudi.

2.The appellant is the 1st defendant in O.S.No.35 of 2016 on the file of the learned Principal District Judge, Thoothukudi. The 1st respondent is the plaintiff and the 2nd respondent is the 3rd defendant in that suit.



A.S(MD)No.119 of 2024

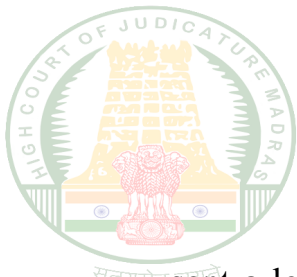
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3.The 1st respondent/plaintiff filed the suit in O.S.No.35 of 2016 for recovery of money based on Ex.A.1 - Promissory note, dated 05.01.2016, against the appellant/1st defendant, 2nd defendant Joseph (since died) and 2nd respondent/3rd defendant (LR of 2nd defendant Joseph). The appellant/1st defendant contested the suit. The suit was decreed in toto by the trial Court.

4.For the sake of convenience, the parties are referred to as per their rank before the trial Court.

5.The brief facts are as below:

(a) The case of the plaintiff is that the plaintiff is doing money lending business; on 05.01.2016, the defendants 1 & 2 approached the plaintiff and borrowed Rs.10 lakhs on execution of a promissory note, dated 05.01.2016 agreeing to repay with interest at 1% per one hundred; on the same day 05.01.2016 both the defendants 1 & 2 gave signed voucher to the plaintiff; on 06.06.2016, the 1st defendant issued a cheque, upon presentation to the bank, the cheque was returned on 07.06.2016 as 'insufficient funds'; so the plaintiff sent a legal notice, dated 19.07.2016; on receipt of the same, the 1st defendant



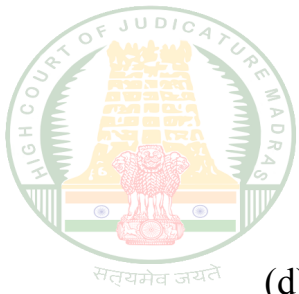
A.S(MD)No.119 of 2024

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sent a letter in his own handwriting with an undertaking that he would repay; in spite of several demands, the defendant did not repay. Hence, the plaintiff laid the suit for recovery of money with interest.

(b) The case of the 1st defendant is that he never borrowed Rs.10 lakhs and the promissory note for Rs.10 lakhs is a forged one; he received only a loan of Rs.1,60,000/- in the month of April 2014; he is working in VOC Port trust; he paid interest upto May 2015; he signed only an empty cash voucher, the particulars about 2nd defendant is not admitted; the alleged cash voucher is also forged one; the ledger produced by the plaintiff is not genuine one; the amount mentioned in the ledger is also false; this defendant obtained VRS and so, as per Section 60 of CPC the exgratia payment alone can be attached by the Court and the suit is to be dismissed.

(c) The case of the 2nd defendant is that he did not sign any of the account ledger, pronote, or voucher. The plaintiff has to prove that this defendant signed along with the 1st defendant in the alleged documents.



A.S(MD)No.119 of 2024

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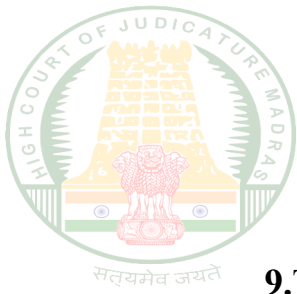
(d) During the pendency of the suit, the 2nd defendant died, and the 3rd defendant was added as his LR. However, the 3rd defendant remained ex-parte.

6.The trial Court framed the following issues upon the pleadings of both parties.

- (1) Whether the plaintiff is entitled for recovery of suit claim amount of Rs.10,72,050/-?*
- (2) Whether the plaintiff is entitled for interest for suit claim amount?*
- (3) What are the other reliefs he is entitled for?*

7.Before the trial Court, on the plaintiff's side P.W.1 & P.W.2 were examined and Ex.A.1 to Ex.A.18 were marked. On the defendants' side D.W.1 was examined, but no exhibit was marked.

8.On appreciation of evidence and the submissions made on behalf of the parties, the trial Court has decreed the suit.



A.S(MD)No.119 of 2024

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appeal.

9. The judgment and decree of the trial Court are under challenge in this

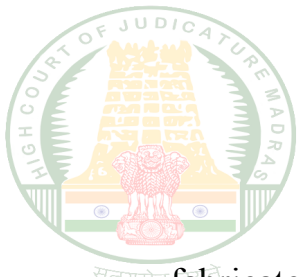
10. The point for consideration in this appeal are:

(1) Whether Ex.A.1 is forged one? And

(2) Whether the plaintiff has no means to advance the loan amount to the defendants?

11. Points 1 and 2:

The learned counsel for the appellant/1st defendant has submitted that the 1st defendant has clearly contended in his written statement that he borrowed only Rs.1,60,000/- and that he never borrowed Rs.10 lakhs. The 2nd defendant has also stated in his written statement that he had not borrowed any amount and had not signed any of the documents. The plaintiff pleaded that both defendants borrowed Rs.10 lakhs from the plaintiff for a real estate business. The 1st defendant was working for the Port Trust and he did not do any real estate business. In Ex.P.5 - legal notice, it is stated that the 2nd defendant signed as guarantor. The plaintiff specifically admitted in his evidence that the 1st defendant alone borrowed money, but Ex.A.1 shows that the defendants 1 and 2 put their signatures. So, the Ex.A.1 is forged, and



A.S(MD)No.119 of 2024

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fabricated one. The plaintiff marked a photocopy of ledger account relating to loan of defendants as Ex.A.10, but he did not produce and mark the original ledger before the Court, so the alleged entries in Ex.A.10 are not made in regular course of business and it has no evidentiary value and it is inadmissible in evidence.

12. In support of this contention, the learned counsel relied on ruling of the Hon'ble Supreme Court in the case of **Ishwar Dass Jain (dead) through LRs. v. Sohan Lal (dead) by LRs** reported in **AIR 2000 Supreme Court 426**, in which it is held in paragraph Nos.23, 24 and 31 as follows:

"23.Now under Section 34 of the Evidence Act, entries in "account books" regularly kept in the course of business are admissible though they by themselves cannot create any liability. Section 34 reads as follows:

"Section 34: Entries in books of account when relevant - Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability".



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A.S(MD)No.119 of 2024

It will be noticed that sanctity is attached in the law of evidence to books of account if the books are indeed "account books i.e. in original and if they show, on their face, that they are kept in the "regular course of business". Such sanctity, in our opinion, cannot attach to private extracts of alleged account books where the original accounts are not filed into Court. This is because, from the extracts, it cannot be discovered whether the accounts are kept in the regular course of business or if there are any interpolations or whether the interpolations are in a different ink or whether the accounts are in the form of a book with continuous page-numbering. Hence, if the original books have not been produced, it is not possible to know whether the entries relating to payment of rent are entries made in the regular course of business.

24. It is only in the case of Bankers' Books Evidence Act, 1891 that certified copies are allowed or the case must come under Section 65(f) or (g) of the Evidence Act. Private extracts of accounts in other cases can only be secondary evidence and unless a proper foundation is laid for adducing such secondary



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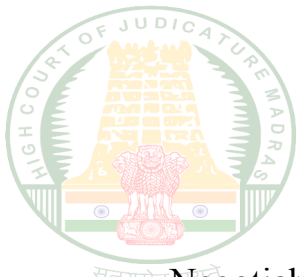


A.S(MD)No.119 of 2024

evidence under Section 65 or other provisions of the Evidence Act, the privately handwritten copies of alleged account books cannot by themselves be treated as secondary evidence.

31. In the result, we hold that the extracts from accounts are not "account books" falling within Section 34 of the Evidence Act and are inadmissible. We also hold that vital material was omitted from consideration by the Courts.

13.The learned counsel has further argued that the trial Court decreed the suit based on Ex.A.8 reply letter given by the 1st defendant. The 1st defendant has not specifically stated the loan amount in it and has not acknowledged the entire claim amount. He only obtained a loan in 2014 and thereafter he has not got any loan from the plaintiff. The 1st defendant is paying income tax and marked his salary certificate as Ex.A.12. If he borrowed any such huge loan, he has to mention it in his income tax returns. But he has not obtained any loan and the same is not shown. The plaintiff has no means to pay such an amount and the plaintiff has not produced any income tax returns to show the advance of the loan amount. P.W.1 has also admitted in his evidence that he has not produced any income tax returns. So, the presumption U/s.118 of the



A.S(MD)No.119 of 2024

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Negotiable Instruments Act is in favour of the 1st defendant. Moreover, the plaintiff has attached the retirement benefits of the 1st defendant. It is a settled position that the retirement benefits cannot be attached. So, the finding of the trial Court is not correct and the same is liable to be set aside. The appeal may be allowed.

14. In support of his arguments, the learned counsel for the appellant/1st defendant has relied on the following decisions of this Court and of the Hon'ble Supreme Court:

(1)2009 (2) CTC 725 in the case of K.Murugesan vs. E.Ulaganathan and Anr.

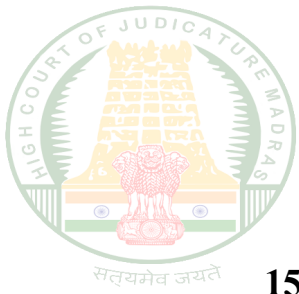
(2)2025 (5) CTC 355 in the case of Nisha vs. Sulochana and Ors.

(3)2025(5) CTC 517 in the case of R.Saravanan /v/ Tecknoweld Alloys (India) Pvt. Ltd.,

(4)2025 (5) CTC 525 in the case of Airen & Associates /v/ Sanmar Engineering Services Ltd.)

(5)2025 (2) L.W.(Crl.) 79 in the case of Nagarajan /v/ Philips Sydney

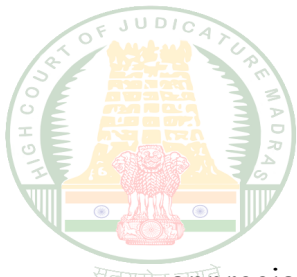
(6)2025 (5) CTC 789 in the case of K.Rangasamy /v/ K.Devaraj.



A.S(MD)No.119 of 2024

WEB COPY

15.Per contra, the learned counsel for the 1st respondent/plaintiff has vehemently contended that both the defendants borrowed a loan amount and executed Ex.A.1 - pronote on 05.01.2016 and also signed in Ex.A.2 voucher. The 1st defendant has also issued Ex.A.3 cheque, dated 06.06.2016 for Rs.10,50,000/-. On presentation, the cheque was dishonoured. So, the plaintiff issued Ex.A.5 legal notice, for which the 1st defendant sent Ex.A.8 reply letter admitting the loan amount and stating therein that he would repay the amount on his retirement. The 2nd defendant has also sent Ex.A.9 reply notice mentioning that the 1st defendant borrowed the loan amount from the plaintiff. The plaintiff examined himself as P.W.1 and also examined one witness as P.W.2. P.W.2 clearly deposed that the twenty bundles of Rs.500/- notes were given to the defendants on the date of obtaining the loan. So, the plaintiff has clearly proved his case, but though the defendant contended that Ex.A.1 is forged one, the same was not proved by documentary evidence as no document was marked. Mere non production of an income tax return does not mean the transaction of money did not take place. Such a defence has not been pleaded by the defendant in his written statement. The 1st defendant clearly admitted the case of the plaintiff. Admission is the best piece of evidence and nothing further is required to be proved by the plaintiff. The trial Court has properly



A.S(MD)No.119 of 2024

appreciated the evidences and correctly decreed the suit. So, the judgment of the trial court need not be set aside and the appeal may be dismissed.

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16. In support of his argument, the learned counsel for the 1st respondent/plaintiff has relied on the following decisions.

(1) **2026 (1) MWN (Civil) 224** in the case of **K.N.Subramani alias K.N.Subramanian /v/ S.Rathnakumar** wherein it is held in paragraph Nos 22, 25 and 27 as follows:

22. Moreover, when the suit was instituted, the original promissory note had been filed as a document. The appellant therefore had every opportunity to inspect the suit records. If, in fact, the signature was not his, he ought to have taken steps to have the document referred for forensic examination along with his admitted signatures. He did not take that step.

25. A perusal of the evidence shows that the respondents had also examined one B.Jayaprakash as P.W.2, who was a witness to the execution of the promissory note and who also deposed that the consideration was paid to the appellant at the time of its execution. The witness stood the test of cross-examination, and nothing adverse to the case of the



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A.S(MD)No.119 of 2024

respondents was elicited from him.

27.It is further to be mentioned that the appellant had questioned the source and availability of funds for the plaintiff to lend a sum of Rs.16 lakhs. However, this had been explained by P.W.1, who stated that a Poclain machine had been sold and that the plaintiff had the necessary funds at the relevant point of time. It is to be noted that there was no requirement on the part of the plaintiff to further prove the source of funds, particularly, when more than sufficient evidence had been adduced regarding the execution of the promissory note, the passing of consideration, and direct testimony from a witness to the execution.

(2) (2008) 7 Supreme Court Cases 655 in the case of Mallavarapu Kasivisweswara Rao /v/ Thadikonda Ramulu Firm and Others, in which it is held in paragraph Nos.19 to 21 as follows:

19.The learned counsel for the appellant, as noted herein earlier, contended that the respondents had neither taken the plea that there was no consideration for the pronote Ext.A-21, either in the reply notice or in the written statement, nor had they adduced any evidence to



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A.S(MD)No.119 of 2024

prove the non-existence of the consideration. The learned counsel for the respondents, however, contended that the respondents had denied the very execution of the pronotes and referred the same as forged both in the reply notice as also in the written statement. We are unable to accept the contentions of the learned counsel for the respondents.

20. In the written statements, the plea of the respondents was that on the face of the pronotes, no cash was paid by the appellant and therefore, the respondents were not liable to pay the amount because the pronotes were forged. It was a finding of the trial court, which was affirmed by the High Court in the impugned judgment that the pronotes were indeed executed by the respondents. It was also a finding of the High Court that except in the reply notice issued by the respondents, nowhere had they stated that the consideration had not passed. It is also an admitted position that the finding of the two courts below was that the execution of the pronotes having been proved, the presumption under Section 118(a) must come into play and the appellant must be entitled to a decree in the absence of evidence to the contrary. Having said this, the High Court proceeded to observe that



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A.S(MD)No.119 of 2024

if there was evidence inconsistent with the presumption under Section 118(a) of the Act, the Court would not be in a position to pass a decree in favour of the appellant on the basis of the presumption and therefore, proceeded to examine the evidence of the appellant in extenso.

21. In view of the decision of this Court in Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Payrelal [supra] and also in view of the findings arrived at by the Courts below, we are of the view that since the initial burden on the respondents to show that the pronote being Ex.A-21 was not supported by any consideration was not discharged by them, the High Court was not justified in not decreeing the suit of the appellant in respect of the amount covered by the pro-note Ex.A-21.

(3) Order dated 28.02.2025 in A.S(MD)No.67 of 2021 of this Court in the case of Veerammal and Ors. /v/ Murugalakshmi, it is held in paragraph Nos.17 to 19 as follows:

"17. P.W.1, the holder of the promissory note Ex.A2, in her evidence has categorically spoken about the consideration passed to the first defendant on her husband and about Ex.A2,



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A.S(MD)No.119 of 2024

pronote came to be executed by the first defendant and her husband. Similarly, P.W.2, who is the daughter of P.W.1, who is also scribe of Ex.A2, has categorically spoken about the manner in which she wrote the Ex.A2. It is settled law that when the defendants specifically denies their execution of the suit promissory note and contends that suit promissory note has been fabricated (or) forged, the initial burden is upon the plaintiff to establish the execution of the suit promissory note.

18. On perusal of entire evidence of P.W.1 and P.W.2, no circumstances, whatsoever, brought in their evidence to show that any of the circumstances, which lead to rebut the legal presumption attached to Ex.A2. The purpose of examining the scribe is to identify the persons, who have put their signature in Ex.A2, in her presence. It is pertinent to mention that as per Section 101 of Indian Evidence Act with regard to burden of proof, when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. In the instant case, the plaintiff has proves the execution of the promissory note, the burden shifts to the defendants to prove that the note is invalid. Section 118 of Negotiable Instruments Act creates a Presumption that every



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A.S(MD)No.119 of 2024

negotiable instrument, including promissory note was made an execution at the time and place created on the instrument. This presumption can only be rebutted by evidence to the contrary.

19. A perusal of the entire evidence of both side reveals that except denying their signature in Ex.A2, the defendants have not brought any circumstances to rebut the legal presumption. The plaintiff has proved the execution of the promissory note, then the burden shifts on to the defendants to bring necessary evidence to show that the signatures found in Ex.A2 are not that of the first defendant and her husband.

(4) (1999) 3 Supreme Court Cases 573 in the case of Vidhyadhar /v/

Manikrao and Another, wherein it is held in paragraph No.17 as follows:

"17.Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh vs. Gurdial Singh and another; AIR 1927



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A.S(MD)No.119 of 2024

Privy Council 230. This was followed by the Lahore High Court in Kirpa Singh vs. Ajaipal Singh and others, and the Bombay High Court in Martand Pandharinath Chaudhari vs. Radhabai Krishnarao Deshmukh. The Madhya Pradesh High Court in Gulla Kharagjit Carpenter vs. Narsingh Nandkishore Rawat, AIR 1970 Madhya Pradesh 225 also followed the Privy Council decision in Sardar Gurbakhsh Singh's case (supra). The Allahabad High Court in Arjun Singh vs. Virender Nath and another, AIR 1971 Allahabad 29 held that if a party abstains from entering the witness box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab & Haryana High Court in Bhagwan Dass vs. Bhishan Chand and others, AIR 1974 Punjab & Haryana, drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter into the witness box.

17. Heard the arguments of both sides and perused the material records of the case. The plaintiff has produced Ex.A.1 - Pronote to support the advancement of the loan to the defendants. The plaintiff has also produced Ex.A.2 - Voucher, Ex.A3 cheque and Ex.A.10 photocopy of the account ledger.

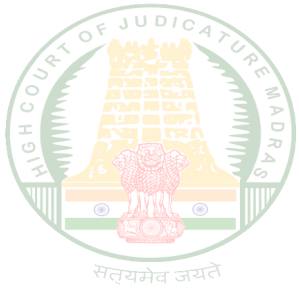


A.S(MD)No.119 of 2024

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The 1st defendant has filed a written statement contending that he has only borrowed Rs.1,60,000/- and he did not receive Rs.10,00,000/- and the pronote is a forged and fabricated one. From perusal of records, it is very clear that the 1st defendant has not denied the signature found in Ex.A.1, Ex.A.2 and also he has not even made a formal denial regarding the issuance of Ex.A.3 cheque. Further, the plaintiff issued a pre-suit legal notice, dated 18.07.2016 marked as Ex.A5, in which it is clearly mentioned that the 1st defendant borrowed Rs.10,00,000/- from the plaintiff on 05.01.2016 and the same was received by the 1st defendant. The 1st defendant has sent a reply letter in his own handwriting, which is marked as Ex.A.8. The 1st defendant has categorically admitted in his evidence that Ex.A.8 was sent by him. The delivery of the Ex.A5 – legal notice to the defendants is proved by the acknowledgment cards marked under Ex.A6 and Ex.A7, which are not disputed. The contents of Ex.A.5 are as follows:

“எனது கட்சி மேற்படி முகவரியில் வெங்கடாசலபதி போங்கர்ஸ் என்ற பெயரில் ‘Money Lender’ வியாபாரம் செய்து வருகிறார். தங்களில் 1வது கட்சி (1ம் பிரதிவாதி) எனது கட்சியிடம் 05.01.2016 அன்று தங்களின் ரியல் எஸ்டேட் வியாபாரம் மற்றும் சில்லறை கடன் தீர்ப்பதற்காக எனது கட்சியின் அலுவலகத்தில் வைத்து எனது கட்சியிடமிருந்து ரூ.10,00,000/-த்தை கடனாக ரொக்கமாக பெற்றுள்ளீர்கள்.... அதே தினத்தில் எனது



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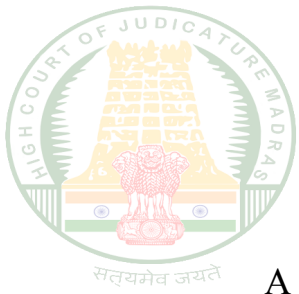


A.S(MD)No.119 of 2024

கட்சியின் பெயருக்கு புரோஹோட்டு எழுதிக் கொடுத்துள்ளீர்கள்... எனது கட்சி பராமரித்து வரும் அலுவலகப் பேரேட்டின்படி 05.06.2016 வரை தாங்கள் எமது கட்சிக்கு அசல் மற்றும் வட்டியாக ரூ.10,50,000/- வரை செலுத்த வேண்டியுள்ளது. இது குறித்து தங்கள் கட்சி இருவரிடமும் கேட்டபொழுது தங்களில் 1வது கட்சி எனது கட்சியின் பெயருக்கு 06.06.2016 தேதியிட்ட தூத்துக்குடி சிண்டிகேட் வங்கி, காசோலை என்.793934 மேற்படி தாங்கள் செலுத்த வேண்டிய கடன் மற்றும் வட்டி ரூ.10,50,000/- க்கு எழுதிக் கொடுத்துள்ளீர்கள்.....”.

18.On receipt of the same, the 1st defendant has sent Ex.A.8 – Letter, dated 20.07.2016 written in his own handwriting, which is also not disputed by the 1st defendant. A perusal of Ex.A.8, the contents therein are as follows:

“வணக்கம். தங்கள் கட்சி வெங்கடாசலபதி பேங்கர்ஸ் உரிமையாளர் எம்.வி.பி. மாரியப்பன் சார்பில் அனுப்பப்பட்ட ஹோட்டிஸ் விபரம் அறிந்தேன். ஹோட்டிஸில் கண்ட சங்கதிகள் உண்மையானவைதான். நான் என் பணியில் இருந்து VRS கொடுத்து விட்டேன். அதன் வகைக்கு வரும் தொகையில் தங்கள் கட்சியிடம் ஹரிடையாக கணக்கை ஹர் செய்து விடுவேன். எந்தவித கிரிமினல் வழக்கு தொடரவேண்டாம் என உங்கள் கட்சிக்கு எடுத்துரைங்கள். நன்றி.....”



A.S(MD)No.119 of 2024

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A careful perusal of Ex.A.8 makes it very clear that the 1st defendant has clearly admitted the contents of Ex.A.5 legal notice and undertook that he would repay the entire loan amount from his retirement benefits as he gave VRS. It is a settled position of law that an admission of fact is the best evidence and nothing is required to be proved further.

19.The 1st defendant admitted his signature found in Ex.A.1 and Ex.A.2. But, it is the case of the 1st defendant that he signed empty documents. When the signature of the 1st defendant on Ex.A.1- pro-note and Ex.A.2 voucher is proved with oral and documentary evidence, the presumption under Section 118 of the Negotiable Instruments Act clearly arises, until the contrary is proved.

20.Section 118 of the Negotiable Instruments Act reads as follows:

“Section 118 : Presumptions as to negotiable instruments of consideration-

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,



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A.S(MD)No.119 of 2024

when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration.

(b) as to date – that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance – that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer – that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of endorsements – that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps – that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course – that the holder of a negotiable instrument is a holder in due course; provided that, where the instrument has been contained from its lawful owner, or from any person in lawful custody



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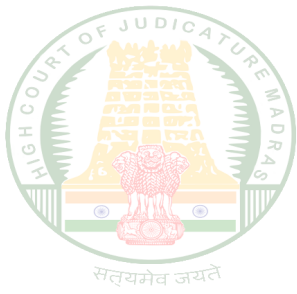
A.S(MD)No.119 of 2024

thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving the holder is a holder in due course lies upon him.”

In this case, the 1st defendant contended that he signed blank documents. When the signature in the pro-note is admitted therein and when the signatory states that he executed the pro-note in blank, it is an inchoate pro-note, i.e., the plaintiff therein is authorised the creditor to fill-up the pro-note.

21.This Court had an occasion to deal with the similar issue, in the decision reported in **2002 (4) LW 360 (supra)**, wherein it has been held that when the signature in the pro-note is admitted and the signatory states that he executed the pro-note in blank, it is inchoate pro-note and held that the pronote is proved in the absence of any rebuttal evidence by the defendant, based on the decision of the Hon'ble Supreme Court, which is held in paragraph No.7 reads as follows:

"7.The Supreme Court in [Mohideenkutty Hajee vs. Pappu Manjooran](#),(1996 (8) SCC



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A.S(MD)No.119 of 2024

586) following a number of earlier pronouncements, held that when a suit is based on a promissory note and the promissory note is proved to have been executed, [Section 118\(a\)](#) raises a presumption, until the contrary is proved, that the promissory note was made for consideration. In the case of *Kundan Lal vs. Custodian, Evacuee Property* (AIR 1961 SC 1316), the Supreme Court has held that the presumption under [Section 118](#) Negotiable Instrument Act is one of law and a Court shall presume, inter alia, that the Negotiable Instrument was made or endorsed for consideration. Therefore, the said Judgment of the learned Single Judge is not in conformity with the Judgment of the Supreme Court. Under [Section 118](#) of the Negotiable Instruments Act, there is a valid presumption with respect to consideration also. Inasmuch as the learned Single Judge has held that there is no presumption for consideration, it is not a good law.



A.S(MD)No.119 of 2024

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22. The Hon'ble Supreme Court has again reiterated the decision in its judgment in Civil Appeal No.5854 of 2022, and held in para 6.1 and 7 that

“6.1. ...At this stage it is required to be noted that as per the provision of Section 118 of the NI Act there is a presumption of consideration in the negotiable instrument [Section 118(a)]. It is true that such presumption may be rebutted. However, no rebuttal evidence is led by the defendant. Under the circumstances also the High Court has erred in allowing the second appeal and quashing and setting aside the decree passed by the learned Trial Court confirmed by the learned First Appellate Court.

7.The judgment and the decree passed by the learned Trial Court decreeing the suit confirmed by the learned first appellate court is hereby restored. The present appeal is accordingly allowed.”

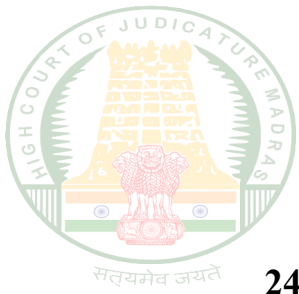
Hence, when the plaintiff has filed the suit based on the pro-note and the pro-note also proved to have been executed, Section 118(a) of the Negotiable Instruments Act raises a presumption, until the contrary is proved, that the pro-note was made for consideration. In this case, the 1st defendant has not let in any rebuttal evidence. But, the plaintiff examined P.W.2, who clearly deposed that the defendants borrowed a loan of Rs.10,00,000/- from the plaintiff and twenty bundles of Rs.500/- was given to the defendants. The defendants has not elucidated any contrary evidence from P.W.2 during his cross examination.



A.S(MD)No.119 of 2024

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23. The 1st defendant has further contended that the 2nd defendant has not signed the Ex.A.1 pronote and Ex.A.2 voucher, and that the 2nd defendant stated in his written statement that he has not borrowed any loan from the plaintiff. However, unfortunately, after filing the written statement, the 2nd defendant died and his wife was added as his legal heir and ranked as 3rd defendant. The 3rd defendant has not participated in the suit proceedings and remained exparte. Since the 3rd defendant has not entered into the witness box and was not subjected to examination, an adverse presumption can be drawn against the 2nd defendant. It is also the case of the 1st defendant that the ink in Ex.A.1 and Ex.A.3 cheque found to be different. Except for the 1st defendant, no witness was examined on his side. Moreover, even the 1st defendant had not taken any steps to get expert opinion regarding the period when the contents were written in the Ex.A.1 pronote, when he claims that he signed on blank stamp paper. The defendant has not chosen to examine any other witness, while P.W.2 deposed that he saw the execution of pronote by the defendant by putting his signature and also receipt of money and that he saw the attesor signing. The defendant has also not examined any other witness to disprove the presence of P.W.2. The above evidence of P.W.2 clearly proved that Ex.A.1 was executed by the defendant on receipt of the suit loan amount.



A.S(MD)No.119 of 2024

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24. Coming to the non-filing of the Income Tax Returns by the plaintiff, the defendant contends that since the advancing of a loan is not reflected in the income tax return, it could be termed as illegal money and the same could not be recovered through the Court of law. The defendant has not taken such a specific plea in the written statement. Therefore, on the unpleaded averments, the trial Court ought not to have given a finding, holding that no Income Tax Return was filed by the plaintiff, though he claimed that he was an Income Tax Assessee and therefore, his capacity to advance the loan amount was unbelievable and is without any substance.

25. In a reference in Criminal Appeal No.795/2018 (**Prakash Madhukarrao Desai vs Dattatrya Sheshrao Desai**), which was made before the **Division Bench of Bombay High Court Nagpur bench**, the Division Bench held as follows:

"The question referred to the Division Bench for being answered reads as under :-

"Whether in case the transaction, is not reflected in the Books of account and/or the Income Tax Returns of the holder of the cheque in due course and thus is in violation to the provisions of Section 269-SS of the Income Tax Act, 1961 whether such a



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A.S(MD)No.119 of 2024

transaction, can be held to be “a legally enforceable debt” and can be permitted to be enforced, by institution of proceedings under Section 138 of the Negotiable Instruments Act ?”

7. With a view to answer the aforesaid question, we may note the relevant statutory provisions that having bearing on the question to be answered :-

Section 118, 138 and 139 of the Act of 1881 reads as under :-.....

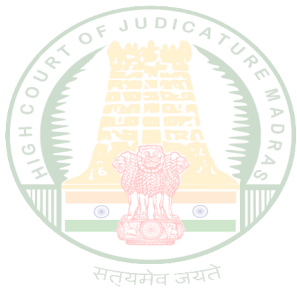
Section 269-SS of the Income Tax Act of 1961 reads as under :-

“Mode of taking or accepting certain loans, deposits and specified sum.

269-SS. – No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], if,

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such



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A.S(MD)No.119 of 2024

*person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid;
or*

(c) the amount or the aggregate amount referred to in clause

(a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by, –

(a) the Government;

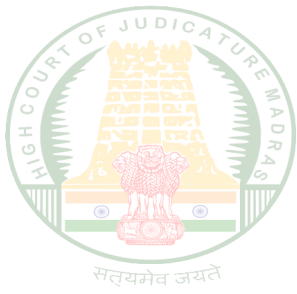
(b) any banking company, post office savings bank or co-operative bank;

(c) any corporation established by a Central, State or Provincial Act;

(d) any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

Provided further that the provisions of this Section shall not apply to any loan or deposit or



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A.S(MD)No.119 of 2024

specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act:

[Provided also that the provisions of this section shall have effect, as if for the words “twenty thousand rupees”, the words “two lakh rupees” had been substituted in the case of any deposit or loan where, –

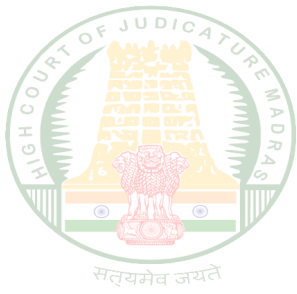
(a) such deposit is accepted by a primary agricultural credit society or a primary co-operative agricultural and rural development bank from its member; or

(b) such loan is taken from a primary agricultural credit society or a primary co-operative agricultural and rural development bank by its member.]

Explanation. – For the purposes of this section, –

(i) “banking company” means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

[(ii) “co-operative bank”, “primary agricultural credit society” and “primary



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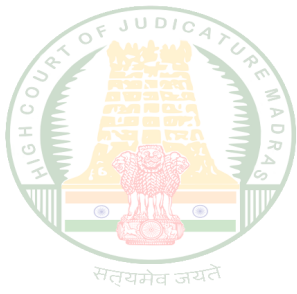
A.S(MD)No.119 of 2024

co-operative agricultural and rural development bank” shall have the meanings respectively assigned to them in the Explanation to sub-section (4) of section 80P;]

(iii) “loan or deposit” means loan or deposit of money;

(iv) “specified sum” means any sum of money receivable, whether an advance or otherwise, in relative to transfer of an immovable property, whether or not the transfer takes place.]”

In Mohammed Iqbal & Others vs. Mohammed Zahoor [ILR 2007 Karnataka 3614] it has been held that Section 269-SS does not declare all transactions of loan by cash in excess of Rs.20,000/- as invalid, illegal or null and void. Referring to the decision in Assistant Director of Inspection Investigation (supra), it was observed that the object behind introducing the said provision was to curb and unearth black money. Referring to the provisions of Section 271-D and Section 273-B of the Act of 1961, it was observed that even though contravention of Section 269-SS resulted in a stiff penalty being imposed on the person taking the loan or deposit, the rigor of Section 271D was whittled down by Section 273B on the proof of bona fides. Hence such transactions could not be declared to be illegal, void and unenforceable. Similar view has been taken by the learned Single Judge of the Himachal Pradesh



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A.S(MD)No.119 of 2024

*High Court in Criminal Appeal No.295 of 2017
(Surinder Singh Versus State of H. P. & Another)
decided on 03.11.2017.*

18. In view of the aforesaid discussion, it is held that a transaction not reflected in the books of accounts and/or Income Tax returns of the holder of the cheque in due course can be permitted to be enforced by instituting proceedings under Section 138 of the Act of 1881 in view of the presumption under Section 139 of the Act of 1881 that such cheque was issued by the drawer for the discharge of any debt or other liability, execution of the cheque being admitted. Violation of Sections 269-SS and/or Section 271-AAD of the Act of 1961 would not render the transaction unenforceable under Section 138 of the Act of 1881. The decisions in Krishna P. Morajkar, Bipin Mathurdas Thakkar and Pushpa Sanchalal Kothari (supra) lay down the correct position and are thus affirmed. The decision in Sanjay Mishra (supra) with utmost respect stands overruled."

26.From the above answer to the reference, it is clear that a money transaction not reflected in the Income Tax Returns can be permitted to be enforced by instituting proceedings, especially in view of the presumption U/s.139 of the NI Act. The defendant has not rebutted the presumption.



A.S(MD)No.119 of 2024

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Violation of Sections 269-SS and/or Section 271-AAD of the Income Tax Act of 1961 would not render the transaction unenforceable under Section 138 of the Act of 1881. The plaintiff is answerable for such a violation if the concerned authorities initiates proceeding. The defendant cannot take advantage of such a violation and cannot claim that the non reflection of the loan cannot be recovered by instituting suit. Moreover, the Hon'ble Supreme Court in the decision in “**Bharat Barrel & Drum Manufacturing Company vs. Amin Chand Payrelal**” case (1999 (1) CTC 497), it is held that the faith of the business community dealing in mercantile and trade cannot be permitted to be shaken by resorting to technicalities of law and the procedural wrangles as appears to have been done in this instant case.

27. In the above material facts and circumstances, this court holds that the plaintiff has proved the execution of the pronote and receipt of loan amount as mentioned in Ex.A.1. Hence, the Ex.A.1 - Pronote is genuine one and the 1st defendant has not established that it is forged and fabricated one and the evidence demonstrates that the plaintiff had sufficient means to pay the loan amount. Therefore, the citations relied on by the 1st respondent/plaintiff are applicable to the facts and circumstances of this case, whereas the rulings



A.S(MD)No.119 of 2024

relied on by the appellant/1st defendant are not applicable to this case.

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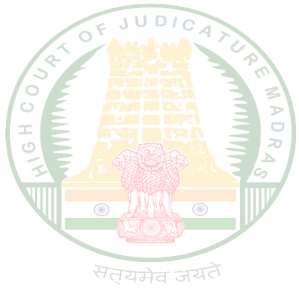
The points are answered accordingly.

28.For all these reasons, the judgment and decree of the trial Court is sustainable in law and the same need not be interfered with by way of this appeal. Thus, the appeal fails.

29.In the result, this Appeal Suit is dismissed with costs. The judgment and decree, dated 19.07.2019 passed in O.S.No.35 of 2016 on the file of the learned Principal District Judge, Thoothukudi are confirmed. Consequently, the connected Civil Miscellaneous Petition is closed.

29.06.2026

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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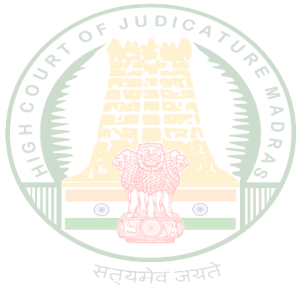


A.S(MD)No.119 of 2024

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To

- 1.The Principal District Judge,
Thoothukudi.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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Case Citation: (2026) ibclaw.in 3577 HC



A.S(MD)No.119 of 2024

P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
A.S(MD)No.119 of 2024
and
C.M.P(MD)No.6342 of 2024**

29.06.2026

36/36