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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-08-2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

A.S.Nos.550 & 551 of 2021 and
C.M.P.Nos.21687 & 21696 of 2021

1. P.Ilango
S/o.T.V.Ponnusamy

2. T.V.Ponnusamy (died)
S/o.Velappa Gounder

3. P.Ravi
S/o.T.V.Ponnusamy
(A3 is brought on record as LR of of the deceased A2 vide order dated 09.01.2026 in C.M.P.No.27260/25 in the above appeal) ..Appellants in both the Appeals

Vs.

Jai Investments, A Partnership Firm
(Reg.No.029/92), D.No.207, Salem Road,
Namakkal Town Rep. by its Managing Partner,
P.Krishnamoorthy, 50 years, S/o.Perumal,
D.No.21/1, Thiru Nagar, Mohanur Road,
Kuspa, Namakkal. ...Respondent in A.S.No.550/21

Lakshmi Chit Funds, A Partnership Firm
(Reg.No.60/70), D.No.207, Salem Road,
Namakkal Town Rep. by its Managing Partner,
R.Appusamy, 76 years, S/o.Ramasamy,
D.No.36-A, Pathy Nagar Ubasandhu,
Salem Road, Kuspa, Namakkal. ..Respondent in A.S.No.551/21

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Prayer in both the Appeals: These Appeal Suits are filed under Section 13(1A) of Commercial Courts Act r/w Section 96 of CPC and Order 41 Rule 1 of CPC seeking to set aside the judgment and decree dated 15.06.2020 made in Commercial Original Suit Nos.18 & 19 of 2020 passed by the learned Principal District Judge, Commercial Court, Namakkal.

For Appellants: Mr.A.Arun Babu – in both the Appeals

For Respondent: Mr.S.Senthi – in both the Appeals

COMMON JUDGMENT

(Judgment of the Court was made by P.Velmurugan J.)

Appellants in both the appeals are the defendants in the suit in C.O.S.Nos.18 & 19 of 2020. The respondents in both the appeals have filed the above suits separately for recovery of money.

2 Both the appeals are arising out of the dispute between the same parties and hence they are taken up together and disposed of by this common judgment.

3 It is the case of the respondent/plaintiff before the trial Court that the plaintiffs are financial institutions, which lend money for interest. The defendants have obtained a loan for a sum of (1) Rs.10,00,000/-, (2)

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Rs.5,00,000/- (3) Rs.10,00,000/- through the cheques drawn at Bank of Baroda dated 20.07.2010 (1 & 2) and 25.08.2012 (3) respectively and executed three promissory notes on the same day agreeing to repay the same on demand of the respondents/plaintiffs and also agreed to pay interest @ Rs.1.25 paise. The first borrowal of (1) Rs.10,00,000/- and the related pronotes are the subject matter of the suit in C.O.S.No.18 of 2020, against which Appeal Suit is filed in A.S.No.550 of 2021 and the second and third borrowal of (2) Rs.5,00,000/- and (3) Rs.10,00,00/- and the related pronotes are the subject matter of the suit in C.O.S.No.19 of 2020 against which, Appeal Suit is filed in A.S.No.551 of 2021. The appellants/defendants paid interest for the above said loans till 19.10.2017, 19.12.2017 and 24.10.2017 respectively. Thereafter the appellants/defendants have not paid the interest, despite the demand of the respondents/plaintiffs and hence the respondents/defendants executed renewed new pronotes, taking back the earlier pronotes. Thereafter despite several demands, the appellants/defendants neither paid the principal and nor paid the interest. Hence the respondents/plaintiffs filed the present suits seeking recovery of money.

4 The appellants/defendants filed their written statement admitting the borrowal of the above said three loans and execution of first three pro notes for the said loans. But the appellants/defendants stoutly denied the execution of alleged renewed new pronotes for the said loans contending the appellants/defendants paid the entire due to the respondents/plaintiffs and got

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back the pronotes executed and there is no due as alleged by the respondents/plaintiffs. The respondents forged the pronotes and the signature of the appellants/defendants in order to extract money illegally from the appellants/defendants.

5 The learned trial Judge, based on the above pleadings framed the following issues:

C.O.S.No.18/2020:

1. Whether the plaintiff is entitled to receive a sum of Rs.11,62,917/- from the defendant along with interest at the rate of 15% per annum for the principal amount Rs.10,00,000/- from the date of filing to till the realization?

2. To What other relief the plaintiff is entitled to?

C.O.S.No.19/2020

1. Whether the plaintiff is entitled to receive a sum of Rs.16,10,000/- from the defendants along with interest at the rate of 15% per annum for the principal amount of Rs.15,00,000/- from the date of filing to till the realization?

2. To what other relief the plaintiff is entitled to?

6 On the side of the respondents/plaintiffs, P.Ws.1 & 2 were examined in both the suits and the alleged suit promisorry notes and copy of Form "C" of the plaintiffs were marked as Ex.A1 & A2. On the side of the appellants/defendants one witness was examined as D.W.1 and no document

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was marked.

7 After trial and hearing the arguments advanced on either side, the learned trial Judge, vide judgments dated 15.06.2020 decreed both the suits in favour of the respondents/plaintiffs, against which, the defendants are before us with the present Appeal Suits.

8 Learned counsel for the appellants/defendants submitted that the appellants/defendants admitted the borrowal of the three loans from the respondents/plaintiffs. It is true that the appellants/defendants borrowed the loans from the respondents on 20.07.2010 (2 loans for Rs.10.00 laksh and Rs.5.00 lakhs) and 25.08.2012 (3rd loan for Rs.10.00 lakhs) through cheques by executing three pronotes on the same day and paid interest till 19.10.2017, 19.12.2017 and 24.10.2017 respectively. The appellants/defendants repaid the entire debts on the above said dates and received back the three pronotes dated 20.07.2010 (2 pro notes) and 25.08.2012 (1 pro note).

8.1 The appellants/defendants never executed any pronotes except the above three pronotes as alleged by the respondents/plaintiffs. The appellants/defendants stoutly denied the execution of alleged pronotes and signatures found thereon in the written statement itself, but the learned trial Judge failed to consider the above defence taken by the appellants. When the

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defendants stoutly denied the execution of the pronotes and the signatures thereon, it is the duty of the plaintiffs to prove the same in the manner known to law, whereas the plaintiffs failed to prove the execution and the signatures in the alleged pronotes and the learned trial Judge shifted the burden upon the appellants/defendants to prove their case, which is not sustainable under law. The plaintiff has to prove their case by adducing oral and documentary evidence and it should not take advantage of the weakness and loopholes left by the defendants.

8.2 Further the respondents/plaintiffs have not produced their statement of accounts to prove their claim and they withheld the best document to prove their claim, which itself clearly shows that the appellants/defendants had repaid the entire loan amount. It is an admitted fact that the promisory notes dated 20.07.2010 and 25.08.2012 were returned to the appellants/defendants and hence the natural corollary of the same would be that the debt under those promisory notes got discharged and there was no necessity to return the promisory notes to the debtor without getting the debt discharged.

8.3 Admittedly the respondents/plaintiffs returned the original earlier promisory notes and the appellants/defendants stoutly denied very execution of the alleged new promisory notes and signature found on the same. But, neither the respondents/plaintiffs nor the trial Court have taken steps to prove the

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disputed signature on the alleged new promisory notes invoking Section 73 of the Indian Evidence Act by sending the disputed signature and admitted signature of the appellants/defendants to Forensic Lab to get expert's opinion. The trial Court blindly believed the case of the respondents/plaintiffs and decreed the suit in favour of the respondents/plaintiffs, which is liable to be set aside. To support his contentions, the learned counsel for the appellants/defendants placed reliance on the following decisions of the Hon'ble Supreme Court and this Court:

1. 1961 SCC OnLine SC 10 (Kundan Lal Rallaram vs. The Custodian, Evacuee Property Bombay)

2. AIR 2008 Supreme Court 1541 (Thiruvengada Pillai vs. Navaneethammal and Anr.)

3. A.S.(MD)No.9 of 2012 (S.P.A.Baskaran vs. N.Sureshkumar)

9 Learned counsel for the respondents/plaintiffs would submit that the appellants/defendants admitted the borrowal of the loans from the respondents on 20.07.2010 (2 loans for Rs.10.00 laksh and Rs.5.00 lakhs) and 25.08.2012 (3rd loan for Rs.10.00 lakhs) through cheques by executing three pronotes on the same day. The defendants also admitted that they have paid interest for the said loans till 19.10.2017, 19.12.2017 and 24.10.2017 respectively. Thereafter the respondents have not paid the interest and hence on the request made by the appellants/defendants, the respondents/plaintiffs returned back the three pronotes dated 20.07.2010 (2 pro notes) and 25.08.2012

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(1 pro note) on execution of the renewed promisory notes by the appellants/defendants. Therefore once the appellants/defendants admitted the borrowal of the money and execution of the old promisory notes, the respondents/plaintiffs discharged their burden in proving their case and the onus will shift on the appellants/defendants and it is for them to prove that they have discharged the entire debt, which they failed to do.

9.1 The appellants/defendants had not even come to the witness box to prove their defence and mere denial is not sufficient to disprove the claim of the respondents/plaintiffs. The appellants were not subjected for cross examinations and hence the trial Court rightly appreciated the oral and documentary evidence adduced on either side and drawn adverse inference and rightly decreed the suits in favour of the respondents/plaintiffs.

9.2 The appellants/defendants admitted the borrowal of the loan and execution of old promisory notes and hence the presumption under Section 118 of Negotiable Instruments Act would come into play and it is for the defendants to rebut the presumption in the manner known to law. In the present case the appellants have not come into witness box and have not rebutted the presumption. But, the plaintiff examined the scribe of the pronotes as P.W.2, who clearly stated that the defendants executed renewed promisory notes for the earlier loan taking back the old promisory notes. Under such circumstances, the

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judgment of the trial Court needs no interference and the appeals are liable to be dismissed.

9.3 To support his contentions, the learned counsel placed reliance on the judgments of the *Hon'ble Supreme Court* reported in *(1999) 3 SCC 35* in the case of *Bharat Barrel & Drum Manufacturing Company vs. Amin Chand Payrelal* and the decision in *Civil Appeal Nos.7750-7751 of 2021* in the case of *Anita Rani vs. Ashok Kumar & Ors.*

10 Heard the learned counsel appearing on either side and perused the materials available on record.

11 According to learned counsel for the respondents/plaintiffs the appellants/defendants borrowed loan by executing three promisory notes and paid interest till 2017 and thereafter executed new renewed promisory notes agreeing to repay the principal with interest and believing the words of the appellants/defendants, the respondents/plaintiffs returned the earlier promisory notes. Thereafter the appellants/plaintiffs neither repaid the principal nor paid any interest.

12 Per contra, it is the case of the appellants/defendants that the borrowal of the three loans and paying interest for the same till 2017 are

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admitted. But the appellants in year 2017 repaid the entire debts and received back the earlier promissory notes and the appellants/defendants never executed any new promissory notes and denied the signatures found on the alleged new promissory notes. Therefore it is for the respondents/plaintiffs to prove their case and the trial Court erroneously shifted the onus on the appellants/defendants and decreed the suit in favour of the plaintiffs.

13 Now what is to be decided is whether the appellants/defendants executed the alleged renewed three pronotes and whether the debt under the said pronotes has been repaid or not.

14 It is an admitted fact that the appellants/defendants borrowed three loans from the respondents/plaintiffs by executing pronotes and paid interest for the same till the year 2017 and thereafter only the dispute arose. The appellants/defendants stoutly denied the very execution of the alleged pronotes and signatures found on the same and also raised a defence that the respondents/plaintiffs had not produced the statement of accounts to prove their claim, especially when the appellants/defendants took a defence that they have repaid the entire debt under the old pronotes. Admittedly the respondents/plaintiffs have not produced the statement of accounts either before the trial Court or before this Court to prove their claim that the appellants/defendants did not repay the principal or interest after 2017.

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15 Even though the scribe of the alleged pronotes was examined as P.W.2. Admittedly P.W.2 is the Manager of the respondents/plaintiffs Finance Institutions and he was working from the year 2014 and he did not aware of the earlier transaction between the appellants and the respondents. Hence when the appellants/defendants stoutly denied very execution of the prontoes and signatures on the same, the initial burden rests on the plaintiffs who has to prove that the promissory note was executed by the defendants. It is the primary duty of the respondents/plaintiffs to take effective steps to prove the execution and signatures by sending the same to Forensic Lab for expert's opinion. But in this case, neither the respondents/plaintiffs nor the trial Court took any steps to send the disputed pronotes to Forensic Lab to get expert's opinion.

16 It is the main contention of the respondents/plaintiffs that the appellants/defendants did not come to the witness box and hence the trial Court rightly drawn adverse inference against them and decreed the suit in favour of the plaintiffs.

17 It is settled proposition of law that no party could be compelled to prove the negative and the plaintiff has to prove his case on its own oral and documentary evidence. In the present case when the appellants/defendants stoutly denied the very execution of the suit pronotes and signatures found

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thereon, the initial burden lies on the plaintiff to establish the execution of the suit pronotes. Only if the execution and signature is admitted by the defendants or the plaintiff proves the execution of the pronotes, then invocation of the statutory presumption under Section 118 of the Negotiable Instruments Act would come into play. The Court cannot insist upon the defendants to prove the negative by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and it is not necessary for the defendant to disprove the existence of negotiable instrument for consideration by way of direct evidence. In this context it is relevant to refer the judgment of the *Hon'ble Supreme Court* in the case of *Thiruvengadam Pillai vs. Navneethammal and another* reported in *(2008) 4 SCC 530* and the relevant portion of the judgment is extracted hereunder:

> *"19.The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate court reversed it by wrongly placing onus on the defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the defendants, it was for the defendants to establish that the document was forged or concocted, is not sound proposition. The first appellate court, proceeded on the basis that it is for the party who asserts something to prove that thing; and as the defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour* ***The first defendant having denied it,***

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the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant to prove the negative. *The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses. But the various circumstances enumerated by the trial court and the High Court referred to earlier, when taken together, rightly create a doubt about the genuineness of the agreement and dislodge the effect of the evidence of PWs 1 to 3. We are therefore of the view that the decision of the High Court, reversing the decision of the first appellate court, does not call for interference."*

18 In the present case, the respondents/plaintiffs deliberately not produced their books of accounts to prove their case, especially, when the appellants/defendants clearly denied the execution of the alleged pronotes and signatures found on the same. Further to strengthen the case of the defendants, the earlier promissory notes were also returned to them by the respondents/plaintiffs. No prudent man would return the promissory notes until the debt is discharged. The plaintiffs, being the financial institutions, did not offer any valid reason for returning the earlier promissory notes and the necessity of execution of the renewed promissory notes. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on records but also by reference to the circumstances upon which it relies. For the purpose of the civil

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litigation, the defendant may not adduce any evidence to discharge the initial burden placed on him.

19 Under such circumstances, we find that the conclusion arrived at by the trial Court that the defendant has to prove their defence that the suit pronotes are forged documents is not legally sustainable and the respondents/plaintiffs failed to prove that the alleged suit pronotes were executed by the appellants/defendants for consideration.

20 In view of the foregoing reasons and observations, this Appeal Suits stand allowed and the judgment and decree dated 15.06.2020 made in Commercial Original Suit Nos.18 & 19 of 2020 passed by the learned Principal District Judge, Commercial Court, Namakkal, are set aside. Consequently connected miscellaneous petitions are closed. There shall be no order as to costs.

(P.V.,J.) (G.K.M.,J.)
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