

**IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE,
VILLUPURAM @ KALLAKURICHI.**

Present: Tmt.K.S.Jayamangalam, M.L.,
III Additional District Judge,
Kallakurichi

Thursday, the 5th day of September, 2019.

Original Suit No.1/2018

Ravishankar ... Plaintiff

/Vs/

Velayutham ... Defendant

This suit is coming up for final hearing before me on 03.09.2019 in the presence of Thiru. R.Rajaprasanna, Counsel for the Plaintiff and Thiru. M.Perilavan, Counsel for the Defendant and after completing the examination of PW1 in chief, the counsel for the defendant has not turned up for cross-examination and hence, the defendant was being called absent and set exparte and upon perusing the records and after hearing plaintiff's side and having stood over for consideration till this day, this court delivered the following....

J U D G M E N T

The Plaintiff filed the present suit against the defendant for recovery of money for a sum of Rs.15,00,000/- with interest and for costs.

2. Brief of plaint runs as follows :-

The defendant borrowed a sum of Rs.15,00,000/- from the plaintiff to meet his family emergent and business expenditure by executing a promissory note for the said amount in favour of the plaintiff on 10.07.2016 in front of witnesses by agreeing to pay the amount with interest @ 12% p.a. to the plaintiff or his order on demand. Subsequently the plaintiff requested the defendant on many occasions

personally to repay the above said amount of Rs.15,00,000/- along with interest. But, the defendant is strongly evading the payment on one pretext or other and trying to defraud the plaintiff by making encumbrance over his sole properties. Hence, the plaintiff is constrained to file this suit for recovery of money, due on payment on promissory note.

3. Brief of written statement filed by the defendant runs as follows :-

The defendant denies the averment set out in the plaint and put the plaintiff to strict proof of the same. It is true that there was a money transaction existing between the plaintiff and the defendant. On that basis, the defendant asked a loan for a sum of Rs.1,00,000/- from the plaintiff, for which the plaintiff told the defendant to hand over 5 blank signed cheques and 4 pro-notes. Accordingly the defendant borrowed the loan in the year 2013 after affixing his signature in the pro-notes and cheques. For the said amount, the defendant was paying interest at the rate of Rs.3/-every month. Likewise once in two months the defendant borrowed Rs. 1 Lakh in four installments totally Rs. 4,00,000/- was received from the plaintiff. Each time the defendant handed over 2 signed cheques and 3 pro-notes to the plaintiff. The defendant paid the interest for one year for the amount borrowed from the plaintiff. Subsequently the defendant after mortgaging his properties at Lakshmi Vilas Bank and repaid Rs.4,00,000/- with interest and discharged the loan. When the defendant asked the plaintiff to return back the 10 signed pro-notes and 11 blank cheques, the plaintiff replied that his wife was out of station and as soon as she arrived he would return the same. The defendant trusted the plaintiff's words and came off. Thereafter due to the enmity arose between the plaintiff and the defendant the plaintiff in order to gain unlawfully the plaintiff filled up the cheque by putting ante date by claiming Rs.15,00,000/- from the defendant. As on today the plaintiff only possessed the 11 signed cheques and 9 pro-notes. The plaintiff has to return back the signed pro-note and the suit pro-note is not supported by any consideration. The defendant need not pay any money to the plaintiff. There is no cause of action to file the present suit. Accordingly prayed to dismiss the above suit.

4. Based on the pleadings in the plaint and written statement, the following issues were framed :-

- 1) Whether the suit pro-note dated. 10.07.2016 is true, valid and for consideration?
- 2) To what other relief the plaintiff is entitled to?

5. On the side of the plaintiff, the plaintiff has been examined as PW1 and the attesting witnesses Kumar and one Gnanavel were examined as PW2 and PW3 respectively and Ex.A1 was marked. On the side of the defendant, neither witnesses were examined nor exhibits were marked.

6. Issue No.1 :

The Learned counsel for the plaintiff has argued that the defendant borrowed a sum of Rs.15,00,000/- from the plaintiff to meet his urgent family and business expenses and executed a promissory note for the said amount in favour of the plaintiff on 10.07.2016 in front of witnesses by agreeing to pay the amount with interest @ 12% p.a. to the plaintiff or his order on demand. Subsequently the plaintiff requested the defendant on many occasions personally to repay the above said amount of Rs.15,00,000/- along with interest. But, the defendant is strongly evading the payment and trying to defraud the plaintiff. Hence, the present suit.

7. To prove the plaintiff's case the plaintiff, he has been examined as PW1 and two witnesses were examined on his side as PW2 and PW3. Through PW1, Ex.A1 was marked. In-spite of giving several opportunities to the defendant, he has not chosen to either cross-examine PW1 nor PW2 and PW3. The initial burden lies on the plaintiff to prove his case. Accordingly, he has established his case. Thereafter, the burden will shift on the defendant to disprove the contention of the plaintiff. In the case on hand, the defendant has neither cross-examined PW1 to PW3 nor put forth his case. The defendant has not proved his case through oral and documentary evidence. In the absence of any contra evidence it has to be decided that the plaintiff has proved his case. The defendant has not disputed the signature

found in the suit pro-note. The defendant has not taken any effort to prove the defence taken in his written-statement. In view of the above discussion the issue No.1 is decided in favour of the plaintiff.

8. Issue No.2 :

Since issue No.1 is decided in favour of the plaintiff th plaintiff is entitled to get the decree in his favour.

In the result, the suit is decreed with costs, directing the defendant to pay a sum of Rs.16,96,767/-to the plaintiff with subsequent interest @ 9% p.a. from the date of plaint till the date of decree and thereafter 6% interest till the date of realization for the principal amount of Rs.15,00,000/-.

Dictated by me to Steno-Typist, typed by him directly in the computer, corrected and pronounced by me in the open court, this the 5th day of September, 2019.

(Sd/-) K.S.Jayamangalam
III Additional District Judge,
Kallakurichi.

List of witnesses on the plaintiff's side :

PW1	Tmt. Ravishankar
PW2	Thiru. Kumar
PW3	Thiru. Gnanavel

List of exhibits on the plaintiff's side :

Ex.A1	10.07.2016	Promissory note executed by the defendant in favour of the plaintiff
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List of witnesses and exhibits on the defendant's side :

- Nil -

(Sd/-) K.S.Jayamangalam
III Additional District Judge,
Kallakurichi.

p.s.