IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.05.2006

CORAM:

THE HON'BLE MR. JUSTICE K.MOHAN RAM

A.S.No.108 of 1992

K.V.Krishnan … Appellant/Plaintiff

-Vs-

B.A.Damodaran … Respondent/Defendant

Appeal under section 96 of C.P.C. against the Judgment and Decree made in O.S.No.146 of 1991 on the file of the District Judge Salem, dated 31.10.1991.

For Appellant : Mr.P.Mathivanan.
For Respondents: Mr.C.N.G.Niraimathi

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J U D G M E N T

The unsuccessful plaintiff in O.S.No.146 of 1991 on the file of the Court of the District Judge, Salem, is the appellant in the above appeal.

2. For the sake of convenience, the parties are referred to as per their ranking in the suit.

3. The case of the plaintiff as set out in the plaint is as follows:

The defendant borrowed a sum of Rs.50,000/- (Rupees Fifty Thousand only) from the plaintiff and executed a promissory note on 09.02.1985 agreeing to pay the same with interest at Rs.1.50 per hundred per month to the plaintiff or his order on demand. But in spite of repeated demands the defendant failed to pay the amount due under the promissory note and hence a notice dated 31.07.1986 was issued calling upon the defendant to pay the amount and for that a reply containing false allegations was sent by the defendant. Since the defendant is owning properties worth more than two lakhs and his annual income will be nearly Rs.10,000/-, he is not entitled to any benefits under the Tamil Nadu Debt Relief Acts. Hence the suit.

4. A detailed written statement has been filed denying the

allegations contained in the plaint and the relevant averments contained therein are set out below:-

(a) The defendant did not execute the suit promissory note in favour of the plaintiff on 9.2.85. It is totally false to allege that the defendant executed the promissory note, agreeing to pay interest at the rate of 18% per annum. For the notice dated 31.7.86 a reply dated 05.08.1986 was sent by the defendant. The defendant is owning properties worth more than Rs.2lakhs and the annual income is more than Rs.10,000/- and he is not entitled to the benefits of the Tamil Nadu Debt Relief Acts.

(b) The defendant has denied the cause of action alleged in paragraph 6 of the plaint and it is contended that the suit filed on the basis of the forged promissory note is not maintainable in law. A specific defence has been taken in the written statement which is extracted below:-

> "The plaintiff is the Managing Director of Sree Devi Finance at Ayothipattanam. The defendant had borrowed a sum of Rs.3000/- from the finance on 29.10.84. The plaintiff had obtained the signatures of the defendant in a number of printed blank pronote forms at the time of disbursing the loan to the defendant. The plaintiff would have used such blank pronote form for completing the ante-dated promissory note. The signature in the promissory note is not that of the defendant. The plaintiff ought to have used one such blank pronote form containing the impressions of the defendant for forging the anti-dated promissory note, engrossing a huge sum of Rs.50,000/- as the amount advanced under the impugned promissory note. The defendant was disposing a land belonging to him in Arur taluk in Dharmapuri District. The plaintiff was offering a very low amount. The plaintiff was not able to purchase the property from the defendant. This is the immediate provocation for forging the promissory note for Rs.50,000/- anti-dating the same. The plaintiff had no means to advance a sum of Rs.50,000/- on 9.2.85. Further this defendant was not in need of a sum of Rs.50,000/- on 9.2.85."

With an intention to grab the other properties of the defendant the suit has been filed.

"The attestors to the promissory note are the close

friends and associates of the plaintiff. The scribe is the clerk of the plaintiff when the plaintiff was the President of the society in Udayapatty village. The plaintiff, the attestors and the scribe have colluded together and brought into existence the forged promissory note."

(c) An additional written statement has been filed by the defendant contending that the suit claim is barred under Section 269 SS of the Income Tax Act, as any amount exceeding Rs.10,000/- should be advanced only by the Account Payee Cheque but in this case it is not been done so.

5. On the above said pleadings the following issues have been framed by the Trial Court viz:-

(a) Whether the suit promissory note is true?
(b)Whether the suit is maintainable under Section 269 S S of the Income Tax Act?
(c) To what relief the plaintiff is extended to?

On the above said issues the parties went into trial. During trial the plaintiff got himself examined as P.W.1. P.W.2 the scribe of the suit promissory note and P.W.3 the attestor were examined on the side of the plaintiff . On the side of the plaintiff, Ex.A.1 to A.14 were marked. On the side of the defendant, the defendant got himself examined as D.W.1 and examined another attestor of the suit promissory note as D.W.2 and one Santhanapa Udaiyar has been examined as D.W.3. Exs.B-1 to B-39 have been marked on the side of the defendant.

6. On a consideration of the oral and documentary evidence adduced in the case the Trial Court dismissed the suit with costs. Being aggrieved by the judgment and decree of the Trial Court the plaintiff has filed the above appeal.

7. I have heard Mr.P.Mathivanan learned counsel appearing for the appellant and Mr.K.Ramaraj learned counsel appearing for the respondent.

8. The learned counsel for the appellant submitted that since the defendant had admitted his signature and thumb impression in Ex.A-1-Promissory Note the plaintiff is entitled to the benefit of the legal presumption available under Section 118 of the Negotiable Instruments Act (hereinafter referred to as "the Act"). He further submitted that the defendant has not proved that no consideration passed under Ex.A-1. In support of his contention the learned counsel relied upon the decision reported in 2002(4)Law Weekly 360

(Ramasami Moopar Vs. Ramaswami Moopanar and Karuppa Moopar). The learned counsel further submitted that the Trial Court has wrongly cast the burden on the plaintiff to show that he had the means to advance the loan under Ex.A-1. According to the learned counsel the trial court has not properly considered the oral and documentary evidence adduced in the case and P.W.2's evidence has not been considered. The learned counsel further submitted that though D.W.1 has admitted that the plaintiff owns 10 acres of lands and coconut trees and D.W.2 has also admitted that the plaintiff owns lands and coconut trees and Exs.A-3 to A-5-pattas have been produced by P.W.1-the plaintiff, the trial court has not properly considered the same and hence the finding of the trial court that the plaintiff was not having the means to advance the sum of Rs.50,000/- under Ex.A-1 is erroneous. The learned counsel further submitted that the trial court erred in disbelieving the evidence of P.Ws.2 and 3-the scribe and the attestor of Ex.A-1 respectively and committed an error in taking into consideration the evidence of D.W.2 who was treated as hostile. He further submitted that the trial court has relied upon the chief examination of D.W.2 alone without considering his answers in his cross examination. By relying upon the decision of this Court reported in A.I.R. 1999 Madras 76 (S.Murugesan and Others Vs. Pethaperumal and others) the learned counsel submitted that merely because D.W.2 had spoken against the interest of the defendant who called him as a witness permission to declare him hostile and to allow the defendant to cross examine him should not have been granted. He further submitted that unless the deposition of D.W.2-a hostile witness is corroborated by other evidence it is not of any use and in this case according to the learned counsel there is no corroborative evidence. He further submitted that since D.W.3 was dismissed from service on allegations of misappropriation from Sree Devi Finance run by the plaintiff he was inimicaly disposed towards the plaintiff and hence his evidence ought not to have been accepted.

9. Per contra the learned counsel for the respondent submitted that the trial court has drawn the legal presumption under Section 118 of the Act that was available in favour of the plaintiff, but has considered the specific defence that has been taken by the defendant in the written statement and on an elaborate consideration of the oral and documentary evidence adduced by the defendant and on a consideration of the evidence of P.Ws.1 to 3 has rightly found that Ex.A-1-Promissory note had not been executed by the defendant as pleaded by the plaintiff. The trial court, according to the learned counsel for the respondent, on the basis of the evidence has recorded a correct finding that the plaintiff's concern namely Sree Devi Finance used to get signatures from the borrowers in blank printed promissory notes and the plaintiff had used the blank promissory note signed by the defendant while borrowing the sum of Rs.3,000/- from Sree Devi Finance on 29.10.1984 to create the suit promissory note-Ex.A-1. He further submitted that the trial court has recorded the

finding that the plaintiff had no means to advance the loan amount under Ex.A-1 and the defendant had no necessity to borrow the amount from the plaintiff. He further submitted that the trial court has on an analysis of the evidence of P.Ws.2 and 3 and the evidence of D.W.2 has come to the right conclusion that P.Ws.2 and 3 would not have come to the plaintiff's village from some other village only for the purpose of writing the promissory note and attesting the same. The learned counsel further submitted that the trial court has given reasons for treating D.W.2 as hostile and for permitting his cross examination by the defendant. The learned counsel further submitted that simply because a witness has been declared as hostile it does not mean that his evidence has to be totally eschewed. He further submitted that the trial court has cast the burden on the defendant alone to prove his case that the suit promissory note-Ex.A-1 was not supported by consideration and only on a consideration of the evidence adduced by the defendant and the other attending circumstances has come to the conclusion that the suit promissory note is not supported by consideration. The learned counsel further submitted that since the findings of the trial court are based on evidence and convincing reasons have been recorded by the trial court, no interference by this Court is called for.

10. It has to be seen as to whether the contention of the learned counsel for the appellant that the trial court has not drawn the legal presumption available in favour of the plaintiff under Section 118 of the Act, inspite of the fact that the defendant had admitted his signature in Ex.A-1 is sustainable.

11. In view of the specific defence taken by the defendant in his written statement as pointed out above the trial court has posed a question as to whether, from the evidence adduced by either side, it has been proved that Ex.A-1-promissory note was actually executed by the defendant in favour of the plaintiff after receiving a sum of Rs.50,000/-. Ex.A-1-Promissory Note is in a printed form which according to the plaintiff was written by P.W.2 and attested by P.W.3 and D.W.2. According to the plaintiff Ex.A-1 was executed in his house at Masinaickenpatty and the defendant brought along with him P.Ws.2 and 3 to the plaintiff's house on 09.02.1985 and at that time D.W.2 was there and Ex.A-1 was written by P.W.2 and P.W.3 and D.W.2 attested the same. P.Ws.2 and 3 have corroborated the said evidence of P.W.1, whereas D.W.2-the other attestor of Ex.A-1 deposed in his chief examination on 10.10.1991 in favour of the defendant. But he deposed against the interest of the defendant when he was cross examined by the plaintiff on 21.10.1991 and hence he was treated as hostile and the defendant was permitted to cross examine D.W.2. At this juncture, the relationship of the plaintiff, defendant and the witnesses is worthwhile to be noticed. The plaintiff is the maternal uncle of the defendant as well as D.W.2. P.W.3 is son-in-law of the brother-in-law of the plaintiff. Further P.W.3's wife was a partner

in Sree Devi Finance of which the plaintiff was the Managing Director.

12. D.W.2 has deposed in his chief examination that since his maternal uncle-the plaintiff requested him to attest Ex.A-1 at Salem Central Cooperative Bank, he attested the same and while attesting the same it was blank. He has further deposed that since the plaintiff helped him in the purchase of a land by negotiating with the owner of the land he has to oblige the plaintiff in attesting a blank promissory note. He has further deposed that the defendant did not execute the promissory note in his presence and the plaintiff did not pay the sum of Rs.50,000/- in his presence. The trial court has pointed out that on 10.10.1991 when D.W.2 was examined in chief, he was not cross examined on the same day but the plaintiff took time on the pretext of summoning certain documents and the case was adjourned after dasara holidays and D.W.2 was cross examined on 21.10.1991 i.e. after a gap of 10 days and only on that date D.W.2 deposed contra to what he deposed in his chief examination. In the said circumstances only the trial court permitted him to be cross examined by the defendant. The trial court has rightly pointed out that simply because D.W.2 has been treated as hostile, his evidence need not be totally eschewed but should be considered as a whole and the truth should be found out. As rightly pointed out by the trial court, D.W.2 is the son of the sister of the defendant's mother. D.W.2 and the defendant are the sons of the sisters of the plaintiff and that being so there was no need for D.W.2 to depose falsely on 10.10.1991 and D.W.2 after his chief examination on 10.10.1991 in the gap of 10 days had been coerced. The trial court has also pointed out that unless D.W.2 had been coerced there was no need for him to depose in his cross examination contra to what he deposed in his chief examination.

13. In this context the contention of the learned counsel for the appellant that D.W.2 should not have been treated as hostile and his evidence should not have been relied upon by the trial court has to be considered. The learned counsel placed reliance on the decision reported in A.I.R.1999 Madras 76 (referred to supra) in support of his contention. In the said decision in paragraph 7 it has been observed as follows:

> "7. From a reading of the abovesaid provision, it is clear that the discretion is conferred upon the Court to permit cross-examination of his witness, and it does not contain any conditions or guidelines, which may govern exercise of such discretion. But, it is always expected that the Courts have to exercise such discretion judicially and properly in the interest of justice. A party will not normally be allowed to

> cross-examine his own witness and declare the same hostile unless the Court is satisfied that the statement of witness exhibits an element of hostility or that he is resiled from a material statement or where the Court is satisfied that the witness is not speaking the truth and it may be necessary to cross-examine him to get out the truth. There must be some material to show that the witness is not speaking the truth or has exhibited an element of hostility to the party for whom he is deposing before a witness can be declared hostile and the party examining the witness is allowing to cross examine him. Merely because the witness speaks about the truth which may not suit the party on whose behalf he is deposing the same and favourable to the other side, the discretion to allow the party concerned to cross-examine its own witness cannot be exercised".

Further in the said judgment the Learned Judge in paragraph 13 has observed as follows:

> "In view of the above, merely because some statements of D.W.2 are against the defendants, it cannot be said that he has become hostile. The court below has not considered all these aspects, and, only on the ground that he has spoken about Ex.A6, which is against the interest of the defendants, the Court below has allowed the application".

14. Based upon the above said observations the learned counsel for the appellant submitted that in the instant case merely because some statements of D.W.2 are against the defendant, he should not have been treated as hostile and permitted to have been cross-examined. The said submission of the learned counsel based on the observations made in A.I.R.1999 Madras 76 (referred to supra) are not sustainable for the following reasons:

In paragraph 12 of the said decision while dealing with the facts of the case the Learned Judge has observed as follows:-

> "In the present case, the Court below has granted permission to the first respondent to cross-examine D.W.2 only on the basis that he has spoken about Ex.A-6, which was marked through him and it is against their interest, can it be said that he has to be declared as hostile to the defendants? I am not able to sustain the reasonings given by the Court below regarding the same. In the cross-examination he has not gone back from his evidence in the chief-

examination. He has spoken about Ex.A-6 which was marked through him during the course of cross-examination, since he seems to have attested the said document. He has admitted the attestation of that document".

A reading of the above said observation clearly shows that in that case, in the cross-examination, D.W.2 had not gone back from his evidence in the chief examination and therefore the Learned Judge has held that he should not have been treated as hostile and allowed to be cross examined. But in the instant case on hand, D.W.2 has gone back from his evidence in the chief examination and that too, as pointed by the trial court due to the coercion exerted on him by the plaintiff. Therefore the decision reported in A.I.R.1999 Madras 76 (referred to supra) in no way helps the case of the appellant.

15. It is pertinent to point out that D.W.2 in his cross examination has stated as follows:-

"நான் முதல் விசாரணையில் வாதியின் தொந்தரவு, காரணமாக நான் அவ்வாறு சொன்னேன். யார் தொந்தரவு, செய்தார்கள் என்று சொல்ல முடியாது, ஏனென்றால் எனக்கு மீண்டும் தொந்தரவாகும் ".

The above answers of D.W.2 clearly shows that he was put under coercion. The examination in chief of D.W.2 was on 10.10.1991 and on the same day he was not cross examined and as pointed out by the trial court on the pretext of summoning certain documents the plaintif got an adjournment and the case was adjourned after the dasara holidays and D.W.2 was cross-examined on 21.10.1991 i.e. after the gap of 10 days and in the meanwhile he has been coerced to change his version. In such circumstances the trial court has rightly permitted the defendant to cross-examine D.W.2.

16. In 1997 (1) Madras Law Weekly 92 (Shanmuganathan Vs. Vellaiswamy), Mr. Justice A.R.Lakshmanan (as His Lordship then was) has laid down that when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether and it is for the Presiding Officer to consider, in each case, whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can-still be believed in regard to a part of his testimony. Therefore the contention of the learned counsel for the appellant is liable to be rejected. The reliance placed by the trial court on the evidence of D.W.2 cannot be said to be erroneous. It has to be pointed out that D.W.2 is the sister's son of the plaintiff and the cousin of the defendant and when he is related to both the plaintiff as well as the defendant and when there is no enmity between D.W.2 and the plaintiff

there is no reason for him to depose against the interest of the plaintiff. Therefore, in the considered view of this Court, the deposition of D.W.2 in his chief examination has been rightly believed by the trial court.

17. Admittedly Ex.A-1-Promissory Note is said to have been executed on 09.02.1985. The legal notice-Ex.A-2 has been issued by the plaintiff to the defendant on 31.07.1986, for which the defendant had sent a reply-Ex.B-16 dated 05.08.1986. In Ex.B-16 itself the defendant had stated that he was making arrangement to dispose off his land to a third party but the plaintiff was insisting him to sell the land to him for a low price, which was not agreed to by the defendant and enraged by that the plaintiff had antedated and forged the promissory note, as if he had borrowed a sum of Rs.50,000/- on 09.02.1985. The said defence has also been spoken to by D.W.1 in his evidence and the defendant had also sold the land subsequently which has also been admitted by the plaintiff as P.W.1. The sequence of events narrated above clearly probabilises the above said defence taken by the defendant. One another aspect has to be pointed out at this juncture viz., the amount is said to have been paid by the plaintiff to the defendant on 09.02.1985 and the notice-Ex.A-2 had been issued on 31.07.1986, whereas admittedly the sum of Rs.3,000/- borrowed by the defendant from Sree Devi Finance of which the plaintiff was the Managing Director, though remain unpaid, no notice had been issued. The plaintiff is none else than the maternal uncle of the defendant. Even assuming that any amount was due from the defendant the plaintiff would not have straightaway issued a legal notice considering their close relationship, unless there was misunderstanding between them or the relationship was strained. Therefore the plea of the defendant that the plaintiff had created the suit promissory note only due to his refusal to sell his land for a lesser price to the plaintiff appears to be probable and acceptable.

18. The trial court has pointed out that on a consideration of the evidence of P.Ws.1 to 3 and the evidence of D.Ws.1 and 2, a doubt arise as to whether Ex.A-1 could have been executed on 09.12.1985 as pleaded by the plaintiff. The defendant admittedly has studied up to P.U.C. and D.W.1 has deposed he had written promissory notes for others and in such circumstances as pointed out by the trial court there was no need for the defendant to take P.Ws.2 and 3 from some other village to the village of the plaintiff only for the purpose of writing the promissory note and getting it attested. According to the plaintiff, Ex.A-1 was written in his house at Masinaickenpatty, whereas P.W.2 belong to Ayothiyapattinam, P.W.3 belong to Chengannur village and D.W.2 belong to Thathampatti and as pointed out above, P.W.3 and D.W.2 are closely related to the plaintiff. Further, P.W.3's wife was a partner of Sree Devi Finance of which the plaintiff was the Managing Director and therefore the deposition of

P.W.2 and P.W.3 that they were present in the house of the plaintiff when the promissory note was alleged to have been executed by the defendant is not believable. The said reasoning of the trial court based on the evidence on record cannot be said to be erroneous. As rightly pointed out by the trial court if really the defendant had executed the promissory note in the house of the plaintiff some neighbours of the plaintiff could have been requested to attest the promissory note and for that purpose the defendant would not have brought with him P.Ws.2 and 3.

19. The trial court has separately considered the plea of the defendant that the blank promissory note signed by him while borrowing a sum of Rs.3,000/- on 29.10.1984 from Sree Devi Finance had been used to create the suit promissory note. The trial court has pointed out that the said plea of the defendant has been spoken to by the defendant as D.W.1 and his version has been corroborated by D.W.3 who was an ex-employee of Sree Devi Finance. The trial court has extensively considered the deposition of D.W.3 and Exs.B-4 to B-9 and B-33 and the admission of P.W.1 and has come to the conclusion that the practice of getting signatures from the borrowers in blank promissory notes was prevailing in Sree Devi Finance. The trial court has also found that D.W.3 had not committed any misappropriation and he was not sent out from Sree Devi Finance on the charge of misappropriation and hence his evidence need not be discarded. The trial court on a consideration of Exs.B-10 to B-13 and B-34 to B-39-receipts has pointed out that D.W.3 was working in Sree Devi Finance till the beginning of 1987 and hence the claim of the plaintiff that D.W.3 was sent out from Sree Devi Finance in 1985 itself is not acceptable. The plea of the plaintiff that D.W.3 had stolen away blank promissory notes containing the names of Sree Devi Finance and the same have been used to create Exs.B-5 to B-8 and B-33 has been disbelieved by the trial court and acceptable reasons have been recorded for the same. On the above said reasonings, the trial court accepted the defence of the defendant that Ex.A-1 had been created using the blank promissory note signed by the defendant while borrowing the sum of Rs.3,000/- on 29.10.1984 from Sree Devi Finance.

20. The trial court has pointed out that when the defendant had admittedly not repaid the sum of Rs.3,000/- borrowed by him which he had promised to repay within three months, it is highly doubtful whether the plaintiff would have advanced a further sum of Rs.50,000/- on 09.02.1985 under Ex.A-1-promissory note and that too without obtaining any security from the defendant. The said reasoning of the trial court cannot be said to be erroneous.

21. For the foregoing reasons it has to be held that the finding of the trial court that Ex.A-1-promissory note had not been executed by the defendant after receiving the sum of Rs.50,000/- from the plaintiff, but the same had been created by using the printed

blank promissory note which had been signed by the defendant at the time of borrowing the sum of Rs.3,000/- from Sree Devi Finance is correct. The said finding of the trial court is based on the evidence adduced by the defendant and the trial court has not wrongly cast the burden on the plaintiff to prove the passing of consideration under Ex.A-1. The legal presumption arising in favour of the plaintiff has been rebutted by acceptable evidence by the defendant as pointed out above. Therefore the findings of the trial court cannot be faulted with. When a finding has been recorded that Ex.A-1-promissory note is not genuine but the same had been created by the plaintiff, the other aspects of the case pale into insignificance.

22. Though the finding of the trial court regarding the means of the plaintiff to advance the loan under Ex.A-1 in the light of the evidence of the defendant himself is erroneous, as there is no acceptable corroborative evidence to come to the conclusion that the plaintiff had no means, the said finding will not in any way affect the ultimate result reached by the trial court. The contention of the respondent that an adverse inference ought to have been drawn against the appellant on his failure to produce the account books is liable to be rejected, because no question whatsoever has been put to P.W.1 in this regard and no notice calling upon him to produce the account books had been issued. The decision reported in A.I.R.1992 Madras 132 (A.S.Duraisami Chettiar Sons Vs. S.Rathnaswami Gounder) is not applicable to the facts of this case. The facts of that case are totally different.

23. The trial court has considered the evidence of each and every one of the witnesses examined in the case and the relevant documentary evidence adduced and has given convincing reasons for the conclusions reached by it and hence I see no reason to interfere with the findings of the trial court.

24. Issue No.2 was decided against the defendant since he failed to bring to the notice of the Trial Court, the provisions contained in Section 269 SS of the Income Tax Act. When an issue has been framed and it relates to a question of law it is incumbent on the part of the Trial court to advert to the relevant provisions of law and apply the same to the facts proved in the case. The Trial Court failed to do so in this case. Section 269 SS of the Income Tax Act reads as follows:

> "Mode of taking or accepting certain loans and deposits.- No person shall, after the 30th day of June,1984, take or accept from any other person (hereafter in this section referred to as the depositor), any loan or deposit otherwise than by an account payee cheque or account payee bank

draft if,-

(c) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or

(d) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(e) 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 further that the provisions of this section shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and the person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act."

As per the above said proviso this section shall not apply to any loan or deposit where the parties to the loan transaction or deposit are both having agricultural income and neither of them have any income chargeable to tax under the Income Tax Act.

25. Therefore in my considered view, the said provision cannot straightaway be applied to the facts of this case in the absence of acceptable evidence to show that the plaintiff and the defendant have income chargeable to tax under the Income Tax Act. Further, the contravention of the section was formerly punishable under Section 276 DD (now deleted) read with the old S 278 AA, and from 1 April 1989 it may attract penalty under Section 271 D read with Section 273 B of the Income Tax Act. But this Section does not bar the institution or maintainability of a suit filed on the basis of a promissory note executed in respect of a consideration exceeding Rs.20,000/- and where such consideration had not been passed on by way of an Account payee cheque or Account payee Bank Draft. Admittedly there is no evidence on record to show that the plaintiff or the defendant had any income, at the relevant time chargeable to tax under the Income Tax Act. Therefore, in my considered view, the plaintiff cannot be non-suited simply by invoking the provisions contained in Section 269 SS of the Income Tax Act.

26. For the foregoing reasons, the appeal fails and the same is dismissed with costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kua/srk

To

The District Judge,
Salem

+1cc to Mr.R.M.Krishna Raj, Advocate Sr 23488

GM (CO)
km/10.1.

A.S.No.108 of 1992