

(2002) 07 MAD CK 0240
In the Madras High Court
Case No : A.S. No. 971 of 1998

M.N. Nallasamy

APPELLANT

Vs

M/s. Jai Sree Finance and 8 others

RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 27, 28
Partnership Act, 1932 — Section 22

Citation : (2002) 07 MAD CK 0240

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : V.K. Muthuswamy, for Mr. T. Murugamanickam, for the Appellant;
A.K. Kumarasamy for Respondents 2 to 8 and N.A. for Respondent 1 and 9, for
the Respondent

Final Decision : Allowed

Judgement

Prabha Sridevan, J.—The appellant advanced a sum of Rs. 85,000/- on the strength of a promissory note Ex.A-1 wherein M.L. Ramasamy Partner Jai Sree Finance had promised to pay the sum borrowed and the promissory note was signed by the said Ramasamy with the seal for Jai Sree Finance as Partner. Since the amount borrowed was not repaid, the appellant filed a suit for recovery of the money due against the firm and the partners including the aforesaid Ramasamy, the 9th respondent. The trial Court was inclined to hold that the amount was borrowed individually by the 9th respondent and not on behalf of the firm and decreed the suit against him and dismissed the suit against the firm and the other partners. Against this dismissal the appeal has been filed. Mr. V.K. Muthuswamy the learned senior counsel appearing for the appellant would refer to Section 22 of the Indian Partnership Act and Sections 27 and 28 of the Negotiable Instruments Act. Section 22 of the Indian Partnership Act says that in order to bind a firm an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name or in any other manner expressing or implying an intention to bind the firm. Section 27 of

the Negotiable Instruments Act refers to the principle of agency and the liability of agents signing. As per Section 28 of the same Act, a person capable of binding himself as a party to the note, bill or cheque may be equally bound by a duly authorised agent acting in his name and an agent who signs his name to a note bill or cheque without indicating that he signs as such as agent or he does not intend to incur personal responsibility, is personally liable except to those who induced him to sign upon the belief that the principal only would be held liable.

2. The promissory note Ex.A-1 was read out. It was submitted that the fact that it has been signed for the firm as a partner would clearly show that he was acting on behalf of the firm. It was further submitted that it was not as if the 9th respondent did not have the authority to bind the firm. Clause 8 of partnership deed Ex.B-5 states that the 9th respondent is the Managing Partner entitled to a monthly remuneration and that as a partner he has the power and authority to individually operate bank accounts and to borrow money. In Clause 9 of the other partnership deed Ex.B-1 the 9th respondent has been given power and authority to individually operate bank account and to borrow money from the bank and others. The evidence of P.W.1 shows that before signing the promissory note, the 9th respondent had produced two partnership deeds of the firm and after satisfying himself that he had the authority to sign on behalf of the firm the money was lent. P.W.2 is the scribe of Ex. A-1 who speaks of the execution of the promissory note. The appellant has evidence to show that the promissory note was executed on behalf of the firm and for the benefit of the firm, Therefore it was submitted that the firm must be made liable.

3. The following decisions were relied on by the learned senior counsel -

- (1) Sivagurunatha Pillai Vs. Padmavathi Ammal and Another,
- (2) Ramanujulu v. Narasimhulu (AIR 1962 A.P. 92) (DB);
- (3) Edumban Chettiar Chockalingom Chettiar Vs. Ramalakshmi Pichamma,
- (4) Pramod Kumar Pati and Another Vs. Damodar Sahu and Others,
- (5) J.I. Lourenco V. Xec Hamra (AIR 1975 GOA 29) (DB);
- (6) Chinnathambi v. Drivers and Conductors Bus Service Pvt. Ltd (1986) 99 L.W. 341);
- (7) Ghisulal Vs. Hazi Mohammed and Others,
- (8) Koneti Naicker v. Jatu Gopala Aiyar (Indian Cases (XXI) 417 MFB);

4. Mr. A.K. Kumarasany the learned counsel appearing for the respondents would submit that the reference to the 9th respondent as Partner in Ex.A-1 is only a descriptive term and not indicative of his capacity. He would also point out that the 9th respondent was only a Managing Partner and not a mere Partner and exhibits had been marked in the trial proceedings where he had signed as the Managing Partner. This would show that the seal affixed has been used with the

oblique motive to implicate the firm. He also referred to the serious discrepancies in the evidence of P.W.1 with regard to the manner in which Ex.A-1 was executed, While P.W.5 would show that the 9th respondent brought two deeds on the date of Ex.A-1. P.W.2 had stated that he had brought only one document. Similarly in the evidence of P.W.1, he had stated that it was only on the recommendation of his brother-in-law, the money was given. But, this does not find support in the evidence of P.W.2 brother-in-law. The learned counsel pointed out that the trial Court had gone into the details regarding the genuineness of the seal and found that there are differences. When that is so. it is clear that Ex.A-1 is a concocted document. The seal had been affixed on the promissory note subsequent to the execution of the promissory note and therefore, no liability can be fixed on the firm on the basis of this. The learned counsel relied on (1) Penumatsa Rangaraju Vs. Sait Devichand Bhootaji Firm partner Sait Seshmull Kasturji and Another, and (2) Adaikappa Chettiar V. Official Assignee (1969 (2) M.L.J.

5. Though some submissions were made on the ground that the partners had retired from the firm and that therefore, they cannot be made liable, this was not seriously urged, since the evidence of D.W.1 is that D-2, D-3, D-4, D-5 and D-6 retired from the firm on 31.3.1976 which is subsequent to the execution of Ex.A-1. The other defendants who were partners, did not get into the box to give evidence. They merely filed their written statements stating that this was an individual borrowing by the 9th respondent and it would not bind the firm.

6. Halsbury's Laws of England (4th Edition) Vol. 35 para 60 at page 35 deals with Acts done by Authorised Person in the Firm Name. The following extract is relevant:-

"An act or instrument relating to the business of the firm done or executed in the firm name or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners. A deed executed by one partner for himself and his partner in the presence of the latter binds both."

As regards Bills of Exchange (para 62) it says:-

"A bill given for partnership purposes by one partner in his own name, and not in the firm's name, does not bind the other partners but if given in a name which the court finds to be intended for and substantially identical with or habitually used as that of the firm although not strictly accurate, it binds the other partners."

As regards Borrowing money (para 50) it says-

"The implied power of a partner extends to the borrowing of money for the purposes of the business, where the business is of a kind that cannot be carried on in the usual way without such a power, but not for the purpose of providing the capital to be contributed by any individual partner. Where the limit of

contribution is fixed by express agreement among the partners, a partner cannot, at all events as between himself and his partners, bind them by borrowing beyond the stipulated sum."

This is with regard to the capacity of the partner for borrowing on behalf of the firm.

7. Ex.A-1 promissory note reads thus

"Rs. 85,000/-

9.11.1977 Erode.

On demand I / M.L. Ramaswamy, Partner, Jai Sree Finance, Erode promise to pay N.A. Nallaswamy S/o. Appaji Sounder, O.N. Palayam or order the sum of Rupees eighty five thousands only for value received in cash with interest 15% (Fifteen per cent) percent per annum.

For Jai Sree Finance,

Sd/- xx xx

Partner.".....:

Therefore, it is clear that it has been executed in the firm name as required u/s 22 of the Indian Partnership Act. The fact that the words " I, M.L. Ramaswamy Partner, Jai Sree Finance" in the body of the promissory note will not detract from the effect of the signature found at the bottom that he has signed as a partner of Jai Sree Finance. The partnership Deed which has been referred to above deals with the business of money lending, hire purchase, pawn brokers and financiers. Therefore, the business is of such a nature that borrowing money would be part of the business.

8. Clause 8 of Ex.B-5 reads thus:-

"Sri M.L. Ramaswamy and Sri P.K. Kaliannan, shall be the Managing Partners of the firm shall be entitled to a monthly remuneration of Rs. 200/- each, and shall be in charge of the management of the business of the firm and the day-to-day activities of the business shall be looked after by them. Both the partners shall have the power and authority individually to operate the bank account and to borrow money from the bankers or others."

Clause 9 of Ex.B-1 reads thus-

"That Sri M.L. Ramasamy shall be the Managing Partner of the firm and shall be entitled to a monthly remuneration of Rs. 400/~ and shall be in charge of the management of the business of the firm and the day to day activities of the business shall be looked after by him. He shall have the power and authority individually to operate bank account and to borrow money from the bankers or others."

9. Ex.B-1 is after Ex.A-1. But, Clause 8 of Ex.B-5 is sufficient to show that the 9th respondent had the power to borrow. In fact two partners shall have the power and authority to individually operate bank account and borrow money. The fact that they have the authority to borrow money is clear and the fact that it is needed for the business is also apparent.

10. The respondents' case rests on the seeming differences in the seal. One is that in the seal affixed on the suit filed in other proceedings, the words used as "Managing Partner", whereas in Ex.A-1 the word used as "Partner". But, this is explained by the fact that as Managing Partner, he sue on behalf of the firm. As regards borrowal the seal used is that of the Partner. This is apparent from Ex.C-3, which is the specimen signature of defendants 4 and 9, who are the persons named in Clause 8 of Ex.B-5 and they gave their specimen signatures to State Bank of India, Erode in which the 9th respondent has described himself "For Jai Sree Finance, Partner". Therefore, nothing really turns on the fact that the seal used in Ex.A-1 is only that of a Partner and not of a Managing Partner.

11(a). In *Koneti Naicker V. Jatu Gopala Aiyar* (Indian Cases (XXI) 417), where the maker of a promissory note described himself in the body of the note as an agent, but his promise to pay was unqualified by any reference to his alleged principal and the note was also signed without any addition to the signature, this Court has held that there was no indication in the note that the maker signed as agent or that he did not intend to incur personal liability. This would clearly show that when the note is signed describing the maker as an agent, that would be sufficient indication that he signed as such. Ex.A-1 has been signed as partner and on behalf of the firm.

(b) In *Ghisulal Vs. Hazi Mohammed and Others*, it was held that the firm's name must be disclosed in some such manner that upon fair interpretation of the promissory note it must appear that the firm was the real person liable upon the pro note.

(c) In *Chinnathambi V. Drivers And Conductors Bus Service Pvt. Ltd* (1986) 99 L.W. 341), it has been held that as long as the promisee himself states that what is written in the document is not what really took place he forfeits the legal presumption arising under the Negotiable Instruments Act. This does not really apply to this case.

(d) In *Pramod Kumar Pati and Another Vs. Damodar Sahu and Others*, it was held thus:-

"It is of the essence of a claim based upon a negotiable instrument that the person executing that document should disclose on the face of the document itself, that he is not personally liable and that he is executing a promissory note for someone else. It is not sufficient that the principal's name should be in some way disclosed, it must be disclosed in such a way that, on any fair interpretation of the instrument his name is the real name of the person liable upon the bill."

(e) In Sivagurunatha Pillai Vs. Padmavathi Ammal and Another, it has been held that the Court cannot look into the surrounding circumstances when deciding whether the maker of a promissory note has executed it as the agent or the representative of another. It is the instrument alone which has to be looked at and its effect judged from words used.

All these decisions come to the aid of the appellant herein.

12. As against the same, in the decision relied on by the respondents in Penumatsa Rangaraju Vs. Sait Devichand Bhootaji Firm partner Sait Seshmull Kasturji and Another, it was held that the promissory note executed by a partner of a firm disclosed that the money was borrowed for the purpose binding on the firm and that the executant was a partner of it but was not executed in the name of the firm but only personally. In those circumstances, it was held that the firm was not bound by it. This would not apply to the present case since Ex.A-1 was executed on behalf of the firm.

13. Yet another decision relied on by the respondents is N.S.M. Adaikappa Chettiar Vs. The Official Assignee, High Court, wherein it was held that the promissory note executed by a partner would not bind the firm unless it clearly appears on the face of the document that the parties meant that the firm should be bound. This is actually in favour of the appellant.

14. In the written statements filed by various defendants, they are not consistent in their stand regarding the seal. On 12.12.1980, the 3rd defendant had filed the written statement in which no reference is made to the seal.

In the additional written statement filed by the 2nd and 3rd defendants on 2.1.1984, no reference is made to the seal, it only states that the reference as Partner, Jai Sree Finance is to describe the identity or capacity of the first defendant firm.

15. In the written statement filed by the 5th defendant on 6.12.1982, it is alleged that the seal of the firm was hidden with firm's other stationery and it had been utilised wrongly by one of the partners of the firm and his son K.P. Subramaniam and therefore, according to this defendant, the seal of the firm has been appropriated and misused.

16. On 13.12.1980, the 7th defendant filed his written statement in which again there was no reference to the seal. In the additional written statement filed by the 7th defendant, the defence taken is that the partners of the firm are not entitled to borrow or operate the bank account, which has been demonstrated to be wrong by the extract of Clause 8 above. For the first time on 12.11.1984 in the additional written statement filed by the 7th defendant, it is stated that the first defendant firm never had any such seal as is found on the suit promissory note and that it would have been created for the purpose of suit promissory note.

17. On 24.12.1982, the 9th respondent filed his written statement in which he alleges that one of the partners of the firm and his son had easy access to the

stationery of the firm including the seal and therefore the seal so accessed was used for fabricating the suit promissory note. But, there is no support for this in the oral evidence.

18. On the other hand, both P.W.1 and P.W.2 categorically stated that it was the 9th respondent who brought the seal for affixing it on Ex.A-1 on the date of execution of the promissory note. The trial Court has taken pains to compare and contrast various exhibits and has arrived at a conclusion that it was a fabricated seal. But some of the defendants have taken the stand that the appellant has access to the firm's seal and firm's stationery. If that is so, then there cannot be any difference in the firm's seal and the seal affixed on the promissory note for it is the genuine seal of the firm. So, a genuine seal has been wrongfully used according to some a forged seal has been used according to the other. Both stands mutually destroy the other. It is, therefore, clear that the other partners in trying to evade the liability of Ex.A-1, have taken conflicting stands.

19. Ex.A-1 indicates that the maker of the promissory note is signing the document as partner of the firm, the partnership deed discloses that this partner has the authority to borrow money for the firm, the business of the firm is such that it cannot be transacted without borrowing and lending money, and there is absolutely no evidence to show that the seal affixed on the promissory note was fabricated by the appellant in collusion with all or any of the partners.

20. I am not inclined to agree with the finding of the trial Court that the seal on the promissory note is a forged one or that it was affixed later. It is found that the 9th respondent had authority to borrow money for the firm and in fact under Ex.A-1, he had done so and it was also executed on behalf of the firm. For the above reasons, I set aside the decree of the trial Court in so far as the dismissal of the suit as against the respondents 1, 2 to 8. The appeal is allowed. No costs.