

Madras High Court

R. Amutha vs Jeyachitra on 24 March, 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2017

RESERVED ON : 14.03.2017

DELIVERED ON : 24.03.2017

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

A.S.(MD)No.217 of 2015

M.P.(MD)No.1 of 2015 and

C.M.P.(MD)No.3698 of 2016

R. Amutha : Appellant/Defendant

Vs.

Jeyachitra : Respondent/Plaintiff

PRAYER: Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 20.04.2015 passed in O.S.No.63 of 2014, by the learned III Additional District Judge, Thanjavur.

!For Appellant : Mr.Arjun Varman,

for Mr.T.Lajapathi Roy

^For Respondent : Mr.S.Ramu

: JUDGMENT

This appeal has been filed by the defendant against the judgment and decree in O.S.No.63 of 2014, passed by the learned III Additional District Judge, Thanjavur, dated 20.04.2015.

2. The original suit has been filed for recovery of a sum of Rs.12,18,000/- (Rupees Twelve Lakhs and Eighteen Thousand only) together with interest at the rate of 12% per annum and for costs.

3. The defendant is the appellant. The plaintiff had filed the above original suit which was tried by the III Additional District Court, Thanjavur, seeking a judgment and decree for recovery of a sum of Rs.12,18,000/- (Rupees Twelve Lakhs and Eighteen Thousand only) from the defendant together with interest at the rate of 12% per annum and for costs. The suit was based on a promissory note.

4. It had been stated that the plaintiff and the defendant are close relations. The husband of the plaintiff was employed in a foreign country and he used to send money regularly to the plaintiff, which the plaintiff saved. The defendant had constructed a house and had also performed the marriage of her daughter. She had to borrow money for the said purpose. Consequently, the plaintiff had advanced a sum of Rs.12,00,000/- on 14.05.2014 and the defendant had also executed a promissory note on the same day. On 16.05.2014, the defendant sold a property to one K.Saravanan. The plaintiff demanded return of the amounts advanced by her. The defendant stated that she would sell the house and repay the amounts. The plaintiff was also questioned by her husband regarding lending of money to the defendant. In spite of further demands made by the plaintiff, the defendant did not make payment. The plaintiff issued a notice dated 24.06.2014. The defendant received the notice, but did not reply. Consequently, the suit was filed for recovery of a sum of Rs.12,18,000/- (Rupees Twelve Lakhs and Eighteen Thousand only) together with interest at the rate of 12% per annum and for costs.

5. In the written statement, the defendant claimed that the plaintiff was the President of a Women Self-Help Group, which had about 20 members. As President, on 14.05.2014, the plaintiff arranged a loan of Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousand only) from HDFC Bank and gave a sum of Rs.22,500/- (Rupees Twenty Two Thousand and Five Hundred only) to each member. At that time, signatures were obtained in blank stamp papers. It had been stated that the plaintiff had earlier made unlawful gain of Rs.50,000/- (Rupees Fifty Thousand only) and Rs.10,000/- (Rupees Ten Thousand only) from the Women Self-Help Group. This was questioned by the defendant who held out that a criminal case would be filed. It had been stated that the plaintiff, her husband and her mother came to the house of the defendant and assaulted her, her sister and daughter on 10.06.2014. A police complaint was also lodged in this regard. It had been stated that writings had been filled up in the blank signed stamp papers available with the plaintiff. The defendant claimed that it was totally false to say that the defendant had executed a promissory note as stated in the plaint on 14.05.2014 for a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only). The other allegations in the plaint were also denied. It was further stated that a reply was sent on 10.07.2014 to the Advocate notice. It had been stated that the plaintiff had not come to the Court with a true case and consequently, it was pleaded that the suit should be dismissed.

6. The parties went into trial and the learned III Additional District Judge, Thanjavur, had framed the following issues for consideration:-

1. Whether the signature of the defendant in the promissory note was signed in the circumstances as stated by the defendant in the written statement?
2. Whether the consideration has passed for the said promissory note?
3. Whether the plaintiff is entitled for the relief claimed?
4. To what relief, the parties are entitled?

7. During trial, the plaintiff examined herself as P.W.1. She also examined one Ms.Vasuki as P.W.2 and one Ms.Shanthi as P.W.3. P.W.2 and P.W.3 are the witnesses to the promissory note. She also marked Ex.A1 to Ex.A13. The documents included Ex.A.1, which is the promissory note dated 14.05.2014; Ex.A.2 and Ex.A.4 which are the Advocate notice and the reply notice; Ex.A.5, Ex.A.6, Ex.A.9, Ex.A.10, Ex.A.11 and Ex.A.12, are the certified copies of the sale deeds; Ex.A.7 is a certified copy of mortgage deed; and Ex.A8 and Ex.A.13 are the bank pass books of the plaintiff and her husband. The defendant examined herself as D.W.1, but did not mark any documentary evidence.

8. On consideration of the oral and documentary evidence, the learned III Additional District Judge, Thanjavur, had decreed the suit for a sum of Rs.12,18,000/- (Rupees Twelve Lakhs Eighteen Thousand only) and also granted further interest at 6% per annum on Rs.12,00,000/- (Rupees Twelve Lakhs only) and also costs.

9. The defendant is in appeal as against the said judgment and decree.

10. Before this Court, the defendant had taken an additional plea which was not raised during trial, namely, that the promissory note, Ex.A.1 which is the basis for the claim by the plaintiff was not actually a promissory note. It had been stated that the said document, Ex.A.1 did not have the necessary features which are required under Section 4 of the Negotiable Instruments Act, 1881, which defines a promissory note.

11. This point is discussed first. Credit must go to Mr.Arjun Varman, learned Counsel for the appellant for opening up the scope of the appeal to a broader plane. Arguments advanced by him with much skill and passion necessitated this court to examine Ex.A1 in detail.

12. It had been argued by Mr.Arjun Varman, that the promissory note Ex.A.1 was not executed in its proper format; that it did not contain an unconditional undertaking to pay on demand, which are conditions pre requisite to consider a document as a promissory note. It was therefore, stated that the promissory note, Ex.A.1 was not at all a promissory note in the eye of law and consequently, a decree cannot be passed based on the same.

13. Mr.Arjun Varman further elaborated on facts and stated that the witnesses examined on the side of the respondent/plaintiff, are actually relatives of the plaintiff, and they had stated that they did not know about the execution of the promissory note and therefore this Court should reject their evidence. The learned Counsel further argued that the property was already under mortgage on 19.03.2014 and the plaintiff had received a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only); and that she had executed a sale agreement on 16.05.2014, with one Ms.Chandra Lekha and had received a sum of Rs.1,00,000/- (Rupees One Lakh Only). He opined that therefore, the defendant was in possession of substantial liquid cash and there was no necessity to borrow money from the plaintiff and that too, for a sum of Rs.12,00,000/- (Rupees Twelve Lakhs Only). The defendant had no requirement to hold cash to that extent at all.

14. These contentions have been negated by Mr.S.Ramu, learned Counsel appearing for the respondent, who relied on Ex.A.1 and stated that the conditions imposed were not conditions for

payment, but default clauses to be followed, if there was non-payment on demand of the amount mentioned in the promissory note. With respect to the other issues, the learned Counsel for the respondent has stated that the same points had been dealt with during trial and the facts that have been determined by the trial Court do not warrant any reason to upset the same.

15. The primary point that has to be considered in this appeal is:

Whether Ex.A.1 is a promissory note or not?

16. The further points that have to be then dealt with, are:

Whether execution been proved in accordance with law? and Whether the appellant is liable to pay the suit claim to the respondent?

17. Ex.A.1 - promissory note, dated 14.05.2014 is the document based on which, the respondent had filed the suit in O.S.No.63 of 2014 claiming a sum of Rs.12,18,000/- (Rupees Twelve Thousand eighteen Thousand Only) together with interest at the rate of 12% per annum and for costs. Ex.A.1 reads as follows:

"2014k; tUlk; nk khjk; 14Mk; njjp jQ;rht{h; khtl;lk;> gl;Lf;nfh;il tl;lk;> mjpuhk;gl;odk; lt[d;> ahjth; bjU> fjt[ vz;.47/1y; trpf;Fk; byl;Rkzd; kidtp b\$arpj;uh mth;fSf;F nkW;goa{h; mz;zhj; bjUtpy; trpf;Fk; buq;frhkp kidtp mKjh Mfpa ehd; vGjpf; bfhLj;Js;s fLDWjpr;rPl;L vd;dbtdpy;> ehd; fl;oa tPl;ow;fhd flida[k; milf;f jq;fSplk; fldhf bgw;w bjhif U:.12>00>000/- (U:gha; gzp buz;L ,yl;rk;) nkW;go bjhifia jhq;fs; ntz;Lk;ngHj jq;fSf;nfh jhq;fs; TWk; egUf;nfh 12% tl;oa[lld; jpUg;gp brYj;j cWjpTwp ,e;j fLDWjpr; rPl;il vGjpf; bfhLj;Js;nsd;. nkYk; vd;dhy; nkW;go bjhifia fl;l jtWk;gl;rj;jpy; vdf;F brhe;jkhd mjpuhk;gl;ozk> mz;zhj; bjU> g[y vz;.303/19y; mike;Js;s Mh;.rp.rp.FoapUg;g[ kho tPl;il jhq;fns tpw;gid bra;J jq;fSf;F nru ntz;oa bjhifia bgw;Wf; bfhs;tjw;F ehd; kdg{h;tkha; rk;kjpf;fpnwd;."

Unlike the promissory notes which are printed and which are normally used both by individuals who lend money on a regular basis or also otherwise, Ex.A1-promissory note has not been affixed with revenue stamps. On the other hand, it has been executed on a Rs.100/- (Rupees One Hundred only) Non- Judicial Stamp paper. This is one of the main contentions raised by Mr.Arjun Varman, on behalf of the appellant, who urged this Court to negative any relief based on the said promissory note.

18. Section 4 of the Negotiable Instruments Act, 1881, defines a promissory note as follows:-

"4.?Promissory note?.-A ?promissory note? is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, or to the bearer of the instrument."

19. According to the learned Counsel for the appellant, the features required are:

1.Unconditional undertaking;

2.Signed by the promisor;

3.To pay a certain sum of money; and

4.To a certain person or the holder of the promissory note.

20. The learned Counsel for the appellant also pointed out that the promissory note has been executed on a Rs.100/- (Rupees One Hundred only) non judicial stamp paper and a revenue stamp was not affixed. He stated that if a revenue stamp is affixed, signatures would be obtained on the revenue stamps and that would authenticate the execution of the promissory note since the signatures would run over the stamp and also proceed on to the paper. It had been stated that the appellant had actually signed in a blank stamp paper, which had been later filled by the respondent and produced as a document for the basis of the claim made before this Court.

21. In this connection, the learned Counsel for the appellant relied on the judgment rendered in the case of R.Ravindran Vs M.Rajamanickam reported in 2006-(1)-TLNJ (Civil)?457, in which, this Court following an earlier judgment in Thenappa Chettiyar Vs. Andiappa Chettiyar reported in 1971 (1) MLJ 214, had held as follows:

"9. The Division Bench of this Court in the decision, referred to above, constructed a document, which is similar to the present ones and concluded that the document contained an unconditional undertaking to pay and therefore it is a promissory note and since it specified two years period for repayment it is payable otherwise than on demand and falls under Article 49(b) of Schedule I of the Stamp Act and as the document was insufficiently stamped, in view of the proviso to Section 35 of the Stamp Act, it would be inadmissible for any purpose. The above decision is squarely applicable to the facts of the present case."

In that case, the promissory note reads as follows:

?6. .... vd;dhy;> ehsJ njjpapy; jq;fsplkpUe;J vdJ FLk;g eph;thf mgptpUj;jp brytpw;fhf fldhf buhf;fkhf bgw;Wf; bfhz;lJ U:.2>00>000/- .,e;j U:gha; ,uz;L ,yl;rj;Jf;Fk; ehsJ njjpapypUe;J khjk; xd;Wf;F U:.100/-f;F U:.1/- (xU U:gha;) tPjk; tl;o brYj;jpte;J> ehsJ njjpapypUe;J MW khj fhyf;bfLtpw;Fs; jq;fsplnkh> my;yJ jq;fsJ cj;jut[ bgw;wthplnkh bfhLj;J jPh;j;J tpLfpnwd; vd ,jd; K:yk; cWjp Twp ,e;j cWjpbkhHp; fld; gj;jpuk; vGjpf; bfhLj;njd;. ....?

It was engrossed on a Ten Rupee Non-Judicial Stamp paper. It is seen that a time limit was fixed for payment of the promissory note as six months. Consequently, this Court had held that they are payable otherwise than on demand and therefore, held that the stamp found was inadequate and no proper stamp duty had been paid for the promissory note. The judgment cited is therefore distinguishable on facts.

22. In another judgment in P.Moorthy Vs. A.R.Kothandaraman reported in 1991-28-L.W-450, an issue arose before this Court regarding admissibility of a promissory note which had been executed on a particular stamp paper instead of using adhesive stamps. In the said judgment, this Court

categorically held that a promissory note can be stamped either with adhesive stamps or engrossed on a stamp paper of proper value.

23. Section 10 of the Indian stamp Act lays down that "except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps"(a) according to the provisions herein contained; or (b) when no such provision is applicable thereto, as the State Government may by rule direct.?"

24. Section 11 of the Indian stamp Act lays down that "the instruments set out under clause (a) to (e) thereunder may be stamped with adhesive stamps. Clause (b) of Section 11 refers to bills of exchange, and promissory notes, drawn or made out of India. Obviously, this clause would not apply to the case in question.?"

25. Rule 13 of the Tamil Nadu Rules, reads as follows:

"13. Use of adhesive stamps on certain instruments. The following instruments may be stamped with adhesive stamps, namely -

(a) transfers of debentures of public companies and associations.

(b) copies of maps or plans, printed copies and copies of or extracts from registers given on printed forms when chargeable with duty under Article 24 of Schedule I.

(c) Instruments chargeable with duty under Article 5 (a) and (b) and Schedule I.

(d) Instruments chargeable with stamp duty under Article 47 of Schedule I.

(e) Instruments chargeable with stamp duty under Article 19, 36, 37, 49

(a)(ii) and (iii) and 52 of Schedule I.

(f) Instrument of transfer of shares of public companies or associations.

(g) Bonds executed under any law relating to a central duty of excise or any rule made thereunder.

(h) deleted.....

(i) Security bonds to be furnished by an appellant or an applicant in revision under the provisions of Section 31(5), 33(4), 35(4), 36(5), 37(6), Rule 38(6) and authorisation to be furnished under Section 52 of the Tamil Nadu General Sales Tax Act, 1959.?"

26. In Kalyan Singh Vs. Banwar Lal reported in 1965-II-I.L.R-Rajasthan- 231, it had been held that "The rule is merely a permissive one, permitting the use of an adhesive stamp on promissory notes

payable on demand when the amount or value exceeds Rs.250/-. The rule does not lay down that such a promissory note shall be stamped with adhesive stamp of the requisite value. The result is that a promissory note exceeding Rs.250/- in value can be written on a paper having an impressed stamp or it can be stamped with adhesive stamps of the requisite value.?

27. In *Somdatta Vs. Abdul Rashid* reported in A.I.R. 1968-Rajasthan-45, it had been further stated that in view of the word 'may' used in the provisions the promissory notes of any value can also be written on impressed stamps.

28. In *Essaki and another Vs. S.Royappan*, reported in 1990 (2) L.W-143, this Court discussed the issue elaborately and had held as follows:

?in order to appreciate the contention raised, it would be necessary to make a reference to some of the provisions of the Act and the Rules framed thereunder. S.2 (1) of the Act defining 'Duly stamped' states that as applied to the instrument, it means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India. Thus, in order to be an instrument duly stamped for purposes of the Act, the instrument should bear an adhesive or impressed stamp of not less than the proper amount. 'Impressed stamp' has been defined under S.2(13) of the Act as including labels affixed or impressed by the proper officer and stamps embossed or engraved on stamped paper. Under S.10(1) of the Act, the mode of payment of stamp duty has been indicated. That provision enacts that all duties with which instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps according to the provision herein contained; or when no such provision is applicable thereto, as the State Government may by rule direct. This, however, is subject to express provision in the Act otherwise. S.10 (2) of the Act is not necessary for the present purposes. The promissory note sued upon in this case is in excess of Rs.1,000 and that is not in dispute and the stamp duty payable under Art 49 (a)(iii) of Schedule I to the Act is twenty-five paise. However, S.11(a) of the Act, which makes a reference to instruments chargeable with a duty not exceeding twenty paise, except parts of bills of exchange payable otherwise than on demand and drawn in sets, has no application. Likewise, S.11 (b) to (e) also will not have any application in this case. Under R.(3) (2) of the Rules, for purposes of indicating payment of duty, with which instruments are chargeable, two kinds of stamps have been enumerated, viz., impressed stamp and adhesive stamp. R.5 provides that except as provided by S.11 of the Act, or by R.13 of the Rules, a promissory note or bill of exchange shall be written on paper on which a stamp of the proper value, with or without the word 'hundi' has been engraved or embossed. Under R.13 (e) of the Rules, it has been provided that instruments chargeable with stamp duty under Art.49 (a) (ii) and (iii) may be stamped with adhesive except as otherwise provided by these rules, the adhesive stamps used to denote duty shall be the requisite number of stamps bearing the words 'India Revenue' and the words 'Twenty-five paise' or 'fifteen paise' or 'ten paise'. R.17 of the Rules catalogues the kinds of instruments which require to be stamped with special adhesive stamps. It is thus seen from the above provision of the Act and the rules that the instrument in this case will not fall under S.11 of the Act and there is, therefore, no question of its being stamped according to the provisions of the Act as laid down in S.10(1)(a) of the Act. In other words, the instrument in this case, required to be stamped in accordance with the Rules. Under R.5

of the Rules, a promissory note, shall except as otherwise provided by R.133, be written on paper, on which a stamp of the proper value has been engraved or embossed. However, under R.13

(e) of the Rules, which is permissive as shown by the use of the expression 'may', such an Instrument may be stamped with adhesive stamps. Thus, though under R.5 of the paper, on which a stamp of the proper value has been engraved or embossed, by the operation of R.13 (e) of the Rules, such an instrument can also be written on paper and duly stamped with adhesive stamps. When a promissory note is written on stamp paper instead of a plain paper with adhesive stamps, the payment of duty with which the instrument is chargeable, is indicated under R.3(2) (a) of the Rules, which includes stamps engraved on stamped paper, under S.2 (13) (b) of the Act. Thus, under the provisions of the Act and the Rules, a promissory note can be either written on stamp paper of the proper value or written on plain paper and stamped with adhesive stamps. In either event, the payment of stamp duty would be in accordance with the Rules.

29. It is further seen that, the term 'voucher' as defined in New Webster's dictionary of the English language is as follows:-

'One who or that vouches, as for something, a book, a document, stamp or the like, which serve to prove the truth of something; a receipt or other written evidence, as of the payment of money.'

30. In P.Ramanatha Aiyer's Law Lexicon, Reprint Edition, 1987 'voucher' has been defined as 'Document establishing payment of money or truth of accounts.'

31. In the context, it is relevant to refer to the definition of 'duly stamped' as given in Sec.2(11), Indian Stamp Act. The term 'Duly stamped' has been defined in Sec.2(11) of the Indian Stamp Act as follows:

'Duly stamped' as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with law for time being in force in India.'

32. It is therefore necessary that an instrument to be duly stamped should be stamped with a stamp not only of the amount required by law, but also in the manner prescribed by law, the law, being contained in the rules under the Act as well as in the Act itself. 'Duly stamped' would mean, stamped with the value and description of stamp required by the law in force when the instrument was executed or first executed. The true scope of the rule of substance prevailing over the form with reference to a document chargeable to stamp duty is that the recitals therein should not be lost sight of merely because the parties gave a particular description of the nature of the document. An instrument to be duly stamped (i) must bear the proper description of stamp, (ii) the stamp must be of the proper amount; and

(iii) the stamp must be affixed or used according to the law or rules for the time being in force in India, and properly cancelled. In determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, the Court will look at the document as it



stands and not at any collateral circumstances which may be shown in evidence. When the question is, whether a document bears a sufficient stamp, the document must be looked at as it stands. Therefore, every instrument which is required to be stamped is said to be duly stamped if the instrument bears adhesive or impressed stamp of not less than the proper amount. The proper amount of stamp for a receipt which is of the value of more than Rs.500/- ie Re.1/-. A receipt can be said to be duly stamped if it bears an adhesive or impressed stamp of not less than Re.1/- if the value of the receipt is more than Rs.500/-. A receipt can thus bear adhesive stamp or be on an impressed stamp.

33. 'Impressed stamp' is defined in Sec.2(13) of the Indian Stamp Act and it includes (a) labels affixed or impressed by the proper office; and (b) stamp embossed or engrossed on stamp paper. The stamps are of two kinds, i.e., impressed stamps and adhesive stamps. Ordinarily, all kinds of adhesive stamps including special adhesive stamps are 'labels' as mentioned in the Stamp Act. They come within the artificial definition of 'impressed' stamp as contemplated in Sec.2(13) of the Act, if they are affixed and impressed by the 'proper officer' they remain merely adhesive stamps. The labels, affixed and impressed or perforated by means of a stamping or perforating machine comes within the definition of 'impressed stamps'.

34. The term 'Receipt' has been defined in Section 2(23) of the Indian Stamp Act, which runs thus:

'Receipt' includes any note, memorandum or writing-

a)Whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or

b)Whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or

c)whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied, or discharged, or

d)Which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person.?

It is clear from the definition of the term 'receipt' that it includes any memorandum whereby money received as acknowledged. Such a receipt has to be stamped as per Article 53 of the Act.

35. Article 53 of the Indian Stamp Act thus:

Description of Instruments Proper stamp duty

53. Receipt as defined by Section 2(23) for any money or other property the amount or value of which exceeds five hundred rupees. One rupee Therefore, an instrument written or embossed or engrossed on stamp paper, that is 'impressed stamp' and which is 'duly stamped' and which

satisfies the definition of 'receipt' under Sec.2 (23) of the Act and stamped in accordance with Article 53 of the Act, would satisfy the requirements of the Act.

36. I therefore hold that Ex.A.1, which has been executed on a Rs.100/- (Rupees One Hundred only) Non-Judicial Stamp paper has been sufficiently stamped and does not suffer from legal infirmity on that ground.

37. In the present case, an objection is also raised by Mr.Arjun Varman, that the instrument Ex.A.1 has a condition. The learned Counsel impressed upon this Court that the said condition is as follows:  
nkYk; vd;dhy; nkw;go bjhifia fl;l jtWk;gl;rj;jpy; vdf;F brhe;jkhd mjpuhk;gl;ozk> mz;zhj; bjU> g[y vz;.303/19y; mike;Js;s Mh;.rp.rp.FoapUg;g[ kho tPl;il jhq;fns tpw;gid bra;J jq;fSf;F nru ntz;oa bjhifia bgw;Wf; bfhs;tjw;F ehd; kdg{h;tkha; rk;kjpf;fpnwd;.

38. According to the learned Counsel for the appellant, this condition which has been imposed, negatives the contention that Ex.A.1 is a promissory note, since there is no unconditional undertaking to pay which is an essential feature of a promissory note under Section 4 of the Negotiable Instruments Act. I do not agree with the said contention. Ex.A1 contains an unconditional acceptance and undertaking to make the payment on demand. It further runs that 'if the payment is not made, the respondent who was the plaintiff will have the option of bringing the property to sale. This is the second clause in the promissory note and I hold that it has been stated to only ensure that the unconditional undertaking is performed.

39. On analysis of the law and Ex.A.1, I hold that the preliminary point has to be answered against the appellant. Ex.A.1 has been executed in accordance with the requirements of Section 4 of the Negotiable Instruments Act and is admissible in evidence.

40. The further points regarding its proof will have to be next taken up.

41. The Counsel of the appellant drew the attention of this Court to the evidence of P.W.2 and P.W.3, who stated that they did not know the circumstances under which the promissory note was executed. The witnesses to any document need not know the contents of the document. They must only identify the signature of the executant. It has also been admitted that the appellant and the respondent are very close relatives. The witnesses are also their relatives. Consequently, the witnesses cannot be expected to come forward and speak either in favour of the appellant or in favour of the respondent. It is natural that they adopted a neutral stand. On considering the oral and documentary evidence, I hold that the respondent, who was the plaintiff in the lower Court has made out a case to uphold the undertaking to pay as given in Ex.A1.

42. I further hold that the defence taken by the learned Counsel for the appellant that the signature had been taken on a blank stamp paper cannot be accepted, since a perusal of the original signed stamp paper reveals there is no differential line spacing in the promissory note and the signature of the appellant has been affixed immediately after the last line and exactly parallel to the signature of the witnesses.

43. The other contentions regarding the Women Self-Help Group and other issues, pale into insignificance. This Court is concerned with admissibility and proof of Ex.A.1. The further contentions that the appellant had substantial liquid cash and consequently, there was no necessity to borrow, cannot be considered by this Court, since there would be varying necessity to borrow for family expenses. Quantum and reasons would vary from family to family depending on circumstances that cannot be a matter to be adjudicated in a Court of law. Hence, the necessities have been pleaded ? marriage of daughter of the appellant and construction of house. The expenses involved are matters of speculation and I am not venturing into the same.

44. As a last resort, the learned Counsel for the appellant stated that the matter may be remanded back to the trial Court to decide the issues. The learned Counsel for the respondent stated that full opportunity has been granted to the appellant during trial and the appellant cannot raise any grievance over the procedure adopted during trial.

45. In *Ramasamy Vs. Ramachandran*, reported in 2009 (3) CTC 241, the scope of remand and the power of the Appellate Court to remand, and the circumstances to be ensured before directing remand of a case has been discussed. In the said judgment, it had been held that under Order 41, Rules 23 and 23 (a) of Civil Procedure Code, a clear finding has to be furnished by the Appellate Court for remanding the matter. In this case, the respondent has to stand or fall on Ex.A.1. I hold that the respondent stands.

46. In *P.Purushottam Reddy Vs. M/s. Pratip Steels Limited*, reported in 2002 (2) SCC 686, the Hon'ble Supreme Court has held as follows: ?In cases where additional evidence is required to be taken in the event at any one of the clauses of sub-rule (1) of Rule 27 being attracted, such additional evidence, oral or documentary, is allowed to be produced either before the Appellate Court itself or by directing any Court subordinate to the Appellate Court to receive such evidence and sent it to the Appellate Court. In 1976, Rule 23-A has been inserted in Order 41 which provides for a remand by an Appellate Court hearing an Appeal against a decree if, (i) the Trial Court disposed of the case otherwise than on a preliminary point, and

(ii) the decree is reversed in Appeal and a re-trial is considered necessary. On twin conditions being satisfied, the Appellate Court can exercise the same power of remand under Rule 23 ?A as it is under Rule 23. After the amendment all the cases of wholesale remand are covered by Rules 23 and 23-A. In view of the express provisions of these rules, the High Court cannot have recourse to its inherent powers to make a remand because, as held in *Mahendra V.Sushila*, AIR 1965 SC at 365 at 399, it is well settled that inherent powers can be availed *ex debito justitiae* only in the absence of express provisions in the Code. It is only in exceptional cases where the Court may now exercise the power of remand *de hors* the Rule 23 and 23-A. To wit, the Superior Court, if it finds that the judgment under Appeal has not disposed of the case satisfactorily in the manner required by Order 20, Rule 3 or Order 11, Rule 31 of the C.P.C. and hence it is no judgment in the eye of law it may set aside the same and send the matter back to re-writing the judgment so as to protect valuable rights of the parties. An Appellate Court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23-A or Rule 25 of the C.P.C. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided.?

47. In Rathnasamy Mudaliar and others Vs. Rasu, reported in 2000 (3) MLJ 89, it has been held as follows:

?From the conspectus of the various decisions referred above the following guidelines emerge. The Appellate Court must come to the conclusion on the pleading or on the evidence placed before it or on law that the judgment and the decree of the Trial Court are erroneous and therefore liable to be reversed or set aside. There must at least be a finding that there has been a misunderstanding of the pleadings of the parties or denial of an opportunity to place the materials they wanted to place before the Court in support of their respective claims. In the absence of such a finding, there can be no reversal or setting aside of the judgment and the decree of the Trial Court and consequent remand.?

48. In the instant case, the trial Court had examined in detail the evidence and the respondent had not complained that there has been denial of opportunity during trial. Witnesses have been examined and documents have been marked. As a matter of fact, a perusal of the notes paper of trial Court reveals that the issues were framed on 06.01.2015 and thereafter, the trial commenced on 23.02.2015, by filing proof affidavit of P.W.1, the witness was cross examined on 03.03.2015. P.W.2 and P.W.3 were examined in chief and cross examined on 10.03.2015. Thereafter, D.W.1 was examined on 17.03.2015 and was cross examined on 26.03.2015. The arguments were advanced on behalf of the respondent herein on 09.04.2015 and by the appellant herein on 10.04.2015 and the judgment was pronounced on 20.04.2015. It is seen that, at no point of time, the appellant raised an issue of denial of opportunity before the Lower Court. Consequently, I hold that the appellant had not made out any case to remand the issue back and as stated by the Hon?ble Supreme Court, an unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided. Following the said dictum, I also avoid it.

49. Consequently, on analysis of the documentary and oral evidence, I hold that the reasons afforded by the trial Judge in decreeing the suit does not suffer from any legal infirmity and consequently, I uphold the said judgment and decree and the appeal is to be dismissed with cost.

50. The decree and judgment in O.S.No.63 of 2014, passed by the learned III Additional District Judge, Thanjavur, is to be confirmed. The points are decided accordingly.

51. In the result, the appeal is dismissed with costs and the judgment and decree in O.S.No.63 of 2014, dated 20.04.2015, by the learned III Additional District Judge, Thanjavur, is confirmed. Consequently, connected Civil Miscellaneous Petitions are closed.

To The III Additional District Judge, Thanjavur..