

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA
Present: Smt. Anju Cletus, BSc, L.L.M., Additional Munsiff
Thursday, the 27th day of June, 2019/06th Ashada, 1941

OS 682/2016

Filed on 25.11.2016

Plaintiff:

Reghu Kumar, aged 47 years,
S/o Krishnankutty Nair, Varshalayam,
Kokkothamangalam P.O,
Ward-5, Thannermukkom Panchayath,
Cherthala East Muri, Kokkothamangalam Village,
Cherthala Taluk.

By Adv. Jose Cyriac

Defendant:-

C.P.Viswanathan, aged about 61 years,
S/o late Padmanabhan, Chemmezhathu House,
Kokkothamangalam P.O, Ward -5,
Thannermukkom Panchayath,
Cherthala East Muri, Kokkothamangalam Village,
Cherthala Taluk

By Adv. V.R.Rajesh

This suit having been finally heard on 26.06.2019 and the court on 27.06.2019 delivered the following:-

J U D G M E N T

Suit for money.

2. Plaintiff averments in brief are as follows: Defendant is the neighbour and friend of the plaintiff. Plaintiff is a gulf returnee and the defendant used to borrow money from the plaintiff. While so, on

the last week of February 2016, the defendant requested the plaintiff a hand loan of Rs. 3,00,000/- for the purpose of his house construction. The defendant made plaintiff believe that he will get a housing loan within 3 weeks and there will be funds in his account on 24-03-2016. The plaintiff lent Rs.3 lakhs on 01-03-2016 and towards discharge of the said debt, the defendant executed and issued to the plaintiff a cheque bearing No.569171 dated 24-03-2016 for Rs.3,00,000/- drawn on Alappuzha District Co-operative Bank, Cherthala Branch. When the cheque was presented through plaintiff's bank, the same was dishonoured with a memo on 20-04-2016 for insufficiency of funds in the account of the defendant. The plaintiff received the dishonor memo on 21-04-2016. On 22-04-2016, the plaintiff issued a demand notice to the defendant intimating the fact of dishonour of the cheque and demanding payment of cheque amount. The defendant refused to accept the notice and therefore it was returned. The defendant has not paid any amount covered by the cheque so far. The plaintiff is entitled to realise the cheque amount with 12% interest from the date of the cheque from the defendant and his assets. Hence, the suit.

3. Defendant filed written statement contending as follows.

The defendant has not borrowed Rs.3,00,000/- from the plaintiff for the purpose of his house construction as alleged. The defendant has not issued any cheque to the plaintiff promising that there will be sufficient funds in his account on 24-03-2016 as alleged. The plaintiff has not lent Rs.3,00,000/- to the defendant on 01-03-2016 as alleged. The defendant has not issued cheque No. 569171 of Alppuzha District Co-Operative Bank dated 24-03-2016 in discharge of such debt to the plaintiff. The fact that the plaintiff presented the cheque before the bank and it was dishonoured are false and cooked up for the purpose of the suit. The defendant is not liable to pay any interest on cheque amount to the plaintiff. The plaintiff is a money lender. In January 2015, the defendant had borrowed R.5,000/- from the plaintiff and as a security for repayment of such amount, the plaintiff obtained a blank cheque from the defendant. On 12-02-2015, the defendant repaid Rs.5,500/- to the plaintiff but the plaintiff refused to return such cheque apprehending 'Kubera Raid'. Thereafter, the plaintiff entered huge amount in the cheque and instituted this suit. All the allegations in the plaint are false and the suit is liable to be dismissed with cost.

4. The following issues arise for consideration in the plaint:-

1. Did the defendant issue cheque to the plaintiff in discharge of any debt as alleged by the plaintiff?
2. Is the plaintiff entitled to realize the amount from the defendant as prayed for?
3. Reliefs and costs.

5. On the side of the plaintiff, PW1 and PW2 were examined and Exts.A1 to A7 were marked. On the side of the defendant, DW1 was examined. There is no documentary evidence on the part of the defendant.

6. **Issues 1 to 3:** These issues are discussed together in order to avoid repetition of facts. It is admitted by both sides that the plaintiff and defendant are neighbours. The claim of the plaintiff is that he had lent Rs.3 lakh to the defendant on 1.3.2016 and the defendant on the same day executed and issued to the plaintiff Ext.A1 cheque dated 24.3.2016 for Rs. 3 lakh drawn on Alappuzha Dist, Co-operative Bank, Cherthala branch. The defendant during his cross examination as DW1 admitted that Ext A1 cheque bears the signature and Ext A1 was issued by him to the plaintiff. However, the defendant deposed that Ext A1 cheque was issued by him to the plaintiff in connection with another

transaction as a security for repayment of Rs. 5000/- which he had borrowed from the plaintiff. According S.118 of the Negotiable Instruments Act, until the contrary is proved, it has to be presumed that the holder of a cheque is a holder in due course and that such cheque was drawn and transferred for consideration. As the signature and ownership and act of issuance of the cheque stands admitted by the defendant it can be safely concluded that the same was transferred by the defendant in favour of the plaintiff. By virtue of S. 118 of the NI Act there is a presumption in favour of the plaintiff that he accepted the cheque for consideration. The defendant has no case that the plaintiff had obtained Ext.A1 cheque from the defendant by means of an offence or fraud or for unlawful consideration. So presumption can be drawn in favour of the plaintiff that, he is the holder in due course of Ext A1 cheque. So the burden is on the defendant who denies the whole transaction to bring in contra evidence to disprove the case of the plaintiff.

7. The defendant examined himself as DW1 and deposed that he borrowed Rs. 5,000/- for interest from the plaintiff in January 2015 and as a security for the said amount, he issued a signed blank cheque

to the plaintiff. Defendant also deposed that on 12-02-2015, he returned Rs.5,500/- to the plaintiff at the residence of the plaintiff. The defendant also deposed that the plaintiff did not return the security cheque apprehending 'Kubera Raid'. According to the defendant, such blank cheque was misused by the plaintiff to institute the present suit. Perusal of Exhibit A1 cheque would show that the entries such as the name of the payee, amount in figures and words and the date are in a particular handwriting which is apparently different from the handwriting in which the name of the defendant is written above his admitted signature. This shows that the entries in Exhibit A1 cheque are made by different persons. The plaintiff has examined PW2 to show that the name of the payee, date and amount has been entered by PW2 under the instruction of the defendant. PW2 deposed that plaintiff and defendant told him that there was such a transaction of Rs.3,00,000/- between the plaintiff and defendant. Therefore, PW2 has no direct knowledge regarding the alleged payment of money. His knowledge regarding the borrowal of Rs.3,00,000/- can only be treated as hearsay. PW2 deposed that the defendant requested PW2 to make entries in the cheque at the residence of the defendant. However, DW1, during his

cross examination denied the fact that he had any occasion to seek the assistance of PW2 to make any entries in the cheque for him as he himself could read and write. No explanation has come forth regarding the circumstances, if any, that compelled the defendant to seek the assistance of PW2 to make entries in Exhibit A1 cheque as alleged by the plaintiff. Even though the role of PW2 in the instant case is strange, it does not really tend to absolve the defendant from his burden to disprove the plaintiff's case, especially when the defendant has a specific case that Exhibit A1 cheque was given by him with respect a particular transaction which had taken place in January 2015. The specific deposition of DW1 in chief examination is that the amount borrowed by him from the plaintiff was returned with interest on 12-02-2015. The plaintiff has produced Ext A7 passport to show that he had left India on 30-01-2015 and returned only in May 2015. The seals of the airport authority showing the date of departure and arrival in Ext A7 passport substantiate this fact. In these circumstances, it cannot be believed that the defendant returned R.5,500/- to the plaintiff on 12-02-2015 and discharged his liability towards the plaintiff as claimed by him. The relevant entries in the passport make the defendant's case

improbable. The case of the defendant was that the he had returned such amount to the plaintiff in person at the residence of the plaintiff on 12.02.2015. So these evidence would show that the defendant has not succeeded in proving the circumstances on which he rely to contradict the version of the plaintiff. As the defendant could not prove the contrary, in the light of section 118 of the Negotiable Instruments Act, the presumption already drawn in favour of the plaintiff would sustain. Therefore, the plaintiff is entitled to a decree as prayed for. However, since the interest claimed by the plaintiff is unconscionable, a reasonable rate of interest can only be granted. Issues 1 to 3 are found in favour of the plaintiff.

In the result, the suit is decreed as follows.

1. The defendant is directed to pay Rs.3,00,000/- (Rupees Three Lakh only) to the plaintiff.
2. The defendant shall pay interest at the rate of 6% on Rs.3,00,000 (Rupees Three Lakh only) from the date of the suit till realization.

3. The defendant shall pay proportionate cost of the suit to the plaintiff.

Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court this the day of 27th day of June,2019.

Sd/-
Anju Cletus
Additional Munsiff

Appendix:-

Witness for the Plaintiff

PW1 :- Reghukumar dated 29.05.2019

PW2 :- Job Mathew dated 06.06.2019

Witness for the Defendant:-

DW1 :- Viswanathan dated 10.06.2019

Exhibit for the Plaintiff

A1 :- Certified copy of cheque No. 569171 dated 24.03.2016

A2 :- Certified copy of dishonour memo dated 20.04.2016

A3 :- Certified copy of intimation memo dated 21.04.2016

A4 :- Certified copy of lawyer's notice dated 22.04.2016

A5 :- Certified copy of postal receipt dated 25.04.2016

A6 :- Certified copy of certificate regarding delivery of the notice to accused dated 24.05.2016

A7 :- Certified copy of passport dated 18.01.2013

Id/-
Additional Munsiff

Sd/-
Additional Munsiff

