

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Smt. Aneesa.A, Munsiff

Friday the 22nd day of August,2025/31st Sravana,1947

IA.8/2025 in OS.443/2018

(Filed on 19.07.2025)

Petitioner/Defendant: Sudheer, aged 48 yrs,
S/o. Sainudheen kunju,
Aayirathil Veettil, Eruva Muri,
Pathiyoor Village.

(By Adv.A.ASharafudeen)

Respondent/Plaintiff: Ramachandran,
S/o. Achuthan,
Veluthidathu Veettil,
Keerikkad Thekku Muri,
Kerikkad Village.

(By Adv.U.Jabbarkutty)

This petition is coming on for final hearing on 22.08.2025 and the court of the same day passed the following.

ORDER

This is a petition filed by the defendant under Order XVIII and Rule 17 of the Code of Civil Procedure, 1908, to re-call and re-examine PW1 to PW4.

2. The gist of averments in the petition are as follows:-

Petitioner is the defendant in this case. This suit is filed for realisation of money under a cheque. The defendant has denied his signature in the cheque no.7388 of SBI. The complainant in C.C.5/2019 based on the same cheque has been filed a petition in that CC case for sending the cheque to FSL for expert opinion. The above petition was allowed by the court. But the complainant has withdrawn that petition in C.C.5/2019 without taking any action to sent the cheque to FSL. In this circumstances, it is highly necessary to cross examine PW1 to PW4 with respect to the matters in connection with the said cheque. Hence this application is filed to re-call PW1 to PW4 and to re-examine them. Thus this petition.

3. The respondent/ plaintiff filed objection contending *inter alia* as follows:- The petition is not maintainable either in law or on facts. All the averments in the petition except those which are specifically admitted in the objection are denied. The 1st paragraph in the affidavit is admitted. The 2nd paragraph in the affidavit is false and hence denied. In C.C.5/2019, the accused has raised unnecessary disputes to delay the proceedings. Therefore, the accused has also

failed to produce the documents required to verify his handwriting and signature. Thus the petition has been closed by this court. The plaintiff presented the above-mentioned cheque for encashment through the Bank and it was dishonoured with the endorsement "funds insufficient". Hence this suit is filed for realization of money. After filing this suit, in order to delay the judgment passed in this case, the plaintiff filed C.C.5/2019 before Judicial 1st Class Magistrate Court-II, Kayamkulam by stating false averments against the defendant and filed a petition in that C.C. for sending the cheque to FSL for comparing the handwriting and signature of the accused. There is no sufficient reasons stated in this petition to re-call and re-examine PW1 to PW4. The witnesses have been cross examined in detail by the defendant. The defendant delayed the consideration of the petitions by raising unnecessary disputes, but these petitions were allowed on 13.09.2023. Thereafter, the required fee was paid before the court and as per the court's instructions, the cheque and related documents were sent to FSL. Although the defendant was instructed several times to produce the relevant document of the defendant during the alleged period as per the instructions of the FSL Director,

the defendant has delayed the proceedings by not providing his handwriting and the documents in proper manner. This case was firstly included in special list on 09.02.2023. Since the defendant did not appear before the court on that day, the defendant was made ex parte and an ex parte decree was passed. Thereafter, the defendant filed a petition to set aside the ex-parte decree and the case was again included in the special list on 08.02.2024. Then the plaintiff gave evidence and the defendant informed that he is ready to settle the case. Accordingly, the case was referred to mediation and therefore, the case was removed from the list. However, as the defendant did not settle the case in mediation, this case was again included in the special list on 09.07.2024 and the plaintiff's witnesses were examined. Thereafter, from 05.03.2025, the defendant had sought time for evidence. The intention of the defendant is to delay the case proceedings and to cause hardships to the plaintiff. Therefore, this petition is liable to be dismissed with his costs.

4. The following points were formulated for consideration:-

1. Whether the petitioner is entitled for an order to re-call and re-examine PW1 to PW4 as sought for ?
2. What shall be the order as to reliefs and costs?
5. Heard both sides.
6. **Point No.1**:- According to the petitioner, he denied the signature in cheque.No.7388 of SBT, the suit document. Based on the said document, C.C.5/2019 is also pending before this court and in that case, the complainant filed a petition to send the alleged cheque to FSL for expert opinion. The court allowed that petition, but later, the complainant withdrew that petition. In these circumstances, PW1 to PW4 is to be re-called for the purpose of cross examination of the matters in connection with the said cheque. But the respondent/plaintiff vehemently opposed the application by stating that this petition is filed stating false averments. Due to the laches occurred on the part of the accused in C.C.5/2019 to produce documents with his handwriting and signature for sending the document to FSL, the matter was prolonged and later the complainant withdrew that petition. Once court allowed that petition in C.C.5/2019 and the complainant had taken steps to send the document to FSL and the

said document was also send to FSL. But the FSL Director returned the documents by stating that documents containing the handwriting of accused in the relevant period of issuance of the said cheque is necessary for the comparison. Hence court directed the accused several times to produce documents containing his handwriting and signature of the relevant period. But the accused refused to produce the document and prolonged the matter. Thus the petition was withdrew by the complainant. There was no laches on the part of complainant in C.C.5/2019. Once this case was listed on 09.02.2023 and an ex parte decree was also passed in favour of the plaintiff. Later, court set aside the ex parte decree on the petition filed by the defendant and thereafter, the case was listed on 08.02.2024. But while the evidence of plaintiff was going on, as per the submission of defendant about the settlement of the case, the case was removed from list and referred for mediation. But in mediation, the defendant did not settle the matter. Thus the case was again listed to 09.07.2024. Now the evidence of plaintiff in this case was completed and the case is posted for the evidence of defendant. Meanwhile, the petitioner filed this petition for prolonging the matter. In this case,

PW1 to PW4 were already cross examined. In this petition, no sufficient reason is stated for recalling those witnesses.

7. On perusal of records, now the evidence of plaintiff is completed in this case. Order XVIII Rule 17 of C.P.C grants the court discretionary power to re-call any witness who has been examined at any stage of the proceedings to ask questions for the purpose of clarifying ambiguities for resolving doubts in the evidence presented. The main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Here, on perusal of records, PW1 to PW4 were cross examined in detail. In the petition, there is no mention about any ambiguities in the evidence of witnesses. No sufficient reason is stated by the petitioner to re-call PW1 to PW4. Moreover, this is a case of the year 2018 and if this petition is allowed, it will cause undue hardships to the plaintiff. Thus I am not inclined to allow this petition. Therefore, point No. 1 is found against the petitioner.

8. **Point No. 2**:- In view of my discussions and findings on point No. 1, the petition is liable to be dismissed.

In the result, the petition filed by the petitioner to re-call and re-examine PW1 to PW4 is dismissed. No order as to costs.

(Dictated to the confidential assistant, typed by her, corrected and pronounced by me in open court on 22nd day of August, 2025.)

Sd/-
ANEESA.A,
MUNSIFF

APPENDIX - Nil.

Sd/-
MUNSIFF

// True copy //

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Typed by:Shafeek
Compd.by