

IN THE COURT OF THE MUNSIF, KOCHI

Present :-

Sri. Nishad Ibrahim, Additional Munsiff

Tuesday the 05th day of March, 2024/ 15th Phalguna, 1945

O.S. No. 153/2022

Plaintiff:-

Vincent Perera, S/o. Domenic, aged 66 years, Kalavaraparambil (H), Hospital Junction, Njarakal.

By Adv. P.V Vibin

Defendant:-

Leesha, aged 45 years, W/o. Saju, Kanichukunnath (H), Near Island Club, Njarakal

By Advs. C.B Subhash and Joby Kuriakose (Ex parte)

This suit coming on for final hearing before me on 22.02.2024 in the presence of above advocates concerned and having stood over for consideration to this day, the Court delivered the following:-

JUDGMENT

Suit for realization of money to the tune of ₹ 8,00,000/- (Rupees Eight Lakhs only) with interest @ 10% p.a from the defendant.

2. **The plaintiff summary is as follows:-** a) The plaintiff and the defendant are known to each other for the last 5 years. In the 1st week

of February 2019, the defendant came to the plaintiff's house at Njarakkal and demanded an amount of Rs.3,00,000/- (Rupees Three Lakhs only) for the purpose of arranging a visa for her son for the purpose of his higher studies at New Zealand. In consequent to the existence of a good and strong cordial relation between the defendant, the plaintiff and his wife, the plaintiff agreed to advance the amount of Rs.3,00,000/- (Rupees Three Lakhs only) and asked the defendant to come after two weeks. There was a prior understanding between the defendant and the plaintiff that the said amount shall be repaid within 11 months and that the transaction should be based on a written agreement to that effect. Accordingly, on 21.02.2019, the defendant came to the plaintiff's house and borrowed an amount of Rs.3,00,000/- (Rupees Three Lakhs only) by executing the agreement dated 21.02.2019 by undertaking that the defendant had willfully borrowed the amount of Rs.3,00,000/- (Rupees Three Lakhs only) as interest free hand loan, ensuring the plaintiff that the defendant should repay the said amount within 11 months of the date of the said agreement. On 10.05.2019, the defendant again approached the plaintiff and further demanded an amount of Rs.5,00,000/- (Rupees Five Lakhs only) and

convinced the plaintiff that it was essential to show an amount of at least Rs.5,00,000/- (Rupees Five Lakhs only) as the bank guarantee for immigration purpose for the defendant's son and she further appraised the plaintiff that the said bank guarantee amount shall be within 4 months. But the plaintiff was not amenable for the same at once. Subsequently, the defendant convinced and brain washed the plaintiff's wife by utilizing the existing cordial relationship between herself and the plaintiff's wife. Thereafter, the plaintiff decided to advance an amount of Rs.5,00,000/- (Rupees Five Lakhs only) to the defendant as per the plaintiff's wife's wish and asked the defendant to come by the end of the month.

b) Consequently, on 27.05.2019, the defendant came to the plaintiff's house and further borrowed an amount of Rs.5,00,000/- (Rupees Five Lakhs only) on executing another agreement dated 27.05.2019 by undertaking that the defendant shall repay the said amount within 4 months. The plaintiff advanced such a huge amount to the defendant not only because of the cordial relationship but also upon the fact that the defendant and her family were financially stable and secured, so as to repay the said debt. Moreover, the defendant's husband

was employed at abroad and was financially settled. The plaintiff tried to approach the defendant through phone several times after the expiry of the said agreements. But her phone was switched off. Thereafter, on 16.01.2020, the plaintiff approached the defendant and demanded repayment. At that time, the defendant sought a further time of three months for repayment and after the expiry of three months, the plaintiff again called the defendant and demanded the said amount. But the defendant was in an immense financial crisis due to the Covid pandemic lockdown and she further sought six months' time. After the expiry of six months, the plaintiff approached the defendant and demanded back Rs.8,00,000/- (Rupees Eight Lakhs only). But the defendant delayed the repayment on one pretext or the other by raising vague and silly reasons.

c) After the plaintiff's repeated demands, in the 1st week of February 2021, the defendant agreed the plaintiff to repay the said legally enforceable debt of Rs.8,00,000/- (Rupees Eight Lakhs only) within the last week of February. Thereafter, on 23.02.2021 the defendant came to the plaintiff's house and in order to discharge the said legally enforceable debt, the defendant had executed and issued

two cheques in the name of the plaintiff i.e., a cheque drawn from Andra Bank bearing no.000004 for an amount of Rs.3,00,000/- (Rupees Three Lakhs only) and another cheque bearing no.146668 for an amount of Rs.5,00,000/- (Rupees Five Lakhs only) drawn on SBI, Njarakkal branch. Further the defendant made the plaintiff to believe that the said cheques will get honoured on presentation and that there was sufficient fund in her account. Consequently, believing the defendant, on 24.02.2021, the plaintiff presented both the cheques at the Federal Bank, Njarakkal branch. But both the cheques were dishonoured for the reason 'fund insufficient'. The above fact came to the knowledge of the plaintiff through the dishonour memo issued by his bank dated 25.02.2021. The defendant had fraudulently cheated and looted an amount of Rs.8,00,000/-(Rupees Eight Lakhs only) from the plaintiff in order to make unlawful gain and there by the plaintiff suffered irreparable loss and hardships. Thereafter, the plaintiff issued a lawyer notice to the defendant demanding Rs.3,00,000/- (Rupees Three Lakhs only) and Rs.8,00,000/- (Rupees Eight Lakhs only) within the statutory period. But in order to make it unserved, the defendant was purposefully absent from her residence. She did not respond to it even

though the postal authorities intimated her twice (i.e., on 22.03.2021 and 23.03.2021). The defendant did neither repay the amount nor send any reply. Hence it became clear that the defendant had executed and issued the above cheques with the mala fide intention to cheat and defraud the plaintiff without keeping sufficient funds.

3. The defendant did not file written statement in spite of the repeated opportunities granted to her. Hence she was set exparte on 22.05.2023.

4. The plaintiff filed proof affidavit and was examined as PW1. Exts.A1 to A8 were marked.

5. Heard.

6. The uncontroverted proof affidavit along with the documents marked on the side of the plaintiff would entitle him to get a decree as prayed for in the plaint. No contra evidence was tendered. Hence the plaintiff is entitled to get a decree as prayed for.

In the result, the suit is decreed as follows:-

a) The defendant is directed to pay an amount of ₹ 8,00,000/- (Rupees Eight Lakhs only) to the plaintiff with interest @ 6% p.a.

from the date of suit till realization.

b) The defendant is also directed to pay the costs of the suit to the plaintiff.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 5th day of March 2024).

Sd/-
Nishad Ibrahim
Additional Munsiff

APPENDIX :-

Plaintiff's Exhibits:-

A1	23.02.2021	Certified copy of the Cheque bearing No. 000004 in A/c No. 245110100048007 of Andra Bank
A2	23.02.2021	Certified copy of the Cheque bearing No. 146668 in A/c No. 57031467400 of Andra Bank
A3	25.02.2021	Certified copy of dishonor Memo
A3(a)	25.02.2021	Certified copy of dishonor Memo
A4	21.02.2019	Certified copy of Agreement
A5	27.05.2019	Certified copy of Agreement
A6	20.03.2021	Certified copy of Lawyer Notice
A7	20.03.2021	Certified copy of Postal Receipt
A8	Nil	Certified copy of the outer page of the post cover.

Defendant's Exhibits:- Nil

Court's Exhibits:- Nil

Witness Exhibits Nil

Plaintiff's Witness:-

PW1 03.02.2024 Vincent Perera

Defendant's Witness:- Nil

Court's Witness:- Nil

Id/-
Additional Munsiff