

IN THE COURT OF THE MUNSIF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Friday the 20th day of June 2025/ 30th Jaishta, 1947

IA No. 7/2025 in O.S. No. 153/2022

Petitioner/Defendant:-

Leesha @ Lisha, W/o. Saju, aged 49 years, Kanichukunnath (H),
Manjanakkad, Njarakkal PO, Pin-682509.

By Advs. C B Subhash & Joby Kuriakose T J

Respondent/Plaintiff:-

Vincent Perera, S/o. Dominic, aged 68 years, Kalavaraparambil
House, Hospital Junction, Njarakal, Pin 682 509.

By Adv. P.V. Vibin

This petition come up for hearing before me on 18.06.2025 and the
court on 20.06.2025 passed the following:-

ORDER

This is an application filed under Order VIII Rule 8 and sec.
151 of the code of civil procedure 1908 seeking impound the
documents produced by the respondent.

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

The petitioner is the defendant in the suit. The suit is one for

realization of money based on cheque. The case of the plaintiff is that the defendant had borrowed an amount of Rs. 3,00,000/- (Rupees three lakhs only) on 21/02/2019 and Rs. 5,00,000/- (Rupees Five lakhs only) on 27/05/2019. As the defendant failed to repay the borrowed amount she executed 2 cheques in favour of the plaintiff for an amount of Rs. 3,00,000/- (Rupees three lakhs only) and 5,00,000/- (Rupees Five lakhs only) respectively. It is also the case of the plaintiff that at the time of borrowal of the amount the defendant had executed 2 agreements for an amount of rupees 3,00,000/- (Rupees three lakhs only) and 5,00,000/- (Rupees Five lakhs only) on 21/02/2019 and 27/05/2019. The petitioner's contention is that the said agreements produced before the court are insufficiently stamped. As per sec. 33 of Kerala Stamp Act, whenever a document is produced before the court and when it appears to the court that such an instrument is not duly stamped it can be impounded. Hence the court impounded the documents produced by the plaintiff/respondent in the suit.

3. The respondent filed the objection contending that the suit was listed for trial and at this juncture the petitioner filed IA 7/2025

with prayer of impounding of certified copy of the 2 agreements produced by the respondent/ plaintiff in the suit are insufficiently stamped and the said agreements should be impounded as per sec. 33 of Kerala Stamp Act 1959. The respondent contends that the above petition is filed as a delay tactic for protracting the trial. It is also contended that the description, nature and nomenclature of the document is not mentioned and whether such document comes under the schedule of the stamp Act is also not mentioned.

4. The points arise for consideration:-

1. Whether the petition can be allowed?
2. Relief and costs?

5. Heard both sides. Perused the documents.

6. **Point Nos.1 and 2:-** The 2 agreements allegedly executed by the petitioner on 21/02/2019 and 27/05/2019 is the issue involved in this petition. Admittedly, the suit is listed for trial. But on a perusal of the agreements it can be seen that these agreements were executed in stamp papers of Rs.100/- allegedly on the dates mentioned above. The agreements have to be executed in stamp papers of Rs.200/- (Rupees Two hundred only) so it can be concluded that the alleged agreements are insufficiently stamped. Moreover, the respondent

produced the certified copies of the alleged agreements along with the proof affidavit, filed in lieu of chief examination and sought to be marked as Ext.A4 and Ext.A5 in evidence. Needless to say, if the alleged agreements produced by the respondent are required to be marked in evidence, then the same has to be impounded. Admittedly, the alleged agreements are certified copies of the original agreements. Whether the insufficiently stamped certified copies can be impounded is also a question that is required to be answered. In **BEERAN HAJI v ALI (2023 1 KHC 232, 2023 1 KLT 296)**, the Hon'ble High Court of Kerala observed that “ 4.....*the admissibility of the instrument in evidence must satisfy the condition that the instrument bears a stamp of proper amount. In view of the law that in order to admit a document as a primary evidence or in secondary evidence it must bear a stamp of proper amount. The photocopy cannot admitted without proof of proper stamp duty borne on the photocopies. If photocopy is sought to be relied as secondary evidence and the court is of the opinion that the stamp duty borne on the photocopy is insufficient, the court will have to follow the procedure for impounding the instrument.*5..... *The stamp act completely shuts down adducing evidence of any nature of an*

instrument which is insufficiently stamped.” In the present case the alleged insufficiently stamped agreements are certified copies of the originals. Relying on the dictum laid down by the Hon’ble High Court of Kerala, as referred above, this court is of the view that the certified copies cannot be excluded from the purview of impounding , if the same is insufficiently stamped. Considering the facts and circumstances of the case, no order as to costs.

In the result, the petition is allowed as follows:-

The agreement dated 21/02/2019 and 27/05/2019 is impounded u/s 33 of Kerala Stamp Act as it is insufficiently stamped. The same can be accepted upon payment of requisite duty with penalty.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in the open Court on this the 20th day of June , 2025).

Sd/-

**Simi P Siju
Additional Munsiff**

APPENDIX : Nil

Id/-

Additional Munsiff

//True Copy//

Additional Munsiff

O R D E R

I.A. No.7/2025

O.S. No. 153/2022

Dated : 19.06.2025