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**IN THE COURT OF THE SUBORDINATE JUDGE, PERUMBAVOOR**

Present : Sri. Johnson M.I., Sub Judge

Tuesday, the 7<sup>th</sup> day of November, 2023 / 16<sup>th</sup> Karthika 1945

**O.S.No. 3/2020**

**Plaintiff :-**

M.M. Salim, aged 58 years, S/o Muhammed,  
Moothedam House, Allapra P.O, Kandanthara Kara,  
Vengola Village, Kunnathunad Taluk, Ernakumam District.

By Advs.M/s.K.A. Shameer &  
Raji M Balakrishnan

**Defendant:-**

Basheer Oor Pattil, S/o Muhammed, Aged about 42 years,  
Rifa Mahal, (Oorpattil), Kacherikuunnu, Navajeevan Road,  
Vallikunnu P.O, Malappuram District - 673314.

By Advs. M/s M.A. Ismail, Nasrul Haque K.K.,  
Shiji K.K. & Biji Mathew (Exparte)

This suit is coming on for hearing on 07.11.2023 in the presence of the above counsels and the court on the same day delivered the following :-

## **JUDGMENT**

Suit is for realisation of money.

2. Plaintiff's case in brief is as follows:- Plaintiff and defendant are close friends. Defendant borrowed a sum of Rs.11,65,500/- from plaintiff on 25-11-2019 agreeing to repay the same within 15 days. At the time of receiving the amount, defendant executed and issued a promissory note in favour of plaintiff. When plaintiff demanded back the amount, defendant executed and issued cheque bearing No.082413 of Federal Bank, Parappanangadi Branch for abovesaid sum dated 24-12-2019. When plaintiff presented the cheque for encashment, the same was returned dishonour due to insufficiency of funds in the account of defendant. Thereafter, plaintiff intimated the fact of dishonour of cheque to defendant over phone. But, defendant was not ready to repay the amount. Hence, for realisation of abovesaid amount with 12% interest, plaintiff filed the suit.

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3. Defendant filed written statement with contentions briefly stated as follows:- This court has no territorial jurisdiction to entertain this suit. Defendant has never seen the plaintiff. Plaintiff and defendant have no acquaintance with each other. Defendant never borrowed any amount from plaintiff. Plaintiff had no financial capacity to advance such a huge amount to defendant. It is not correct to say that, on 25-11-2019 defendant borrowed a sum of Rs.11,65,500/- from plaintiff. Defendant never executed and issued any document to plaintiff. Defendant was conducting a partnership firm at Saudi Arabia along with his friends namely, Nisajjudheen, Anwar and Shafi and in connection with that partnership firm, a sum of 50,000 Saudi Rial was borrowed from a close relative of plaintiff namely Ashraf. At that time, Ashraf obtained two blank signed cheques and signed white papers from defendant. After misusing abovesaid blank signed cheques and signed white papers, plaintiff falsely filed this suit. Plaintiff is not entitled to get any of the relief sought for in the suit. Suit is liable to be dismissed with cost of defendant.

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4. Upon the pleadings, following issues were raised for trial:

1. What is the amount, if any, to which plaintiff is entitled to realise from defendant?
2. What is the rate of interest, if any, to which plaintiff is entitled to?
3. Order as to cost.

5. After framing the required issues, both sides were given opportunity to take pre-trial steps and thereafter, suit was included in the special list and was posted to 07-11-2023 (today) for trial.

6. Today, plaintiff was present and was ready to adduce evidence. Defendant remained absent and hence, he was set exparte.

7. Plaintiff was examined as PW1 and Exts.A1 to A6 were marked from the side of plaintiff.

8. I heard the counsel for plaintiff.

9. **Issues 1 & 2:-** Both these issues can be considered together for avoiding repetition. Plaintiff was examined as PW1. He filed proof

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affidavit in terms of the plaint. Case of plaintiff is that, defendant borrowed a sum of Rs.11,65,500/- from defendant and executed and issued a promissory note in favour of plaintiff agreeing to repay the amount as and when required by plaintiff. Further case of plaintiff is that, when he demanded back the amount, defendant executed and issued cheque bearing No.082413 of Federal Bank, Parappanangadi for abovesaid sum dated 24-12-2019. Further allegation of plaintiff is that, when he presented the cheque for encashment, the same was returned dishonour due to insufficiency of funds in the account of defendant. It is further alleged by plaintiff that, even after demand from the side of plaintiff, defendant omitted to pay the amount. With the said allegations, plaintiff has filed the suit for realisation of abovesaid amount with 12% interest.

10. Plaintiff has produced promissory note dated 25-11-2019 and the same was marked as Ext.A1. Plaintiff has produced cheque dated 24-12-2019 and the same was marked as Ext.A2. Ext.A3 is the cheque return memo.

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11. PW1 has categorically stated in the proof affidavit that, defendant borrowed the sum of Rs.11,65,500/- from plaintiff and at that time, executed and issued Ext.A1 promissory note and executed and issued Ext.A2 cheque when plaintiff demanded back the amount. From Ext.A3, it can be seen that, Ext.A2 cheque was returned dishonour due to insufficiency of funds in the account of defendant. There is absolutely no evidence before this court to show that, defendant has repaid the amount. In considering the evidence of PW1 and Exts.A1 to A3, it can be seen that, defendant borrowed the sum of Rs.11,65,500/- and omitted to repay the same. Hence, plaintiff is entitled to get back abovesaid sum from defendant.

12. Plaintiff has claimed 12% interest for abovesaid amount. In my considered opinion, plaintiff can be allowed to realise abovesaid sum with 12% interest till the date of decree and thereafter with 6% interest till its realisation. Abovesaid interest is just and proper.

13 In the light of above discussion, both these issues are found in favour of plaintiff holding that, plaintiff is entitled to realise a sum of

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Rs.11,65,500/- with 12% interest from 25-11-2019 till the date of decree and thereafter with 6% interest till its realisation from the defendant and his assets.

14. **Issue No.3**:- Considering the facts and circumstances of the case, plaintiff is entitled to realise entire cost of the suit from the defendant. This issue is found accordingly.

In the result, suit is decreed. Plaintiff is entitled to realise the sum of Rs.11,65,500/- with 12% interest per annum from 25-11-2019 till the date of decree and thereafter with 6% interest till its realisation with cost from the defendant and his assets.

Dictated to the Confdl.Asst., transcribed and typed by her, corrected by me and pronounced in the Open court on this the 7<sup>th</sup> day of November, 2023.

Sd/-

JOHNSON M.I  
SUB JUDGE

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**APPENDIX**

**Plaintiff's Exhibits :-**

- A1 25.11.2019 Promissory note
- A2 24.12.2019 Cheque No. 082413, for Rs. 11,65,500/- issued from Federal Bank, Parappanangadi Branch, Malappuram.
- A3 24.12.2019 Cheque return memo issued from Canara Bank, Perumbavoor Branch.
- A4 28.12.2007 Certified copy of sale deed No. 3570/2007 issued from Sub Registrar Office, Parappanangadi.
- A5 01.01.2020 Certified copy of document No. 20/2020 issued from Sub Registrar Office, Parappanangadi.
- A6 28.10.2023 Encumbrance certificate. Issued from Sub Registrar Office, Parappanangadi.

**Defendants Exhibits :-** Nil

**Court Exhibits :-** Nil

**Plaintiff's Witnesses:-**

PW1 07.11.2023 M.M. Salim

**Defendants Witnesses :-** Nil

**Court Witnesses :-** Nil.

Sd/-  
Sub Judge

Akr  
Compd by.Pkm

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**JUDGMENT**

**Dated : 07-11-2023**