

**IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION),
MUVATTUPUZHA**

Present:- Sri. Atheek Rahman Civil Judge (Senior Division)
Friday, the 13th day of September 2024/22nd Bhadra 1946

O.S No. 6/2022

Plaintiff:-

Sandeep George, aged 52, S/o George residing at
Palakkattu House, Vazhakkulam P.O, Manjaloor Village,
Muvattupuzha Taluk.

By Advs. Gigi Peter & M. M Siraj

Defendant:-

Jobish Joseph, aged about 43, S/o Joseph (Iype) residing at
Tharaniyil House, (Crisilin Villa) Arikuzha Kara, do P.O .,
Manakkadu Village, Thodupuzha Taluk.

By Advs. Bibin Eldhose, Dalbi Emmanuel &
Sonu Augustine (Exparte)

The suit is filed under section 26 read with order 7 rule 1 of
CPC 1908 for realisation of money and is coming on for final hearing
on 11th day of September 2024 in the presence of above counsels and
the court on the 13th day of September 2024 delivered the following:-

JUDGMENT

Suit is for realisation of money.

2. Brief averments in the plaint are as follows:- The plaintiff
and the defendant are known to each other. The defendant purchased
properties from the plaintiff. There were earlier financial transactions
between the plaintiff and the defendant and it was amicably settled

through mediation. The defendant borrowed ₹10,00,000/- on 05.08.2016 as a hand loan from the plaintiff and the defendant executed and issued a post-dated cheque stating that he is intending to sell his immovable property. Further, the defendant demanded ₹15,00,000/- from the plaintiff stating that his property will be sold soon and the sale agreement will be executed on 27.03.2017. Moreover, the defendant gave an assurance that he will return the entire amount on 30.03.2017. The plaintiff paid ₹12,00,000/- on 24.10.2016. So, the plaintiff paid a total amount of ₹22,00,000/- to the defendant. On 24.10.2016 defendant received back the post dated cheque and issued another post dated cheque bearing No.815862 of the Indian Overseas Bank Muvattupuzha branch dated 30.03.2017 for ₹22,00,000/-. Later, plaintiff's friends informed that the defendant and his wife tried to obtain illegal gain from Foreign Charitable agency under the colour of reformation of village areas in Idukki District. It is also came to the notice of the plaintiff from Malayala Manorama daily that the defendant and his wife were arrested by the police in connection with illegal activities. Immediately, the plaintiff contacted the defendant and demanded back the amount borrowed from the plaintiff and on that occasion defendant disclosed about the police

cases and other personal problems. The defendant informed that the buyer is ready to purchase the property and plaintiff can present the cheque for ₹22,00,000/- issued by the defendant for encashment on 05.04.2017 and there will be sufficient funds in the account. On believing the words of defendant, the plaintiff presented the cheque on 5.4.2017 through his account maintained with the State of Bank of India Vazhakulam branch. But, the cheque returned unpaid for the reason funds insufficient in the account of the defendant. On 6.5.2017, plaintiff issued a notice to the defendant demanding the cheque amount. The said notice, was received by the defendant himself. But the signature in the acknowledgment card seems to be his mother. Even after the issuance of notice, the defendant did not turn up. Subsequently, the plaintiff filed a complaint before the Judicial First Class Magistrate Court-I Muvattupuzha under the provisions of Negotiable Instruments Act 1881 and all the original documents were produced by the plaintiff in that court and hence the certified copies of documents are produced in this case. Now, the defendant is trying to alienate the property to third parties in order to defeat and delay the execution of the decree that may be passed against him. Hence, the suit is filed for permitting the plaintiff to realise an amount of

₹31,57,000/- (Rupees thirty one lakh fifty seven thousand only) together with 12% interest from the date of suit till realisation for the principal amount of ₹22,00,000/- from the defendant, by creating charge on the plaint schedule property, with costs.

3. The defendant filed written statement and required issues were settled. When the case posted for evidence, the defendant remained absent and the court has decided to proceed with the suit as exparte against him.

4. The plaintiff was examined as PW1. Exts.A1 to Ext.A15 documents were marked.

5. Heard the learned counsel for the plaintiff.

6. PW1 filed proof affidavit in tune with the pleadings in the plaint. From the unchallenged oral evidence of PW1 and the documents including Ext.A1 to Ext.A15, plaintiff could prove his case. In this case, the plaintiff is seeking a decree creating charge on the plaint schedule property.

7. A charge on an immovable property can be created by acts of parties or by operation of law as provided in Section 100 of the Transfer of Property Act, 1882. No contract between the plaintiff and the defendant for the creation of charge on the plaint schedule

property for the amount covered by the cheque has been produced. Hence, I am of the view that plaintiff is not entitled to get a decree creating charge upon the plaint schedule property.

In the result, the suit is decreed in part with costs as follows:-

The plaintiff is allowed to realise ₹31,57,000/- (Rupees thirty one lakh fifty seven thousand only) with interest @ 9% per annum for the principal amount of ₹22,00,000/- from the date of the suit,ie., 25.01.2022, till the date of decree and thereafter, with future interest @ 6% per annum on the cheque amount of ₹22,00,000/- till its realisation, from the defendant.

Dictated to the Confidential Assistant, typed by her directly into computer, corrected and pronounced by me in the Open Court, this the 13th day of September 2024.

Sd/-
ATHEEK RAHMAN
CIVIL JUDGE (SENIOR DIVISION)

APPENDIX-

Plaintiff's Exhibits :-

- A1 30.03.2017 Certified copy of cheque for Rs. 22,00,000/- bearing No. 815862 drawn of Indian Overseas Bank, Muvattupuzha Branch.
- A2 18.04.2017 Certified copy of Cheque return memo of Indian Overseas Bank
- A3 06.05.2017 Certified copy of Lawyers notice
- A4 06.05.2017 Certified copy of Postal receipt
- A5 07.09.2018 Certified copy of A/D card
- A6 23.06.2017 Certified copy of Criminal Complaint in C.C 986/2017 of JFCM 1- Muvattupuzha

- A7 15.04.2013 Certified copy of deed No. 565/2013/1 of Kalloorkkad S.R.O.
- A8 14.06.2024 Certified copy of Judgment in C.C. 986/2017 of JFCM I, Muvattupuzha.
- A9 10.06.2016 Certified copy of Sale deed No. 699/16 of SRO, Kalloorkkad, issued from JFCM -1, Muvattupuzha.
- A10 19.08.2016 Certified copy of Sale deed No. 978/1/2016 of SRO, Kalloorkkad, issued from JFCM -1, Muvattupuzha.
- A11 07.06.2016 Certified copy of Sale deed No. 689/1/16 of SRO, Kalloorkkad, issued from JFCM -1, Muvattupuzha.
- A12 03.08.2016 Certified copy of Sale deed No. 926/16 of SRO, Kalloorkkad, issued from JFCM -1, Muvattupuzha.
- A13 14.06.2016 Certified copy of Sale deed No. 708/1/16 of SRO, Kalloorkkad, issued from JFCM -1, Muvattupuzha.
- A14 05.01.2016 Certified copy of Sale deed No. 14/16 of SRO, Kalloorkkad, issued from JFCM -1, Muvattupuzha.
- A15 28.01.2013 Certified copy of Sale deed No. 142/13/1 of SRO, Kalloorkkad, issued from JFCM -1, Muvattupuzha.

Defendants' Exhibits :- Nil

Court Exhibits :- Nil

Plaintiff's Witness :-

PW1 11.09.2024 Sandeep George

Defendants' Witness :- Nil

Court Witness :- Nil

Sd/-
CIVIL JUDGE (SENIOR DIVISION)

Copied by : svb/-
Compd by : ss/-

//True Copy//

(By Order)

Sheristadar

Copy of Judgment in

O.S. 6/2022

Dated: 13.09.2024