IN THE COURT OF III ADDL. DISTRICT JUDGE, KOLLAM
Present : Sri. M.C. Antony, III Addl. District Judge, Kollam.
On Tuesday the 9th day of June, 2026/ 19th day of Jeshtam, 1947.

A.S. No.18/2024

Between
Appellant:- Santhini, aged 51 years, D/o. Gopinathan Achary,
Sree Vinayakam Veedu, Kizhakkekkara,
Kottarakkara Village, Kollam.

By Adv. Nithya R.S

Respondent:-
Jiji, aged 50 years, S/o.Joseph, Glory Bhavan,
Panaveli Cherry, Vettikavala Village, Kottarakkara Taluk,
Kollam.

By Adv. Panambil S. Jayakumar

O.S. No. 11/2021:-

Between
Plaintiff:-
JIji
And
Defendant:-
Santhini

This appeal filed against the Judgment and Decree in Sub Court, Kottarakkara in Original Suit No. 11/2021 on 28-11-2023. This Appeal coming on for hearing before me on 09.06.2026 and on the same day the court delivered the following:

JUDGMENT

This is an appeal filed under Order XLI Rule 1 of the Code of Civil Procedure by the defeated defendant in O.S. 11/2021 on the file of the Sub Court, Kottarakara.

2. The suit is one for realization of money.

3. The plaint averments in brief are as follows:- The plaintiff and defendant are well known to each other for several years. Defendant borrowed a sum of ₹ 38,00,000/- in cash in multiple installments for the educational purpose and treatment of her daughter. The defendant had also borrowed a sum of ₹ 2,00,000/- on 27.08.2020 by executing a promissory note in favour of the plaintiff, agreeing to repay the whole amount together with interest. In spite of repeated demands, the defendant failed to pay the amount. A sum of ₹ 41,49,004/- is due to the plaintiff. The suit is for realization of the said amount.

4. The defendants filed written statement contending as follows:- The suit is not maintainable either in law or on the facts. The suit document, namely the promissory note, is false and forged. It is not in the

handwriting of the defendant. It is false to say that the defendant's daughter signed the promissory note as a witness. The defendant has no daughter named Kripa. The plaintiff got acquainted with the defendant through a Pentecostal church at Valakam in Kottarakara. Defendant had participated in the church meetings as invited by the plaintiff. The plaintiff prompted the defendant to join the church and the defendant received financial benefits from the church. She received amount from the church and not from the plaintiff. The plaintiff has no financial capacity to advance such a huge amount to the defendant as stated in the plaint. Since the defendant affiliated with the church, the plaintiff and defendant had only minimal opportunities for interaction. Consequently, there existed no close or intimate relationship between the plaintiff and the defendant. The church extended a financial contribution to the defendant for charitable activities. The said amount was routed through the plaintiff, and the defendant utilized the said amount for charity works and for the common good of the people of the locality. She never used the said fund for her own purpose. The allegation that the plaintiff had given cash for the educational and treatment purposes of her daughter is false. The allegations regarding advancing amount on different occasions and finally ₹ 2,00,000/- on

27.08.2020 are false and hence denied. Although the defendant received a portion of fund from the plaintiff, she is not obliged to return them, since the funds were not provided by the plaintiff personally but were contributed by a church. The defendant is not liable to pay any amount to the plaintiff, and he has not executed a promissory note as alleged. Therefore, the suit is liable to be dismissed.

5. PW1 to PW3 were examined and Exts.A1 to A16 were marked on the side of the plaintiffs. DW1 was examined and on the side of defendants. Exts.X1 series and X2 series were also marked.

6. The trial court, vide judgment dated 28.11.2023, partly decreed the suit with proportionate costs, allowing the plaintiff to realise a sum of ₹11,40,000/- with interest at the rate of 6% per annum from the date of the suit till realisation of the amount. Aggrieved by the said judgment and decree, the defendant filed this appeal on the following, among other grounds. The trial court has categorically found that the plaintiff failed to prove the financial transaction of ₹38,00,000/- and execution of a promissory note on borrowing an amount of ₹ 2,00,000/-. Since the entire action rests upon the promissory note, the suit ought to be dismissed upon

the finding that the execution of the promissory note has not been proven. There are no pleadings by the plaintiff to the effect that PW2 and PW3 had advanced any amount to the defendant on behalf of the plaintiff. Therefore, the judgment and decree are unsustainable.

7. Heard both sides.

8. The parties herein shall be referred to in terms of their status and rank in the trial court.

9. The points that arise for the consideration in this appeal are:

1) Is the plaintiff entitled to raise any amount from the defendant?
2) Whether the impugned judgment and decree of the trial court is liable to be set aside, varied or modified?
3) What is the order as to costs ?

10. **Point Nos.1 and 2**: For the sake of convenience these points are considered together. The case of plaintiff is that the defendant is well acquainted with her and that on different occasions, the defendant borrowed a sum of ₹38,00,000/-. Finally she received a sum of ₹2,00,000/- and on receiving the said amount, she executed a promissory note for the whole

amount. Despite repeated demands, the defendant failed to repay the amount or the interest.

11. The plaintiff was examined as PW1 and he has reiterated the plaint averments in his examination-in-chief and also given the details of the payment made by him to the defendant. He would say that the amount was transferred by bank transfer from his Bank account in ICICI Bank, Kottarakkara branch to the account of the defendant in South Indian Bank, Kottarakkara. Exhibit A1 is the statement of account showing the transactions. Apart from the said bank transactions, the defendant had received amount on various occasions by cash. Finally, on 27.08.2020 he borrowed a sum of ₹ 2,00,000/- and issued the promissory note for a sum of ₹40,00,000/- which is marked as Exhibit A11. The defendant totally denied the transactions and issuance of the promissory note as alleged by the plaintiff. Thus, the plaintiff tried to prove the execution of Exhibit A11, the promissory note, through PW2, one of the attesting witnesses, who is none other than the daughter of the plaintiff. Going by the evidence of this witness, she had not seen the execution of the document. She had signed the document on the next day and she had not seen the executant putting signature in the document. Thus, the trial court has found that execution of

Exhibit A11 document is not proved. It is further to be noted that though plaintiff tried to prove the transactions by producing the bank account details, the amount seen transferred from the account of plaintiff to the account of defendant comes to ₹10,75,000/- only. Moreover, there is no convincing explanation from PW1 for advancing a huge amount as claimed by him to defendant who has no strong financial base for repayment. Further, even when the defendant failed to return the amount of ₹38,00,000/- said to have been advanced, the plaintiff claims to have advanced a further sum of ₹2,00,000/- to obtain a promissory note, which does not inspire confidence. Thus, the plaintiff failed to prove consideration for Exhibit A11, the promissory note. S much so, I am in agreement with the findings of the trial court that the plaintiff failed to prove the execution of Exhibit A11, the promissory note, either by direct evidence or through circumstantial evidence. More over, the said findings of the trial court is not under challenge in this appeal and the plaintiff has not preferred any appeal challenging the said findings of the trial court. Therefore, this court is not called upon to sit in appeal against the said findings of the trial court regarding Exhibit A11 document.

12. Now, the short question arise for consideration in this appeal is whether the trial court is justified in partly decreeing the suit on the basis of the original transactions. No doubt, the suit was filed based on Exhibit A11, the promissory note. But even if the plaintiff fails to prove the execution of the said promissory note, based on which the suit was instituted, he can still succeed if he is able to prove the original transaction. Exhibit X2 is the statement of account of the plaintiff's bank account with the ICIC Bank. The trial court has taken the pain to calculate the total amount that has been transferred from this account to the account of the defendant and it is found that the total amount comes to ₹ 10,75,000/-. The transfer of the amount from the account of plaintiff or its quantum is not seriously disputed by the defendant. But, learned counsel for the defendant would say that the mode of transfer of the amount claimed by the plaintiff has not been stated in the plaint and the bank transactions has been introduced during trial. According to him, the amount seen transferred to the account of the defendant in Exhibit X2 is not a personal transaction between the plaintiff and the defendant, but it was a transfer of amount by the Indian Pentecostal Church, to which she is affiliated, for charity purposes. The transfer was made through the account of the plaintiff, who

was also a member of the said church. But in the cross-examination, DW1 denied her membership in the church and she affirmed that she is following Hindu faith. She would say that plaintiff had told her that he receives amount from the church for charity purposes. She denied her receiving any such amount for charity through the plaintiff. But immediately thereafter she changed her version and stated that Gigi had transferred the amount of the church to her account. Though, the defendant would claim that the amount transferred to her from the account of plaintiff was actually transferred by the church for charity purposes, there is absolutely no evidence to substantiate the said contention. Though, the defendant in the written statement and in her examination-in-chief would say that she was member of a Pentecostal Church, so as to make her eligible to receive the said amount from the Church, she turned around in the cross-examination and denied her membership in the Church. At the same time she clarified that the amount transferred from the account of accused is the amount from the Pentecostal Church. So, there is no clarity in the pleadings or evidence of defendant regarding the amount transferred from the account of plaintiff. The fact that a sum of ₹ 10,75,000 has been transferred from the account of plaintiff to that of the defendant is not disputed. When that be so, as long as the defence version is not substantiated, the only possible conclusion is that defendant had received the said amount from the plaintiff. The defendant has no case that she had discharged the said liability. So much so, despite the fact that the plaintiff failed to prove the execution of Exhibit A11, the promissory note, and consideration for the said negotiable instrument, the liability to the tune of ₹ 10,75,000 has been independently proved by the plaintiff.

13. The plaintiff also would claim that, in addition to the amount transferred from his account, a sum of ₹ 25,000 and another sum of ₹ 40,000 had been paid to the defendant by one of his his friends and his wife at the instruction of the plaintiff and that plaintiff had to repay the amount. Therefore the plaintiff demands said amount also from the defendant. The friend of plaintiff who transferred the amount to defendant was examined as PW3. He has deposed in support of the said case set up by the plaintiff.

14. No doubt, the plaintiff can realize the amount, if it is proved that the third party had transferred the amount to the defendant at his instruction or on his behalf. Section 2(d) of the Indian Contract Act gives legal sanction for the plaintiff to realize such an amount paid by a third party to

the defendant. But it is to be noted that, the plaintiff has not pleaded that any such amount had been paid by PW3 to the defendant at his instruction or on his behalf or that he had repaid the amount to PW3. Such a case has been newly introduced by the plaintiff at the time of trial, without any pleadings. Such an evidence led by the plaintiff without pleadings could not have been accepted by the trial court. But, the trial court has added the said amount allegedly transferred from the account of PW3 and his wife also with the amount due to the plaintiff and decreed the suit for a sum of ₹ 11,25,000. Interestingly, no evidence has been adduced by the plaintiff or PW3 to show that any amount said to have been paid or transferred from the account of PW3 to the account of defendant has been paid back by the plaintiff. PW3 has not taken any legal action against the defendant as well. In such circumstance, even if it is assumed that some amount has been transferred from the account of the PW3 to that of the defendant, it cannot be readily inferred that it was on behalf of the plaintiff or at his instruction for him to realise the amount from the defendant. It is more so when such a case was introduced for the first time in the evidence stage without pleadings. Therefore, the trial court has erred in passing a decree to the extent of allowing realisation of the amount said to have been paid by PW3 and his wife. The amount transferred from the account of plaintiff to that of the defendant comes to ₹ 10,75,000/-. The plaintiff is entitled to realise that amount alone. Therefore, to the extent of adding ₹ 65,000 along with a sum of ₹ 10,75,000 due to the plaintiff, the judgment of the trial court has to be interfered with and the judgment and decree is to be modified to reduce the decree amount to ₹ 10,75,000/-. In all other respect, this court does not find any impropriety or illegality in the judgment and decree of the trial court. The points are partly found in favour of the appellant.

15. **<u>Point No.3</u>** : Normally, the costs shall follow the event. But in this case, the appellant could not succeed to completely get rid of the decree suffered by him. At the same time, he could succeed in the appeal in part. Considering these facts and circumstances of the case, this court is of the view that the plaintiff is entitled only for proportionate costs in the proceedings before the trial court. In the facts and circumstance of the case, the parties shall bear their respective costs in the appeal.

In the result, the appeal is partly allowed. The judgment and decree of the trial court is modified as follows. The defendant shall pay a sum of ₹ 10,75,000 to the plaintiff and the amount shall carry interest at the rate of 6% per annum from the date of suit till the date of realisation. Respondent/plaintiff is entitled to proportionate costs in the proceedings before the trial court. Parties shall bear their respective costs in the appeal.

Dictated to the Confidential Assistant, transcribed and typed by her, revised and corrected by me and pronounced in the open court on this the 9th day of June, 2026.

Sd/-
M.C. Antony
III Addl. District Judge

APPENDIX : NIL

Sd/-

III Addl. District Judge.

Typed by : Smitha. N
Compd. by : Harikrishnan U.G

Judgment
AS No.18/2024
Dated:- 09/06/2026