

IN THE COURT OF THE PRINCIPAL SUB JUDGE, KOLLAM

Present :Smt. Jisha Mukundan. R, Principal Sub Judge

On Friday, the 21st day of July, 2023/ 30th day of Ashadam,1945

OS. 46/2022

Between

Plaintiffs:-

1. P. Mohanan Potti, S/o Padmanabhan Potti, aged 60 years, residing at Padmam, Kadavoor, Perinad.P.O, Kollam Taluk.
2. Girija.S, W/o Mohanan Potti, aged 49 years, residing at Padmam, Kadavoor, Perinad.P.O, Kollam Taluk.

(By Adv. Smt. K.G. Bindhu)

And

Defendant:-

- 1 Beenamol G.S @ Beena, W/o Anilkumar, aged about 42 years, Thattayil Veedu, Kadavoor, Perinad.P.O, Kollam from Anamika, Saralavilasam, Mylode, Pooyappally.P.O, Pin-691537, Kollam.

(By Adv. Sri. C.G. Suresh Kumar)

This suit filed U/o.VII R1 r/w sec 26 of CPC before this court coming before the court for final hearing on 07.07.23 and on 21.07.23 the court passed the following.

JUDGMENT

Suit for realization of money and consequential reliefs.

2. Averments in the plaint, in brief, are as follows: The defendant, who is having close acquaintance with the second plaintiff, approached the second plaintiff in the first week of January, 2019 and requested her to arrange a financial assistance of ₹. 50,000/- for meeting the retirement expenses of her husband. When the second plaintiff informed the defendant that she is not having so much money to lend to the defendant, defendant requested the second plaintiff to hand over any of her gold ornaments so as to be pledged by the defendant and to avail loan. She made the second plaintiff believe that she will return the gold ornaments within a short period. As such, the second plaintiff gave 2 sovereigns of gold ornaments to the defendant. Thereafter on several occasions, the defendant received gold ornaments weighing 33 sovereigns from the second plaintiff which was collected by the first plaintiff, out of her hard earned money for his daughter's marriage purpose. The defendant received the gold ornaments by making the 2nd plaintiff believe that she will return the said 35 sovereigns as new fashioned gold ornaments. Since the plaintiff's daughter's marriage was proposed to be conducted on 15/06/20, the 2nd plaintiff consented to it. When the second plaintiff

demanded the defendant to return the gold ornaments in the last week of May 2020, the defendant told the second plaintiff that one of her relatives had given some gold to her and the same has to be converted into gold ornaments so as to enable her to return the gold ornaments to the plaintiffs, she is in urgent need of ₹. 5,00,000/- for remitting the GST and requested the second plaintiff to arrange ₹. 5,00,000/- as loan to the defendant on her agreeing to repay the said amount and to return the 35 sovereigns of gold ornaments within one week before the date of marriage of the daughter of the plaintiff. Since the second plaintiff in her eagerness to get back the gold ornaments at the earliest, she entrusted ₹. 5,00,000/- with the defendant as a short loan by arranging ₹. 2,00,000/- from the wife of her brother in law and by availing ₹. 3,00,000/- as loan from her father's brother. Though the defendant received ₹.5,00,000/- from the second plaintiff as aforesaid and agreed to return the gold ornaments and the said amount within a short span of time, she did not either repay the said amount or return the gold ornaments. In the said circumstances, the plaintiffs were compelled to postpone the marriage of their daughter to 30.10.2020. Eventhough the plaintiffs repeatedly demanded the defendants to repay the said amount and to return the gold ornaments, she was only protracting the matter under one or other ruse. Finally one week before the marriage of the daughter of the plaintiffs, the defendant telephoned the plaintiff's daughter and promised her that new gold ornaments

will be given on the marriage date itself. Believing words of the defendant, on the date of marriage of their daughter, though plaintiffs waited the defendant till Muhurtham, she did not honour her commitment and did not either return the gold ornaments or repay the amount. This resulted in severe mental pain and agony. Thereafter, the plaintiffs demanded the defendant to return the gold ornaments received by her from the second plaintiff and to repay the amount at the earliest and informed her that her failure will compel them to initiate legal steps against her. The defendant then acknowledged her aforesaid liabilities and agreed to repay the said amount and to return 35 sovereigns of gold ornaments on 30/11/20 itself. Further on 2/11/2020, the defendant executed a deed in the presence of the plaintiff in her own handwriting describing it as a "Samathapathram" acknowledging receipt of 35 sovereigns of gold from the second plaintiff and agreeing to return the gold on 30/11/20 itself or its value as on that date and handed over the said deed to the plaintiffs. But at that time, the defendant cunningly evaded to make mention of anything regarding receipt of the amount of ₹. 5,00,000/- in the said deed. The defendant again failed to keep up her promise to the plaintiffs regarding repayment of the amount and return of the said gold ornaments and it resulted in the plaintiffs taking steps to initiate legal actions against the defendant. On getting knowledge of it, the defendant approached the plaintiffs and in discharge of her said liabilities, she has drawn

cheque No. 037277 dated 18.02.21 for ₹. 20,00,000/- in faovur of the second plaintiff on an account maintained by the defendant with Central Bank of India, Anchalumoodu Branch and issued it to the second plaintiff and gave assurance to the second plaintiff that the said cheque will be honoured as and when presented. When the second plaintiff attempted to present the said cheque for collection through her account, it came to her notice that while filling the said cheque by the defendant in her own hand writing, she willfully made an overwriting in the figure column in the said cheque with the sole intention to cheat the plaintiffs. Consequently, it resulted in the return of the said cheque by the bank at the very outset itself. Though the said fact was intimated to the defendant by the second plaintiff and demanded her to repay the said amount of ₹ 20,00,000/-, she has not cared to pay the said amount and hence the plaintiffs filed a complaint against the defendant before the Anchalumoodu police and the police registered crime No. 0654/2021 against the defendant for offence punishable under sections 415, 417, 418, 420 and 423 IPC. Evenafter repeated requests and demands by the plaintiffs, the defendant has not paid the said amount of ₹. 20,00,000/-. In the aforesaid circumstances, plaintiffs caused to issue a register notice through their lawyer to the defendant on 18/05/2022 detailing all the aforesaid facts and circumstances and demanding payment of the amount of ₹20,00,000/- to the plaintiffs within three days of the receipt of the

said notice. The plaintiffs are entitled to realise ₹. 20,00,000/- with interest at the rate of 12% per annum from 18/12/21 along with all the costs of the said notice from the defendant and from all her assets, both movable and immovable properties. In the said circumstances, plaintiffs are left with no other remedy than to file this suit. The plaintiffs are entitled to realise amount of ₹. 20,00,000/- (Rupees Twenty Lakhs Only) with interest at the rate of 12% per annum from the defendant from 18/02/21 till realisation. Hence this suit.

3. Despite proper service of summons from the Court, the defendant failed to file written statement and resist the suit. Hence defendant set exparte on 20.10.2022

4. On the side of the plaintiffs, PW1 was examined and Exts. A1 to A5 were marked and the plaintiff's evidence was closed. PW1 filed affidavit in lieu of chief examination and she reiterated the contents in the plaint and the same remains unchallenged and un rebutted.

5. Thus, the plaintiffs have succeeded in proving the case through available evidence and is therefore, entitled to get a decree. The plaintiff is also entitled to realize a bank rate of interest from the date of filing of the suit.

6. *In the result,*

It is ordered and decreed that the defendants do pay the plaintiff an amount of ₹. 23,02,000/- (Rupees Twenty Three Lakhs Two

Thousand Only), with interest pendente lite at the rate of 6% per annum and with a future interest at the rate of 9% p.a. till the date of full and final payment.

It is also decreed that the defendants do pay costs, permissible under law, to the plaintiff.

(Dictated to Confl. Assistant, typed by her, corrected and pronounced by me in open court on this the 21st July, 2023)

Sd/-
Jisha Mukundan. R.
Principal Sub Judge.

APPENDIX :

Exhibits For the Plaintiff:

A1	-	21-11-2020	Attested copy of 'Sammathapathram'.
A2	-	18-02-2021	Copy of cheque.
A3	-	09-07-2021	Copy of FIR in Crime No.654/2021.
A4	-	18-05-2022	Advocate notice.
A5	-	18-05-2022	Postal receipt.

Exhibits For the Defendant: NIL

Witness for the Plaintiff:

PW1	05-07-23	Mohanan Potti.
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Witness for the Defendant: NIL

//True Copy//

Sd/-
Principal Sub Judge

Sd/-
Jisha Mukundan.R
Principal Sub Judge

Typed by. Sabitha.T
Comp. By.