

IN THE COURT OF THE PRINCIPAL MUNSIF, KOLLAM.

Present : Kum. Athira R.S. Panicker Principal Munsiff.

On Monday, the 27th day of February, 2023/8th day of Phalguna, 1944.

O.S. No. 793/2022

Between

Plaintiff:-

D. Babu, aged 52 years,
S/o Damodaran, Puthenkandathil Veedu,
Kavadippuram Nagar-28,
Asramam Cherry, Asramom P.O,
Kollam East Village, Kollam Taluk,
Kollam 691002.

By Advs. Sri. G. Gopakumar,
Smt. Chithra.B, Sri. Gokul P. Raj &
Smt. Anantha Lekshmi. M. S.

And

Defendant :-

Naseela Beevi.S., aged 44 years,
W/o Kabeer, Irfan Manzil,
Kochalummoodu,
Valavupacha P.O, Chithara Village,
Kottarakkara Taluk, Kollam 691 559.

(Exparte)

This suit is filed by the plaintiff under Section 26 Order VII Rule 1 of the Code of Civil Procedure for Realization of Money. This suit coming on for final hearing before me on 27-02-2023 and the court on the same day delivered the following:-

JUDGMENT

Suit for realization of money.

2. **Plaint averments, in brief, is as follows:-** The plaintiff is an electrical sub contractor by profession. Defendant is a close friend of the plaintiff's sister Krishnakumari. On 01/08/2022, the defendant came to the plaintiff's house and borrowed an amount of Rs. 6,00,000/- (Rupees six lakhs only) and issued a cheque for said amount, bearing No. 056629 dated 13/10/2022 drawn on the Indian Bank, Chithara Branch in favour of the plaintiff. At the time of issuing the cheque on 01/08/2022, the defendant had given assurance to plaintiff that at the time of presentation of the cheque for encashment on due date, there will be sufficient funds in the account of the defendant. The plaintiff presented the cheque for collection through his bank, the Karnataka Bank Ltd., Kollam branch on 13/10/2022. But the cheque was returned unpaid on 14/10/2022 for the reasons "Funds Insufficient". Plaintiff received the intimation from his bank on 25/10/2022. The factum of dishonour was immediately notified to the attention of the defendant. In spite of repeated demands, the defendant did not care to settle the outstanding due. Thereafter, on 28/10/2022 the plaintiff sent an Advocate notice by registered notice demanding the amount covered by the said cheque but she did not repay the amount. Now the plaintiff reliably learnt from one Bindhumol. S that the defendant in order to delay and defeat the realization of amount from her and from her assets by the plaintiff, attempting to secretly dispose of her property and misappropriate the sale consideration without discharging her liability to the plaintiff. Hence this suit was filed for recovering the cheque amount with 12% interest per annum with future interest from the defendant and her assets.

3. In spite of due service of summons the defendant did not enter appearance. Hence on 14/12/2022, the case against the defendant was ordered to be proceeded exparte.

4. The plaintiff filed affidavit in-lieu of examination-in-chief and was examined as PW1. Exts. A1 to A4 were marked on the side of the plaintiff. Ext.A1 is the original cheque no. 056629 dated 13/10/2022. Ext. A2 is the cheque return memo dated 17/10/2022. Ext. A3 is the office copy of the Advocate notice dated 28/10/2022. Ext. A4 is the postal receipt dated 28/10/2022.

5. The points that arise for consideration are :

1. Whether the plaintiff is entitled to get a decree for realisation of money as prayed for?

2. Relief and costs ?

6. Heard the learned counsel for the plaintiff and perused the records.

7. **Point No.1:** According to PW1, the defendant approached the plaintiff and borrowed an amount of Rs. 6,00,000/- from the plaintiff and issued a cheque for Rs. 6,00,000/- in favour of the plaintiff. When the cheque was presented for collection, it was dishonoured and returned back. Thus the plaintiff sent a demand notice through his lawyer on 28/10/2022. But the defendant did not cared to repay the same. Ext. A1, original cheque no. 056629 dated 13/10/2022 , shows that the defendant executed a cheque for Rs.6,00,000/- in favour of the plaintiff. Ext. A2, cheque return memo shows that the plaintiff presented the cheque for collection, but it was dishonoured and returned back. Ext. A3, office copy of the Advocate notice, shows that the plaintiff demanded the loan amount from the defendant. Ext. A4, postal receipt, shows that the demand notice was sent to the defendant.

8. In this case, there is no challenge to the pleadings and evidence adduced from the side of the plaintiff. The evidence clearly established that the defendant is

indebted to the plaintiff and the plaintiff is entitled to realize the sum of Rs. 6,17,600/- from the defendant and her assets. The plaintiff is claiming 12% interest per annum for the plaint amount till the date of realization. If future interest is granted for the plaint amount at the rate of 12% per annum, the component on interest will become disproportionate to the component of the principal sum. Hence this court is not inclined to grant the rate of interest as claimed by the plaintiff. It is found that 6% interest for the principal sum from the date of the decree till the date of the realization is proper. This point is decided accordingly.

9. **Point No.2:-** The plaintiff is constrained to sue for the amount that is legally due. Hence, there is no reason to deviate from the rule 'costs shall follow the event'. This point is also answered infavour of the plaintiff.

In the result, the suit is decreed as follows:

The plaintiff is entitled to realise an amount of Rs.6,17,600/- (Rupees six lakhs seventeen thousand and six hundred only) together with interest, at the rate of 12% per annum for the principal amount from the date of the suit till the date of the decree and, at the rate of 6% per annum from the date of decree till the realization from the defendant and her assets, with costs.

(Dictated to the Confdl. Assistant, transcribed and typed by her corrected and pronounced by me in the open court on this the 27th day of February, 2023.)

Sd/-
Athira R.S. Panicker,
Principal Munsiff

Appendix:-

Exhibits marked from the side of the Plaintiff :-

A1	13-10-2022	Original Cheque No. 056629
A2	14-10-2022	Cheque Return Memo
A3	28-10-2022	Office copy of Advocate Notice
A4	28-10-2022	Postal Receipts.

Exhibits marked from the side of the Defendant : NIL

Witness examined from the side of the Plaintiff :

PW1 08-02-2023 Babu.

Witness examined from the side of the Defendant : - NIL

Id/-
Principal Munsiff

//True Copy//

Athira R.S. Panicker,
Principal Munsiff.

Typed by : Marybindu.C.
Compared by : Sajeena.A.G.