

IN THE COURT OF THE MUNSIFF, KOTTARAKARA.
Present :- Smt. Sumey Chandran, Munsiff.
Tuesday the 22nd day of February, 2022/ 3rd day of Phalguna, 1943.

OS. No.34/2020
Between

Plaintiff:- Bijeesh S. Pillai, aged 41 years,
S/o Sadasivan Pillai. P, residing at Kailas,
Nediyavila, Kunnathoor P.O., Pin-690 540,
Kunnathoor Village, Kunnathoor Taluk,
Kollam District.

And

Defendant:- Ganguly. V.R, aged 27 years, D/o Venugopal,
Nirappuvilayil, Nedumon P.O., Nedumon Muri,
Ezhamkulam Village, Adoor Taluk,
Pathanamthitta District.

By Adv. K. Rajendran

This suit is filed U/S. 26 and Order VII, Rule 1 of CPC 1908, for recovery of money, coming on for hearing before me on 22.02.2022 and on the same day the court delivered the following:-

JUDGMENT

Suit is for money.

Plaintiff case is as follows:-

1. Plaintiff is the counsel of the defendant in 3 cases which were pending before the Hon'ble Family Court, Pathanamthitta. Defendant

approached the plaintiff at the last week of September 2018 along with her mother in order to entrust her cases to plaintiff by giving a new engagement to plaintiff. They informed the plaintiff that three cases viz.OP 464/17, MC No.97/17 and OP HMA No.1130/17 are pending before the Hon'ble Family Court, Pathanamthitta and they unfortunately entrusted in competent lawyer to contest the cases.

The defendant and her mother, plaintiff advised them to relinquish , if they are so particular in relinquish the case and in search of a promising lawyer, the vakkalath from the then lawyer and to meet the plaintiff at his office on a convenient day. Defendant and her mother reached at the office of the plaintiff at Ghandimukku, Kottarakkara on 03.10.2018 at about 2.00 PM and they discussed about the case in detailed and the defendant decided to engage the plaintiff as her Advocate for contesting her above said cases in the above said court. Then they asked about the Advocate fees for contesting the above said 3 cases in Family Court at Pathanamthitta. Plaintiff demanded ₹ 50,000/- (Rupees Fifty thousand only) each as Advocate fees for the above 3 cases along with ₹ 10,000/- (Rupees Ten thousand only) as office expenses. In that discussion with the plaintiff, defendant was not ready to agree with the demand of the plaintiff and she opined that as per the information collected by her, now a days Advocates are charging 10% of decree amount as Advocate fees and she

is also ready to pay the same as fees and defendant entered in to a mutual contract with the plaintiff. Defendant entered in to a mutual contract with the plaintiff and defendant agreed orally to the plaintiff to give him 10% of the amount receiving by her at the time of disposal of the above said cases, regardless of the fact that whether the cases were disposed on merit or on a compromise. At the time of signing three Vakkalath in the above said cases defendant gave ₹ 3,000/- (Rupees Three thousand only) to the plaintiff as office expenses and informed and convinced the plaintiff that the entire fees will be given in lump sum at the time of receiving the suit amount. Defendant also agree to give TA of ₹ 1,000/- (Rupees One thousand only) to the plaintiff on all the posting days of his appearance in the said cases in Pathanamthitta.

The plaintiff appeared before the Hon'ble Family Court for the defendant in all the above said cases on each and every posting days. Plaintiff successfully contested the trial in M.C No.97/2017 and an amount of ₹ 7,000/- (Rupees Seven thousand only) to the defendant and ₹ 3,000/- (Rupees Three thousand only) to her minor ward was awarded. Plaintiff filed a very detailed objection in the O.P (HMA) No.1130/2017. When the Hon'ble Family Court awarded a total amount of ₹ 10,000/- (Rupees Ten thousand only) per month as maintenance to the defendant and her child, then also her husband come forwarded for a settlement and all the cases were settled on 15.05.2019 before

the Mediation Centre and passed an Award. As per the award OP No.464/17 was settled for an amount of ₹ 12,00,000/- (Rupees Twelve lakhs only). The MC was settled for a lumpsum amount of ₹ 2,50,000/- (Rupees Two lakhs and Fifty thousand only) and an amount of ₹ 1,40,000/- (Rupees One lakhs and Forty thousand only) was deposited in the joint name of defendant and her husband in the Vallicode Service Co-operative Bank. Apart from this defendant's husband agreed to give an amount of ₹ 3,000/- (Rupees Three thousand only) to the minor ward.

For materialising the award entered into between the defendant and her husband, plaintiff was present at Pathanamthitta Family Court on 06.12.2019, 09.12.2019, 10.12.2019. On those days no amount was given by the defendant as TA. Defendant took a firm stand that her house hold items kept in her husband's house will be handed over to her in the presence of her Advocate and she compelled for the presence of the plaintiff there at that time. Thus the plaintiff was present at that time of handing over the items.

On 10.12.2019 defendant's husband handed over ₹ 12,50,000/- through bank transfer and made a direct payment of ₹ 2,00,000/- to her and ₹ 1,40,000/- was deposited in the Vallicode Service Co-operative Bank towards the market value of the gold ornaments of the minor ward. On that day plaintiff prepared the proof affidavit and demanded the defendant to sign the affidavit.

On that day the parents and the brother of the defendant were present along with the defendant at court hall. Defendant and her father went to the SBI Parakodu branch for conforming the transfer of the amount in her account. Defendant with his parents and her husband went to the Service Co-operative bank Vallicodu and deposited ₹ 1,40,000/- (Rupees One lakhs and Forty thousand only) in their joint account and obtained the FD certificate. After completing the formalities defendant come out of the court hall and rushed towards their car along with her brother by saying "എന്റെ മക്കനെ അംഗൻവാടിയിൽ നിന്ന് വിളിക്കണം അവൻ അവിടെ കിടന്ന് കരയുന്നു, ഞാൻ അവനെ വിളിച്ച് കൊണ്ട് ഉടനെ വരാം" and went away from there. Plaintiff and defendant's parents were waiting there for about one hour. Then plaintiff talked about his fees to the parents of the defendant. Then they informed that the direct payment made by the husband of the defendant is in defendant's bag and requested the plaintiff to remain therefore half an hour and they tried to contact the defendant in telephone. But defendant not attended the call. Then her parents expressed their inability and handed over the Fixed deposit Receipt obtained by them from the Service Co-operative Bank to the plaintiff and convinced him that her daughter is a person of indifferent character. When the defendant failed to fulfill her agreement and promises plaintiff tried to contact her through telephone on several times but she was not even ready to attend the call.

Plaintiff is legally entitled to realise an amount of ₹ 1,59,000/- (Rupees One lakh and Fifty nine thousand only) as Advocate fees from the defendant as per the contract escaped them. The illegal act of the defendant amounts to an act of cheating.

The original of the Fixed Deposit Certificate issued from the Vallicodu Service Co-operative Bank, which is handed over by the parents of the defendant on 10.12.2019 is producing along with the suit. Though the FD Certificate is in the joint name of the defendant and her husband, the entire amount is entitled to the defendant. It was deposited in the joint name with a condition that her husband will relinquish his one half claim over the FD amount within one month after obtaining the order of lifting the attachment of the property of his parents and withdrawing the MC before JFMC-I, Kottarakkara. Plaintiff came to know from reliable source that defendant approach the husband to withdraw the amount even without producing the original FD certificate in the bank. Hence the suit.

2. Issue summons to the defendant but she did not field any written statement. Hence she was set exparte.

3. Plaintiff was examined as PW1 and Exts.A1 to A3 were marked. From the evidence of plaintiff and from Exts.A1 to A3 the plaint claim stands proved.

In the result, the suit is decreed as follows:-

1. Defendant is directed to pay an amount of ₹ 1,59,000/- (Rupees One lakh and Fifty nine thousand only) to the plaintiff with 6% interest from the date of suit till date of realisation.

2. The plaintiff is allowed to realise the costs of the suit from the defendant.

Dictated to the Confdl. Asst., transcribed and typed by her corrected and pronounced by me in open court on this the 22nd day of February, 2022.

**SUMEY CHANDRAN
MUNSIFF**

APPENDIX:-

Exhibits marked for the plaintiff:-

A1 : 10.12.2019 : Original of fixed deposit certificate No.26437

A2 : 22.11.2018 : Certified copy of chief affidavit.

A3 : 28.02.2019 : Certified copy of Order in MC. No.97/2017.

Exhibit marked for the defendants:- Nil.

Witness examined for the plaintiff:-

PW1 : 14.02.2022 : Bijeesh S. Pillai.

Id/- Munsiff.

Typed by : Animole. T.C

Compared by :

MUNSIFF.