

**IN THE COURT OF THE MUNSIF OF KANNUR**

Present: Smt. Sushama P., Principal Munsiff, Kannur  
Thursday, the 20<sup>th</sup> day of November, 2025 (29<sup>th</sup> Karthika, 1947)

**ORIGINAL SUIT No.195/2022**

Kannur Business Associates, LLP G'Mall, ]  
South Bazar, Kannur, 670002, represented by its ]  
Designated Partner and Managing Partner, ] Plaintiff  
K.P.Jayakumar, S/o.Kumaran Kunhipurayil, ]  
aged 68 years, residing at Hindustan Bhavan, ]  
Aramkottam, P.O.Alavil, Kannur, 670008. ]

Vs.

1. Kannur Darbar G'Mall, South Bazar, Kannur, ]  
670002, represented by its Managing Partner, ]  
Abdulla K.A, S/o.Mammad.V.V, aged 46 years, ]  
residing at Kunnumpurath, Ekkarathepurayil, ]  
Irikkur, Kannur, 670593. ]
2. Abdulla.K.A, S/o.Mammad.V.V, aged 46 years, ]  
Managing Partner, Kannur Darbar, G'Mall, South ]  
Bazar, Kannur, 670002. ]
3. Mr.Shoukathali, S/o.Abdulla, aged 44 years, ] Defendants  
Partner, Kannur Darbar, G'Mall, South Bazar, ]  
Kannur, 670002. ]
4. Mr.Rajesh Pozhath, S/o.Govindan.K, aged 38 ]  
years, Partner, Kannur Darbar, G'Mall, South ]  
Bazar, Kannur, 670002. ]
5. Mr.Prasoon.B, S/o.Manikkoth Ravindranathan, ]  
aged 38 years, Partner, Kannur Darbar, G'Mall, ]  
South Bazar, Kannur, 670002. ]

This Suit coming on the 12<sup>th</sup> day of November, 2025 for hearing before me in the presence S/Sri.K.K.Balaram, K.Babu, M.R.Hareesh and Krishnapriya.P.C, Advocates for plaintiff; Sri.Shajahan.J, Advocate for 3<sup>rd</sup>

defendant; S/Sri.P.V.Midhun and K.Prasadan, Advocates for 5<sup>th</sup> defendant; S1 to D3 were called absent and set ex parte and having stood over for consideration till this day; the court delivered the following:

### **J U D G M E N T**

Suit for realization of money.

2. The plaint averments in brief are as follows:- The plaintiff is a registered Limited Liability Partnership Firm. The business of the plaintiff firm is the sale of household items, groceries, vegetables etc., by running supermarket. The defendant used to purchase groceries and other items from the plaintiff on credit basis. The plaintiff is keeping true and correct account of the daily transactions in the regular course of business and as on 3-4-2019 an amount of Rs.6,54,152/- is in balance to be paid by the defendants to the plaintiff. As part of the repayment of the above said amount, the defendants issued cheque No.830354 dated 8-2-2019 for Rs.3,20,297/- and cheque No.830356 dated 20-2-2019 for Rs.3,29,181/- at South Indian Bank Limited, Kannur Mele Chovva are executed and signed by the 2<sup>nd</sup> defendant for and on behalf of all the defendants. The above said cheques were issued by the defendants upon the assurance that the cheques will be honoured on presentation. Believing the words of the defendants, the plaintiff presented the cheque No.830354 dated 8-2-2019 for Rs.3,20,297 of South Indian Bank Ltd., Kannur Mele Chovva Branch through the plaintiff's bank Punjab National Bank. But the same was returned unpaid with the endorsement 'funds insufficient' in the account of the defendants to honour the cheque. The plaintiff got the knowledge about the return of the cheque on 3-4-2019.

Notice dated 24-4-2019 was issued by the plaintiff to all the defendants intimating them about the dishonour of the cheque and demanding the cheque amount. But the defendants did not accept the notice and same was returned with endorsement unclaimed. The defendants are well aware of the contents of the notice. The defendants executed and issued the cheques to the plaintiff to discharge the amount owed by them to the plaintiff. All the defendants are jointly and severally liable to pay the amount. The cheque for Rs.3,20,297/- was dishonoured on presentation and after issuing statutory notice the plaintiff has filed a complaint u/s 138 of Negotiable Instruments Act against the defendants before the JFCM-I, Kannur. Subsequently the said complaint was transferred to JFCM-IV, Kannur and the same was pending as STC 16/2022. Even though the defendants are legally liable to pay the amount to the plaintiff, they are delaying the payment. Under these circumstances, the plaintiff has no other option for getting the amount due to the plaintiff than resorting to the assistance of this court. Hence, this suit.

3. The defendant No.4 filed written statement contending as follows:- This defendant states that the plaintiff knows the address of the defendant No.4 and wilfully the plaintiff had filed the suit against the defendant in the address of the closed shop. There was dispute between the plaintiff and the defendant with respect to the accounts of grocery that the plaintiff had added more amount in the accounts and complaint was filed before Kannur Town Police Station. After that the defendant had not bought any product from the plaintiff's shop but some cheques of the defendants company were in the hands of the plaintiff and that cheque was misused by the plaintiff against this defendant. The plaintiff had not produced proper accounts to prove their

case. The plaintiff has not produced GST records or the audited account statement before this court to prove their case. Kannur Darbar is a partnership firm conducting hotel business. There were business transactions between the plaintiff and defendant. As part of business transaction to clear the accounts related to provision store the defendant had issued signed cheque but after the closing of the said hotel run by the defendants the plaintiff had misused those signed cheques due to that the plaintiff as not able to produce proper accounts related to that supermarket. The plaintiff misused the cheque and filed complaint u/s 138 of Negotiable Instruments Act. Now the evidence of the complaint is over. On fear of failure of case which were filed by them under NI Act they have filed this suit. Documents produced by the plaintiff is forged document produced for the purpose of this case only. The cheque date mentioned in the list of document is wrong. They have not produced any documents to prove how much is the amount paid by the defendant to the plaintiff. Calculations for fixing the court fee is not correct. Hence the suit is liable to be dismissed.

4. The defendant No.5 filed written statement contending as follows:- This defendant admits that the defendant has purchased groceries and other items from the plaintiff on credit basis. This defendant admits that the plaintiff has filed a complaint u/s 138 of N.I Act against the defendants for an amount of Rs.3,20,297/-. He admits that another case STC 11/2022 is also pending before this court for an amount of Rs.3,29,181/-. Kannur Darbar was a partnership firm conducting hotel business. There were business transactions between the plaintiff and defendant. As part of business transaction to clear the accounts related to provision store the defendant had

issued signed cheque but after the closing of the said hotel run by the defendants the plaintiff had misused those signed cheques. Due to that the plaintiff is not able to produce proper accounts related to that supermarket. The plaintiff misused the cheque and filed complaint u/s 138 of Negotiable Instruments Act. Now the evidence of the complaint is over. On fear of failure of case which were filed by them under NI Act they have filed this suit. Documents produced by the plaintiff is forged document produced for the purpose of this case only. The cheque date mentioned in the list of document is wrong. They have not produced any documents to prove how much is the amount paid by the defendant to the plaintiff. Calculations for fixing the court fee is not correct. Hence the suit is liable to be dismissed.

5. The defendant Nos.1 to 3 were set exparte.

6. The following issues were framed for trial:-

1. Whether the defendants executed cheque No.830354 for Rs.3,20,297/- and cheque No. 830356 for Rs.3,29,181/- in favour of the plaintiff?

2. Whether the plaintiff is entitled to realize Rs.4,48,028/- from the defendants?

3. Interest and costs?

7. On the side of the plaintiff, PW1 was examined and Exts.A1 to A16 were marked. On the side of the defendants, Exts.B1 and B2 were marked.

8. Heard both sides.

9. **Issue Nos.1 and 2:-** PW1 is the accountant of the plaintiff business concern and he is conversant with the facts of the case. It is a registered Limited Liability Partnership Firm engaged in the business of

household articles, grocery and vegetables. The Managing Partner Jayakumar is representing the firm. The defendants used to purchase goods from the plaintiff. The plaintiff is maintaining accounts of day to day transaction. Till 3-4-2019 the defendants had purchased goods for Rs.6,54,152/-. Towards the said liability the 2<sup>nd</sup> defendant on behalf of other defendants executed and issued a cheque bearing No.830354 for Rs.3,20,297/- dated 8-2-2019 and a cheque bearing No.830856 for Rs.3,29,181/- dated 20-2-2019 upon assurance that cheque will be honoured on presentation. Accordingly cheque for Rs.3,20,297/- dated 8-2-2019 was presented before South Indian Bank, Mele Chovva Branch. The cheque was dishonoured with memo stating the reason funds insufficient. A lawyer notice was sent to all the defendants intimating the dishonour of cheque and demanding the cheque amount. But the notices were returned as unclaimed. The defendants wilfully refused the notice knowing the contents. The cheque was issued towards discharge of legally enforceable debt. All the defendants are liable for the same. Against the dishonour of cheque complaint was filed u/s 138 of Negotiable Instruments Act which is pending as STC 16/2022 before JFCM Court, Kannur. Since transaction is of commercial nature the plaintiff is entitled to get 12% interest. With regard to dishonour of cheque for Rs.3,29,181/-, complaint is filed u/s 138 of NI Act and is pending as STC 11/2022.

10. PW1 denied the case of defendant Nos.4 and 5 that the cheque issued as security during business transaction was misused. A certified copy of cheque bearing No.830356 dated 20-2-2019 is marked as Ext.A1. Certified copy of cheque return memo is marked as Ext.A2. Office Copy of

lawyer notice is marked as Ext.A3. Ext.A4 is the certified copy of postal receipt evidencing the sending of notice to the defendant No.1. Ext.A5 is the certified copy of postal receipt evidencing the sending of notice to the defendant No.2. Ext.A6 is the certified copy of postal receipt evidencing the sending of notice to the defendant No.3. Ext.A7 is the certified copy of postal receipt evidencing the sending of notice to the defendant No.4. Ext.A8 is the certified copy of postal receipt evidencing the sending of notice to the defendant No.5. Exts.A9 to A13 are the returned notices. Ext.A14 is the certified copy of partnership agreement. Ext.A15 is the certified copy of bank account statement. Ext.A16 is the certified copy of certificate of incorporation.

11. The defendants denied the liability alleged by PW1. Case of defendants is that cheque issued during business transaction was misused by the plaintiff. By knowing the fact that the defendants firm was closed notices were sent.

12. During cross examination PW1 stated that at the time of filing the suit Darbar hotel was not closed. The plaintiff firm has GST Registration. PW1 admits that when there is transaction between two concern having GST Registration, the transaction is to be B2B transaction. The details of B2B transaction is to be uploaded in the website of GST. PW1 stated that in the instant case the invoice is raised as B2C transaction. Hence it is not unloaded in the website. The capital commitment of the plaintiff firm is Rs.3 crores. The accounts shall be audited and uploaded in the NCA portal. According to PW1, In audit report of 2018-19 in Form No.8 the details of debtors will be mentioned. In the uploaded audited account the name of

defendants firm is mentioned and the liability of Rs.6,54,152/- is written in the specified column.

13. The transaction between the plaintiff firm and the defendants concern is admitted by the defendants. The case of plaintiff is that an amount of Rs.6,54,152/- is due from the defendants and towards the discharge of said liability two cheques were issued. Cheque dated 20-2-2019 for Rs.3,29,181/- is the subject matter of this case. All the documents produced are the certified copies obtained from STC 11/2022. A complaint u/s 138 of N.I Act is filed by the plaintiff against the defendants.

14. The learned counsel for the plaintiff filed notes of argument and would contend that no oral evidence has been adduced by the defendants to substantiate their case that the cheques issued were misappropriated by the plaintiff. From the evidence given by PW1 and Exts.A1 to A16 the plaintiff has duly proved the case. The goods sold by the plaintiff to the defendant are exempted from GST. Therefore the contention that GST was not paid is not applicable or relevant to the transaction in question. The absence of GST payments does not imply any illegality or irregularity. The plaintiff sold the goods directly to the defendants who is a retailer. The manner of sale was not in the form of final transaction. The dishonour of cheque due to insufficient funds does not negate the existence of debt or the liability of the defendants to pay the amount owed. The issuance of cheque and subsequent dishonour are consistent with the defendants acknowledgment of debt. In the absence of any oral evidence by the defendants the presumption remains in favour of the plaintiff regarding the existence of debt and validity of transaction. The plaintiff has produced sufficient documentary evidence to

prove the case. The suit is within time as the cause of action arose only after the date of issuance of cheque.

15. The counsel for the defendants filed notes of argument contending that the plaintiff is examined in STC 11/22 and STC 16/22 as PW1 on 7.6.2022. Certified copy of deposition of PW1 is marked as Ext.B1. He stated that he is ready to produce the input credit uploaded in the GST portal. PW1 deposed a contradictory statement that cases were initiated prior to the closure of defendants firm.

16. It is to be noted that if a transaction is done as B2B instead of B2C the implication is that the purchaser will not get benefit of input tax credit. The intention of B2B transaction is that it can be used as declaration by the buyer to claim input tax credit. In case of B2C transaction the total turn over will be uploaded in the GST portal without mentioning the invoice details. In the instant case the accused firm is running a restaurant and tax rate is 5%. So the accused firm cannot take credit on any input or input services. So if the transaction is B2B or B2C it will not effect the accused firm. The supplier firm is the complainant in this case .If the complainant has paid tax for the entire turn over as reflected in the accounts, it is not the headache of the accused. So the contention of the learned counsel for the accused that there is no transaction as per GST Act and there is no legally dischargeable debt, cannot be accepted.

17. In **Iswar Bhai C. Patel Alias Bachu Bhai Patel v. Harihar Behera And Another** reported in 1999 AIR SC 1341, the Hon'ble Apex Court held that if the defendant does not enter into the witness box to make statement on oath in support of his pleadings set out in the written statement

an adverse inference would arise that what he had stated in the written statement was not correct. In **Iqbal Basith v. Subbalakshmi reported in 2020 (6) KLT Online 1083 (SC)**, it is held that having not entered into the witness box and having not presented himself for cross examination, an adverse presumption has to be drawn against him on the basis of the principles contained in illustration (g) of Section 114 of Evidence Act 1872.

18. In **Vidhyadhar v. Mankikrao**, it is held that a party to the suit does not appear into the witness box to state his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Counsel.

19. Though the defendants had produced deposition of PW1 and PW2 in STC 11/2022 and STC 16/2022 and marked as Exts.B1 and B2, those documents were not put to PW1 during cross examination .Simply producing the certified copy of deposition in connected case is not sufficient to contradict the statement. Hence no purpose is served in producing Exts.B1 and B2 before the court. The defendants did not mount the box to challenge the evidence given by PW1. The evidence given by PW1 is not discredited during cross examination.

20. Order 30 Rule 3 of Civil Procedure Code provides that where persons are sued as partners in the name of their firm, the summons shall be served either (a) upon any one or more of the partners or (b) at the principal place at which the partnership business is carried on within India upon any person having, at the time of service, the control or management of the partnership business there, as the court may direct, and such service shall be

deemed good service upon the firm so sued, whether all or any of the partners are within or without India. Provided that in the case of partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within India whom it is sought to make liable.

21. In the instant case the contention is that the defendants firm was closed at the time of filing the suit and in the name of closed firm notice was sent. During cross examination PW1 stated that the defendants firm was not closed at the time of filing the suit. No document is produced by the defendants to prove their contentions that at the time of sending notice the firm was closed. The notices sent were returned as unclaimed by the defendants. There is postal endorsement of giving of intimation to the defendants upon the stamp covers. Hence the contention of the defendants that the notices were sent to the firm after closing the firm cannot be accepted.

22. In the above circumstances, I am of the view that no evidence is adduced by the defendants to prove their contentions in the written statement and no opportunity was given to the plaintiff to cross examine the defendants on the basis of pleadings set out in the written statement.

23. From the oral testimony of PW1 and Exts.A1 to A15 documents the plaintiff has established the transaction with the defendants and existence of liability to be discharged by the defendants. On evaluation of the entire evidence adduced by the plaintiff, it is held that the plaintiff has proved the transaction and execution of cheque by the defendants. Hence these issues are found in favour of the plaintiff.

24. **Issue No.3**:- On the basis of my finding on issue Nos.1 and 2, the plaintiff is entitled to get a decree as prayed for. This issue is answered in favour of the plaintiff.

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

1. The defendants are jointly and severally directed to pay an amount of Rs.4,48,028/- (Rupees four lakhs forty eight thousand and twenty eight only) to the plaintiff with interest at the rate of 12% per annum from the date of suit till the date of decree and thereafter at the rate of 6% per annum till realization.

2. The plaintiff is also entitled to costs of the suit from the defendants.

(Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court, this the 20<sup>th</sup> day of November, 2025).

Sd/-  
PRINCIPAL MUNSIF

**Plaintiff's Witnesses:-**

PW1 : Bineeshkumar.P.

**Plaintiff's Exhibits:-**

- A1 : 20.02.2019 : Certified copy of Cheque No.830356.
- A2 : 03.04.2019 : Certified copy of Cheque return memo.
- A3 : 25.04.2019 : Copy of lawyer notice.
- A4 : 26.04.2019 : Certified copy of Postal receipt.
- A5 : 26.04.2019 : Certified copy of Postal receipt.

- A6 : 26.04.2019 : Certified copy of Postal receipt.  
A7 : 26.04.2019 : Certified copy of Postal receipt.  
A8 : 26.04.2019 : Certified copy of Postal receipt.  
A9 : ..... : Certified copy of return notice.  
A10 : ..... : Certified copy of return notice.  
A11 : ..... : Certified copy of return notice.  
A12 : ..... : Certified copy of return notice.  
A13 : ..... : Certified copy of return notice.  
A14 : 19.08.2015 : Certified copy of Limited Liability Partnership Agreement.  
A15 : ..... : Certified copy Ledger Account issued from Kannur Business Associates LLP, Kannur Darbar.  
A16 : ..... : Certified copy Certificate of Incorporation.

Defendant's Exhibits:-

- B1 : 07.06.2022 : Certified copy of deposition of PW1 in STC.11/2022 and STC.16/2022.  
B2 : 31.07.2023 : Certified copy of deposition of PW2 in STC.11/2022 and STC.16/2022.

Defendant's Witnesses:- Nil.

Sd/-

PRINCIPAL MUNSIFF

// True Copy//

PRINCIPAL MUNSIFF

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Fair/ Spare of Judgment  
in OS.195/2022 dt: 20.11.2025.