IN THE COURT OF THE ADDITIONAL MUNSIFF, NEDUMANGAD

Present : Smt.Savithri.V,Additional Munsiff

On Tuesday 02nd June 2026

12th Jyaishta 1948

<u>OS No.388/2017</u>

Plaintiff(s)	Chandran Pillai, aged 60 Years, S/o Chellappan Pillai, Vineeth House, Bharathannoor P.O., Pangode Village, Nedumangad Taluk, Thiruvananthapuram.
Addl.Plaintiff 2	Baby Amma, aged 60 Years, W/o Chandran Pillai, Vineeth House, Bharathannoor P.O., Pangode Village, Nedumangad Taluk, Thiruvananthapuram.
Addl.Plaintiff 3	Lekha, aged 36 Years, D/o Chandran Pillai, Vineeth House, Bharathannoor P.O., Pangode Village, Nedumangad Taluk, Thiruvananthapuram.
Addl.Plaintiff 4	Vineeth, aged 33 Years, S/o Chandran Pillai, Vineeth House, Bharathannoor P.O., Pangode Village, Nedumangad Taluk, Thiruvananthapuram. **(Addl.Plaintiff 2 to 4 are impleaded as per Order dated 06/03/2021 on I.A 01/2021)**

(By Adv.: Sri.A S Sujith Kumar)

Defendant(s)	Sajeevan, aged about 42 Years, S/o Sankarankutty, Saji Nivas, Vyttila, Kachappilli Road, Poonithura Village, Ernakulam.

(By Adv.Sri.P.Sreekumar)

This suit having been finally heard on 18/05/2026 and the court on 02/06/2026 delivered the following;

JUDGMENT

Suit for realisation of money.

2. **Gist of the plaint averment is as follows**: - On 21-05-2014, the defendant borrowed an amount of ₹2,25,000/- (Rupees Two Lakhs Twenty Five Thousand only)/- from the plaintiff and on demand, he issued a cheque dated 21-04-2017 to be drawn on M/s Indian Overseas Bank Bhararathanoor Branch for the repayment of the said amount. At the time of giving the cheque, the defendant made the plaintiff believe that the cheque will be honoured when presented for collection in the bank. However, when the plaintiff presented the cheque for collection in the above bank where he holds an account, it was dishonoured on grounds of insufficiency of fund on 24-04-2017. On 25-04-2017, the plaintiff sent an advocate notice to the defendant demanding the cheque amount but it was returned stating addressee left. Using the political and financial influence of the defendant, he influenced the postman to return the said notice after knowing its contents. Even now, the defendant is residing in the above address. Last demand for payment made to the defendant by the plaintiff was on 25-05-2017. The defendant is married from Bharathannoor where the plaintiff also resides. Thus, the defendant is familiar to the plaintiff. The plaintiff has every right to recover the cheque amount together with interest. Hence this suit. The cause of action for this suit had arisen in Pangaode Village where the transaction took place.

3. **Defendant filed written statement contending as follows**: - The suit is not maintainable either in law or on facts. The cheque is issued by Radha Enterprises, who is not made a party in the suit. Hence, the suit is bad for non-joinder of necessary party. Plaint averment regarding borrowing of money and issuance of cheque by the defendant from the plaintiff are false and hence denied. The defendant is a money lender. Usually, the Manager of Radha Enterprises borrows money needed and it was him who received ₹1,00,000/- from the plaintiff in 2013 and issued a cheque. The cheque produced in this case was not in force in 2014. The plaintiff used the cheque which was issued in 2013 and filed this suit. This defendant entrusted signed cheque leaf to the manager of Radha Enterprises. No amount is received by this defendant and the cheque is not supported by consideration. The writings in the cheque are not that of the defendant. The plaintiff filled the cheque and put the date and presented it for collection, without the permission of the defendant. The cheque was not issued by the defendant and the defendant never gave any assurance to the plaintiff that the cheque will be honoured. The defendant resides at Vytila, Ernakulam and the Manager of the defendant is doing business for Radha Enterprises. All other petition averments to the contrary are false and hence denied. The Manager received ₹1,00,000/- and he is paying interest at the rate of ₹3,000/- per month from the income derived from the business. The defendant is not liable to pay any amount to the plaintiff. There is no legally enforceable debt against the defendant. Notice of dishonour of cheque was not given to Radha Enterprise. Hence the plaintiff is not entitled to recover the plaint claim from the defendant or Radha Enterprise. Suit is barred by limitation. Hence the suit may be dismissed.

4. **Based on the rival contentions, the following issues were framed**:

1) ***Whether the defendant has executed any cheque in favour of the plaintiff for consideration?***
2) ***Whether the plaintiff entitled to realize the plaint claim?***
3) ***Relief and cost.***

5. From the side of the plaintiffs, PW1 and PW2 were examined and Exts.A1 to A5 were marked. Ext.A1 is the cheque No.021078 dated 21/4/2017, Ext.A2 is the dishonor memorandum dated 24/04/2017, Ext.A3 is the copy of Advocate notice dated 25/04/2017, Ext.A4 is the postal receipt and Ext.A5 is the Acknowledgement Card. From the side of the defendant, DW1 was examined. No other evidence was adduced from the side of the defendant. Through PW2, Ext.X1 series which is the

Account opening forum from Indian Overseas Bank, specimen signature of the defendant and annexure to account opening form is marked.

6. Heard both sides and perused the records.

7. **<u>Issue No.1 & 2</u>**:- - The foremost ground raised by the learned counsel for the defendant to challenge the maintainability of the suit itself is that Ext.A1 being issued in the name of proprietor, Radha Enterprises, the said enterprise was a necessary party and ought to have been impleaded in this suit. This ground shall be first addressed by this court.

8. In the written statement, there is no explicit pleading regarding the position of the defendant in Radha Enterprise. It is during the cross examination of DW1, that he admitted that he is the proprietor of Radha Enterprise. DW1 has no case that there is any other proprietor to Radha Enterprise. From a plain reading of the Ext.A1 cheque involved in this case, it is evidently clear that in it, the drawer of the cheque has been shown as 'For Radha Enterprises, Proprietor and it admittedly bears the signature of the defendant. In the plaint, there is no whisper about whether the alleged plaint claim was borrowed by the defendant in his personal capacity or in his capacity as the proprietor of Radha Enterprise. However, in the proof affidavit filed in lieu of chief examination and Ext.A3 legal notice, it is seen that the plaintiff has alleged that the defendant borrowed a sum of ₹2,25,000/- from the plaintiff for business purpose.

9. Learned counsel for the plaintiff rightly relies on the decision of the Hon'ble Apex Court in ***Dogiparthi Venkata Satish v. Pilla Durga Prasad*** 2025 KHC 6745 in which it was held that a proprietorship concern is nothing, but a trade name given by an individual for carrying on his business; that a proprietorship concern is not a juristic person; that it cannot sue but it can be sued and whether proprietorship concern is sued in its name or through its proprietor representing the concerned is one of the same thing and it cannot be equated either with a Company or with a partnership firm. It was further held that once proprietor has been impleaded as a party representing the proprietorship, no prejudice is caused; rather, its interest is well protected and taken care of by the only person who owns the proprietorship and that O.30 R.10 does not in any manner debar a suit being filed against the proprietor.

10. The Hon'ble Apex Court in the case of **Vinayak Purshottam Dube(Deceased) through Lrs Vs. Jayashree Padamkar Bhat and Others** (2024 INSC 159) while considering jurisprudential status of a proprietary concern has observed as under

2.2 Proprietorship firms are businesses that are owned, managed and controlled by one person. They are the most common form of businesses in India and are based in unlimited liability of the owner. Legally, a proprietorship is not a separate legal entity and is merely the name under which a proprietor carries on business. [Raghu Lakshminarayanan vs. Fine Tubes (2007) 5 SCC 103.]

11. The Hon'ble Apex Court in the case of ***Raghulakshminarayan V. M/s Fine Tubes (supra)*** while considering distinction between partnership firm and a proprietary concern has observed as under

- *"13. The distinction between partnership firm and a proprietary concern is well known. It is evident from Order XXX Rule 1 and Order XXX Rule 10 of the Code of Civil Procedure. The questioncame up for consideration also before this Court in Ashok Transport Agency v. Awadhesh Kumar [(1998) 5 SCC 567] wherein this Court stated the law in the following terms :-*
    - *"6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Partnership Act, 1932. Though a partnership is not a juristic person but Order XXX Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order XXX which make applicable the provisions of Order XXX to a*

proprietary concern, enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order XXX have no application to such a suit as by virtue of Order XXX Rule 10 the other provisions of Order XXX are applicable to a suit against the proprietor of proprietary business 'insofar as the nature of such case permits'. This means that only those provisions of Order XXX can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."

12. The Hon'ble Apex Court in the case of M/s Shankar Finance and Investments v. State of A.P. And Ors AIR 2009 SC 422 wherein it is observed as under

"8. As contrasted from a company incorporated under the Companies Act, 1956 which is a legal entity distinct from its shareholders, a proprietary concern is not a legal entity distinct from its proprietor. A proprietary concern is nothing but an individual trading under a trade name. In civil law where an individual carries on business in a name or style other than his own name, he cannot sue in the trading name but must sue in his own name, though others can sue him in the trading name.

13. Thus, the settled proposition that can be culled out from the above decisions is that a proprietorship concern, which is not the same as a company or a partnership, does not have any legal identity distinct from its proprietor. A proprietorship concern is only a business name and the real person is the proprietor. Thus, while it is often safe practice to mention the name of the business concern in the suit but failing to do so does not invalidate the same as it has been filed against the proprietor. As already noted, in the instant case, admittedly, the cheque was drawn in the name of Radha enterprise and signed by the defendant as its proprietor. PW2 who is the Bank manager also adduced Ext.X1 series bringing out that such account stand in the name of Radha Enterprise, with the defendant as its proprietor. Having regard to the above settled legal position discussed with reference to the case laws cited, the Court concludes that Radha Enterprise was not to be impleaded as a defendant being a non-juristic person and since, it was represented by the defendant, who is the drawer of the alleged cheque, he is the one to be prosecuted.

14. Now this court proceeds to address the contention of the defendant that there is no legally enforceable debt against the defendant. The case of the plaintiff is that whereas the defendant is known to him, the latter borrowed a sum of ₹2,25,000/- from the plaintiff for business purpose; that upon demand the defendant issued Ext.A1 cheque dated 21-04-2017 assuring the plaintiff that it will be honoured; however, when the plaintiff presented it for collection at M/s Indian Overseas Bank Bharathannoor Branch, it was dishonoured vide Ext.A2 memo stating finds insufficient. On the other hand, while denying borrowing the said money from the plaintiff and issuance of Ext.A1 cheque to him, the specific case canvassed by the defendant is that he is a money lender and is that it is the Manager of the Radha Enterprise who used to borrow money for the enterprise; that the defendant entrusted signed cheque leaf to the manager and in 2013, the manager received ₹1,00,000/- from the plaintiff and issued the cheque in 2013. The cheque was not in force in 2014.

15. A perusal of the written statement filed by the defendant makes it amply clear that he has admitted the fact that Ext.A1 cheque in the possession of the plaintiff was in fact signed by the defendant, though the borrowing of money from the plaintiff by the defendant and issuance of cheque to the plaintiff are per se denied. It is pertinent to note that the defendant has no case that the Manager, Radha Enterprise borrowed the money from the plaintiff for the Manager's personal use. The defendant has admitted the fact that he had entrusted signed cheque leaf to the Manager. Given the fact that no explanation is offered by the defendant as to why a signed cheque leaf was entrusted to the manager, such an admission as above can be taken to presume that it was so entrusted for the running of the business and nothing else. It is already noted above that a proprietorship concern, which is not the same as a company or a partnership, does not have any legal identity independent from its proprietor and that it is only a business name and the real person is the proprietor who is responsible for the business and liabilities of the proprietorship concern. Thus, even for arguments sake, the contention of the defendant that he never personally borrowed the money from the plaintiff and never personally issued the cheque to the plaintiff is accepted, the admission of the defendant that he entrusted the signed cheque leaf to the manager gives rise to the presumption that it was for the purpose of the business, makes the defendant, being the admitted sole proprietor of Radha Enterprise, personally liable to repay the amount to the plaintiff. When the signature is not disputed and plea of having handed over the alleged cheque as to the Manager without any explanation as to why, the only presumption would be that it was drawn for discharging a debt. Such presumption is in favour of the plaintiff. However, the presumption in favour of the plaintiff could not be dismantled by the defendant with any evidence. Even though PW1 was examined in length, nothing was brought out so as to disbelieve his evidence.

16. Except for a bald averment that it was the Manager who borrowed a sum of ₹1,00,000/- from the plaintiff and that the Manager is paying interest at the rate of ₹3000/- per month from the income derived from the business, no concrete evidence is adduced by the defendant to prove that only a sum of ₹1,00,000/- was borrowed and it is being repaid as stated above. When the learned counsel for the plaintiff rightly contended that no evidence is adduced by the defendant to prove such a version, like examining the Manager, the learned counsel for the defendant submitted that it was the burden of the plaintiff to examine the Manger and not that of the defendant's. It is trite that while the initial onus to prove a prima facie case lies with the plaintiff, the defendant bears the burden of establishing the affirmative facts of their separate defence through positive, credible evidence. Thus, when the defendant advances a specific case of defence putting forth a different version from the case advanced by the plaintiff which stands proved prima facie, burden is on the defendant to prove his version and discredit the evidence adduced by the plaintiff. It is trite that when a cheque is received and it has been presented before the Bank and could not be encashed, it shall have to be presumed that the same was issued by the drawer in discharge of legally enforceable debt or liability unless and until, contrary is proved. In the case at hand, the dishonoured cheque was signed by the petitioner on behalf of M/s Radha Enterprise. In the instant case, no such concrete evidence is seen adduced by the defendant so as to discredit the evidence adduced by the plaintiff.

17. The learned counsel for the defendant further contends that Ext.A1 cheque dated 21-04-2017 is not valid as it does not contain the MICR code. During the cross examination of PW2 who is the Branch Head, Indian Overseas Bank, Bharathannoor Branch, she deposed that Ext.A1 cheque belongs to the account number 1035 whose holder is Radha Enterprise as per Ext.X1; that Ext.A1 is not an MICR cheque, that MICR cheques were implemented by RBI after 2012; that after 2012 cheques without MICR are not issued by the said bank, that Ext.A1 cheque is of the year 2004. However, during the re-examination, it was brought out that this cheque was passed after it came for collection in the bank. Here, it is pertinent to note that in Ext.A2, though several options for dishonour relating to the instrument are listed, such as it being outdated, irregular etc., the sole reason for dishonour is stated as funds insufficient. Thus, the reason cited in Ext.A2 coupled with the deposition of PW2 that it was passed after it came for collection in the bank, strongly indicates that the bank treated the cheque as otherwise valid and processable. In other words, since the dishonour was solely due to "funds insufficient," and the undisputed testimony that it was passed after it came for collection in the bank, it gives rise to the strong presumption that the bank did not reject it as invalid but considered it operationally valid and had sufficient balance existed, the cheque likely would have been honoured. Thus, the evidence on record would prompt this court to reject the contention of the counsel for the defendant that the cheque was inherently invalid.

18. Yet another contention raised by the defendant is that notice of dishonour was not given to Radha Enterprise. In the plaint and Ext.A3 lawyers notice, address of the defendant is shown as Saji Nivas, Vytila, Kachappilli Road, Poonithura Village, Ernakulam District. Ext.A5 Acknowledgment card is returned unserved stating left. Consequently, it is contended by the learned counsel for the defendant that the statutory presumption regarding due service would not arise; rather, the proper inference would be that the notice had been incorrectly addressed to the defendant and not Radha Enterprise. It has come out in the evidence of PW1 that Radha Enterprise is no longer functioning. The fact that is it the very same address shown in the written statement to be that of the defendant makes it amply clear that there is no ambiguity in the address of the defendant. It is to be noted that in the same address in which the account of Radha Enterprise stands, the defendant has received summons in the suit and he entered appearance before the court. Since it is already found that the suit can be instituted against the proprietor alone without making the proprietorship a party, this court finds that there is no irregularity in service of summons and issuance of notice addressed to the defendant and not Radha Enterprise.

19. Finally, this court shall address the contention raised by the learned counsel for the defendant that the alleged place of transaction is not properly stated in the plaint. A perusal of the plaint shows that the pleading therein as regards the place of the alleged transaction is only stated as 'Pangode' in the paragraph stating cause of action. However, in the proof affidavit, it is stated that the transaction took place at the house of the plaintiff in Pangode. The question that raises for consideration is whether the omission to state the particulars as to the place of alleged transaction is fatal in this suit. The instant suit is filed for realisation of money based on Ext.A1 cheque. It is already found above that the execution of the Ext.A1 cheque and the existence of legally enforceable debt against the defendant as well as the liability of the defendant to pay the plaint claim to the plaintiff stand proved. Neither has the defendant specifically disputed the territorial jurisdiction nor has he successfully adduced evidence to cast doubt on the transaction between the parties. On the other hand, the defendant himself has specifically admitted the signature on Ext.A1 and borrowal of money from the plaintiff for business purpose. The defendant has unsuccessfully advanced a case that it was done so by his Manager. That being so, the absence to state the exact place of transaction in the plaint by itself does not invalidate the entire case of the plaintiff which stands otherwise proved. In light of the above discussion, Issue No.1 and 2 are found in the affirmative, in favour of the plaintiff.

20. **<u>Issue No.3</u>:- The suit is decreed as follows:-**

i. The plaintiff is entitled to realise the plaint claim of ₹3,06,000/- (Rupees Three Lakh Six Thousand only) with future interest @ 9% per annum from the date of suit, till the date of decree and thereafter @ 6% per annum, till realization of the amount from the defendant and his assets both movable and immovable.

ii. No order as to cost.

(Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in Open Court on this, the 2nd day of June, 2026).

SAVITHRI.V
ADDITIONAL MUNSIFF

<u>APPENDIX</u>:

<u>Exhibits marked from the side of Plaintiff(s)</u>:-

A1	dated: 21/04/2017	Original Cheque No.021078
A2	dated: 24/04/2017	Return of Memorandum
A3	dated: 25/04/2017	Copy of Advocate Notice
A4		Postal Receipt
A5		Ackowledgment Card

<u>Exhibits marked from the side of Defendant(s):-</u> NIL

<u>Court Exhibits:-</u>

X1series dated: 06/03/2025 Copy of Account Opening Form

<u>Winess Examined from the side of Plaintiff(s)</u>:-

PW1 dated: 16/08/2023 Vineeth C

PW2 dated: 06/03/2025 Sumam Varghese

<u>Witness Examined from the side of Defendant(s)</u>:-

DW1 dated: 15/10/2025 Sajeevan

ADDITIONAL MUNSIFF

Typed by: PB
Compd by: