

IN THE COURT OF THE SUB JUDGE, SULTHANBATHERY

Present: Sri.Sunil Berchmans Varkey, Sub Judge

Monday, the 30th day of May, 2022
9th day of Jyaishta, 1944

ORIGINAL SUIT No.1/2019

Aboobacker Thooliyan, aged 55 years,
S/o.Moosa, Tooliyan House, Mundakutty Post,
Kuppadithara Village, Vythiri Taluk, Wayanad
District-670645.

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Plaintiff

V/s.

1. Abdul Salam Shaik, S/o.Ebrahim, aged 31
years.
2. Hashim, aged 29 years, S/o.Ebrahim.
3. Ebrahim, aged 54 years.
4. Kanhayil Sainaba, aged 49 years,
W/o.Ebrahim. (All are residing at Shaik
(Vengaleri) House, P.O.Mundakutty,
Kuppadithara Village, Vythiri Taluk, Wayanad
District) PIN 670645.

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Defendants

This Original Suit is coming on 25th day of May 2022 for final hearing before me in the presence of Sri. P.K.Dineshkumar and Sri.M.C.M.Jamal, Advocate for Plaintiff and defendants name called absent set exparte and having stood over for consideration to this day the Court delivered the following:

JUDGMENT

The suit is for realization of money.

2. ***The plaint averments in brief are as follows:-*** That, the plaintiff is a Gulf returnee and an entrepreneur. The 1st defendant is a business man

and the 2nd defendant is the brother of the 1st defendant. The 3rd and 4th defendants are the parents of 1st and 2nd defendants. On 24.08.2018, the defendants had entered into an agreement with the plaintiff, acknowledging and promising to pay back the balance amount of ₹95,83,500/- (Rupees Ninety five lakhs eighty three thousand five hundred only) which is payable by the 1st defendant to the plaintiff, in the event of any default by the 1st defendant in making the repayment as per the terms of the agreement. It was agreed between the plaintiff and the defendants that the total amount of ₹95,83,500/- (Rupees Ninety five lakhs eighty three thousand five hundred only) due from the 1st defendant would be paid in two installments ie., ₹30,00,000/- (Rupees Thirty lakhs only) on or before 15.12.2018 and ₹65,83,500/- (Rupees Sixty five lakhs eighty three thousand five hundred only) on or before 24.08.2019. That on 15.12.2018, when the plaintiff demanded first installment amount of ₹30,00,000/-, the 1st defendant issued a cheque bearing No.283718 dated 15.12.2018 drawn on Canara Bank, Padinjarathara Branch for the said amount. But, when the cheque was presented for payment, it was returned dishonoured for the insufficiency of funds in the account of the 1st defendant. Then the plaintiff had approached a lawyer and issued a legal notice on 17.12.2018 intimating the dishonour of the cheque and demanding payment of the cheque amount. Though the intimation of notices were given to the defendants in the last known residential address on 28.12.2018, they didn't accept the notice and it was returned as refused. The defendants are jointly and severally liable to pay the debt of ₹30,00,000/- (Rupees Thirty lakhs only) with interest @6% per annum to the plaintiff. The interest from 15/12/2018 to 07.01.2019 comes to ₹12,000/- and the lawyer fees for legal notice comes to ₹6,000/-. The total amount due from the defendants

as on the date of suit is ₹30,18,000/-. Hence, the suit is for realization of money.

3. On receipt of summons, all the defendants entered appearance and jointly filed their written statement. The contentions in the written statement are as follows:- The defendants contended that they had not entered into any agreement with the plaintiff on 24.08.2018 acknowledging and promising to pay the debt of ₹95,83,500/-(Rupees Ninety five lakhs eighty three thousand five hundred only) as pleaded in the plaint. The defendants had not agreed to make any part payment of ₹30,00,000/-(Rupees Thirty lakhs only) on or before 15.12.2018 and the balance amount of ₹65,83,500/-(Rupees Sixty five lakhs eighty three thousand five hundred only) on or before 24.08.2019. It is stated that the real facts are suppressed by the plaintiff. The 2nd defendant is a tax practitioner and he had been conducting a shop in the name of “A to Z Automobile and Accessories” at Padinjarathara. The plaintiff is his friend and the 2nd defendant while facing a financial crisis, the plaintiff agreed to invest the entire amount for running the business on condition that he will be paid 75% of the profits and the 2nd defendant can take 25% of the profits. It was an oral agreement between them and the plaintiff had invested ₹58,50,000/- (Rupees Fifty eight lakhs fifty thousand only) in the said business. But, due to the world wide financial crunch, the business was running loss and thereupon, they decided to stop the business and to clear the stock. An amount of ₹32,00,000/-(Rupees Thirty two lakhs only) was received from the sale of stock and it was taken by the plaintiff for the realization of his capital amount. The 2nd defendant had agreed to pay the balance amount of ₹20,50,000/-(Rupees Twenty lakhs fifty

thousand only) to the plaintiff and in order to secure the payment, the plaintiff came to the residence of defendants No.1, 3 and 4 and obtained the signatures in blank cheque leaves and stamp papers. In addition to that, the 2nd defendant had paid ₹8,50,000/- (Rupees Eight lakhs fifty thousand only) to the plaintiff and only the balance amount is outstanding. The plaintiff has suppressed all these facts and filed this suit for realization of money in order to grab more amount from the defendants. Hence, the suit is liable to be dismissed on merits.

4. On the basis of the plaint and written statement, the issues framed are as follows:-

1. What was the real transaction between plaintiff and defendants?
2. Did the defendant No.1 obtain any amount from plaintiff and made ₹95,83,500/- as balance?
3. Has there been an agreement between the plaintiff and defendants?
4. Whether the plaintiff is entitled to realize ₹30,18,000/- from defendants?
5. What shall be the future interest?
6. Relief and costs?

5. On the side of plaintiff, he was examined as PW1 and Exts.A1 to A9 and Ext.A10 series were marked. The defendants counsel submitted no instruction and therefore, they were set ex-parte.

6. Heard the counsel for the plaintiff.

7. **Issue Nos.1 to 5:-** These issues are considered together for the sake of convenience. The plaintiff has filed proof affidavit in lieu of his examination in chief. In the chief affidavit, the plaintiff has reiterated his averments in the plaint. Exts.A1 to A10 are the documents marked from the side of the plaintiff to prove his claim as stated in the plaint. The unchallenged oral and documentary evidence of the plaintiff established his case and therefore, he is entitled to realize an amount of ₹30,18,000/- (Rupees Thirty lakhs eighteen thousand only) from the defendants. The defendants are jointly and severally liable to pay the said amount to the plaintiff. Issue Nos.1 to 5 are answered accordingly in favour of the plaintiff.

8. **Issue No.6 :-** The plaintiff has sought for only the interest @ 6% per annum for the plaint claim of ₹30,18,000/- (Rupees Thirty lakhs eighteen thousand only) from the date of suit. It is the normal rate of interest and it is not found excessive. Hence, the issue No.6 is also found in favour of the plaintiff.

9. **Issue No.7:-** The plaintiff is entitled to the relief as prayed for in the suit and I do not find any reason to deny the costs.

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

1. The defendants do shall pay ₹30,18,000/- (Rupees Thirty lakhs eighteen thousand only) to the plaintiff with 6% interest per annum from the date of suit till realization of the amount. The defendants are jointly and severally liable to pay the amount and the plaintiff is entitled to realize the amount from the defendants and their assets.

2. The defendants shall pay the costs of the suit to the plaintiff.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in Open Court on this the 30th day of May, 2022)

Sd/-

SUB JUDGE

Appendix: -

Plaintiff's witness:

PW1 - 21.05.2022 - Aboobacker Thuliyen

Plaintiff's Exhibits:

A1	-	24.08.2018	-	Agreement.
A2	-	15.12.2018	-	Cheque No.283718673015815
A3	-	15.12.2018	-	Cheque return Memo.
A4	-	17.12.2018	-	Lawyer Notice.
A5	-	17.12.2018	-	Postal receipt.
A6	-	18.12.2018	-	Copy of Lawyer Notice.
A7	-	18.12.2018	-	Postal receipt
A8	-	18.12.2018	-	Postal receipt.
A9	-	18.12.2018	-	Postal receipt.
A10(series)		19.12.2018	-	Returned Notice.
A10(a)		19.12.2018	-	Returned notice.
A10(b)		19.12.2018	-	Returned notice.
A10(c)		19.12.2018	-	Returned notice.

A10(d)	19.12.2018	-	Returned notice.
A10(e)	19.12.2018	-	Returned notice.

Defendants' Witness: Nil.

Defendants' Exhibits: Nil.

Sd/-
SUB JUDGE

Typed by : Girija T.N.
Compared by : Haseena K.A