IN THE COURT OF THE PRINCIPAL MUNSIFF, ERNAKULAM

Present :- Sri. Pramod Murali, B.A.L, LL.B, Principal Munsiff.

Friday, 28^{th} day of January, 2022/8^{th} Magham, 1943

O.S. No. 89 of 2019

Plaintiff:-

K.S Vijayan, Son of T.Sankaran, aged 67 years, residing at Kannampilly, C-34/378, Padivattom, Edappally, Ernakulam, Kochi-24. Edappally South Village, Kanayannur Taluk, Ernakulam District.

By Advs. A.Balagopalan, A.Rajagopalan, M.N Manmadan & R.Rajesh.

Defendant:-

P.K.Sathyan, Son of Kelankutty, aged about 60 years, residing at C-33/118 C, "Makam", SRA-7^{th} Lane, SRA-D-15, Padivattom, Edappally, Ernakulam, Kochi-24, Edappally South Village, Kanayannur Taluk, Ernakulam District.

By Advs. C.A Chacko, C.M Charisma & Megha.K.Xavier.

This suit have been came up before me for hearing on 20.01.2022 and the court on 28.01.2022 delivered the following:

JUDGMENT

The suit is for realisation of money based on a cheque.

2. The averments in the plaint are briefly stated as follows: The plaintiff and defendant were friends. On 18.10.2016 the plaintiff gave a sum of Rs.3,00,000/- by cheque as loan to the defendant. It was agreed by the defendant that the amount will be paid within 6 months. But for one reason or other the defendant prolonged the payment.

3. Finally, in the third week of May 2018, the defendant signed and issued a post dated cheque for Rs.3,00,000/- to the plaintiff. Upon presentation, the cheque was returned for the reason 'payment stopped by the drawer'. So the plaintiff caused a lawyer notice to the defendant. But, instead of repaying the amount, the defendant gave a reply notice. The plaintiff is entitled to receive the cheque amount with interest.

4. The averments in the written statement filed by the defendant are briefly stated as follows:- The defendant has not borrowed any amount from the plaintiff. Actually the plaintiff, defendant and one Mr.Damodaran Nair were conducting a scrap business with the help of one Mr.Ubaid. Later one of the defendant's friend Anandan also joined their business. But without paying due profits from the business, Ubaid cheated them.

5. Since Anandan was in dire need of money, he requested Rs.3,00,000/- from the plaintiff. He agreed that the amount will be repaid, whenever the profit is received from Ubaid. The plaintiff paid the amount by cheque to Anandan through the account of the defendant. As security the plaintiff obtained a signed blank cheque from the defendant. It was misused by the plaintiff and filed the present suit. There is no legally enforceable debt existing between the plaintiff and defendant.

6. The defendant gave reply to the lawyer notice stating true facts. The defendant had given the stop memo, not to cheat or defraud the plaintiff. The plaintiff is not entitled to realise the plaint amount with interest from the defendant. The amount has to be claimed from Anandan. The suit is liable to be dismissed.

7. On the basis of the above rival contentions of the parties, the issues framed are recast as follows.

1. Did the defendant borrow Rs.3,00,000/- from the plaintiff?
2. Whether the plaintiff has got a legally enforceable debt against the defendant?
3. Did the defendant execute the cheque in favour of the plaintiff?

4. Is the plaintiff entitled to recover the plaint amount from the defendant?

5. If so, what is the rate of interest, if any, to be granted?

6. What is the order as to costs?

8. During the trial, the plaintiff was examined as PW1 and Exts. A1 to A5 were marked. The defendant was examined as DW1 and no documents were marked.

9. Heard both sides.

Issues No.1 to 5

10. Considering the facts and circumstances and to avoid repetition of discussion of evidence the above issues can be considered together. The contention of the plaintiff is that the defendant and himself were friends. On 18.10.2016 the defendant borrowed an amount of Rs.3,00,000/- from the plaintiff. The amount was paid by cheque to the defendant. Later, for repayment of the amount borrowed, the defendant issued a post-dated cheque to the plaintiff. Upon presentation, it was returned unpaid for the reason 'payment stopped by the drawer'. Consequently the plaintiff issued a lawyer notice to the defendant calling upon him to pay the amount. It was not

heeded to by the defendant. Instead, he sent a reply stating untenable contentions. It paved the institution of the suit.

11. The defendant contended that true facts in respect to the transaction are not as stated by the plaintiff, but as stated below.

The plaintiff, defendant and one Mr.Damodaran Nair were conducting a scrap business with the help of one Mr.Ubaid. At that time, one of the defendant's friend Mr.Anandan joined their business. But without paying due profits from the business, Ubaid cheated them. Later, when Anandan was financial predicament, he requested the plaintiff to lent Rs.3,00,000/-. Anandan agreed that the amount will be repaid, whenever the profit had been received from Ubaid. The plaintiff paid the amount to Anandan by cheque through the account of the defendant. However, the plaintiff caused to obtain a signed blank cheque as security from the defendant. It was misused and the present suit has been instituted.

12. Now, coming to the evidence. PW1 is the plaintiff. He filed proof-affidavit in lieu of examination-in-chief, reiterating the plaint averments. Ext.A1 is the cheque. Ext.A2 is the dishonour memo. Ext.A3 and A4 are copy of lawyer notice issued to the defendant and postal acknowledgment card signed by him, respectively. Ext.A5 is reply given by the defendant. During the

cross-examination PW1, the learned counsel for the defendant put a specific question that the amount given to the defendant was fully repaid on different occasions by him, he answered that it is not correct. He deposed that he along with the defendant, Damodaran Nair and Ubaid were doing scrap business. But he denied that Anandan was also a partner in their business. He added that he does not know Anandan. He also denied that Rs.3 lakhs was given by him to Anandan through the defendant. He admitted that Ubaid cheated them in the business. When it was put to PW1 that the amount was given by him to Anandan and he managed to obtain the cheque from the defendant as a security since Anandan was his friend, he denied it.

13. DW1 who is the defendant also filed proof-affidavit in lieu of examination-in-chief, almost identical to the contentions in the written statement. During the cross-examination of DW1, he deposed that he does not know what are the documents produced by the plaintiff in the suit. He deposed that the proof-affidavit was kept prepared, and he only signed it. He stated that their scrap business was conducted at Ernakulam. It had no name or office. It was a partnership business. They conducted the business during the period from 2014 to 2018. He deposed that Anandan was residing in a flat near KSRTC Depot, Ernakulam. He had no job. To his memory, Anandan

joined the business in 2016. He does not exactly know how much was the amount Anandan pooled in the business. He denied that Anandan was not known to the plaintiff at any point of time. When it was asked to him by the learned counsel for the plaintiff that whether he was ready to examine Anandan, he answered that Anandan need not be examined. He admitted that the plaintiff gave him Rs.3 lakhs by cheque on 18.10.2016. It was encashed by him on the same date. He also admitted that the said amount was given by the plaintiff on his demand. But interestingly a different version was given by him from the written statement and proof-affidavit as to the transaction, receipt of the amount and issuance of cheque. When the learned counsel for the plaintiff asked him why the version made by him in the cross-examination was not stated in the reply notice (Ext.A5), written statement or proof-affidavit, he replied that there was no particular reason.

14. At the time of arguments, the learned counsel for the plaintiff invited the attention of the court to Ext.A5. It is submitted that in Ext.A5 it is not stated how, when and where the plaintiff gave the amount by cheque to the defendant and issuance of the cheque by the defendant to the plaintiff. It is also submitted that more or less the same contention has been raised in the written statement. It is further pointed out that during the cross-examination

of PW1 it was put to him that the defendant had fully repaid the amount due to him on various occasions, he denied it. It was also put to PW1 that the defendant had agreed to repay the amount given to him through Ubaid, he denied it. Thus it is argued by the learned counsel for the plaintiff that the defendant has no consistent case. It is further submitted by the learned counsel for the plaintiff that the receipt of Rs.3 lakhs by the defendant on 17.10.2016 has been admitted by him in the cross-examination. It is submitted that there is no reason forthcoming as to why the stop memo was issued by the defendant to the bank. Further it is submitted that Ext.A1 was not confronted to PW1 or any question/suggestion was put to PW1 concerning the same. It is also submitted that while PW1 was in the box, it was asked by the learned counsel for the defendant that the amount due is barred by limitation and the defendant has no liability to repay the amount, he deposed that the defendant could say whatever things. It is submitted by the counsel for the plaintiff that limitation and discharge cannot go together. It is also submitted that the plaintiff is entitled to get the presumptions under Section 118 of the Negotiable Instruments Act, 1881. So much so, it is submitted that the plaintiff has succeeded in establishing his case, and thus entitled to get a decree.

15. Per contra, the learned counsel for the defendant submitted that

ground realities in the instant case are to be taken note of. Actually, Ubaid hoodwinked all of them and had taken away the whole profits of the scrap business, without paying a single penny to anyone. In fact, the amount was given by the plaintiff to Anandan through the defendant. In other words, it was not given to the defendant. Ext.A1 was issued as security at the instance of the plaintiff. No amount is liable to be paid by the defendant. The suit is liable to be dismissed.

16. On analysing the evidence, principally, the plaintiff and defendant are friends. It is admitted that the defendant received Rs.3,00,000/- by cheque from the plaintiff on 18.10.2016. The contention of the defendant as to the involvement of Anandan in respect to the transaction with the plaintiff has not been proved. Significantly, the defendant has no case in the written statement that the amount received from the plaintiff was repaid. Only during the cross examination of PW1, the defendant has come up with such a case. It was denied by PW1. Again it was put to PW1 that the defendant told to him that the amount received would be repaid through Ubaid, to which he answered in the negative. On focusing on the contentions of the defendant and his stand at the time of evidence, it is rather discernible that he has no consistent case. Virtually the defendant could not establish that a signed blank cheque was

issued to the plaintiff as security. Moreover it is incumbent upon the defendant to prove the reason as to why 'stop memo' was given against the encashment of Ext.A1, by the plaintiff. But no evidence whatsoever is forthcoming to vindicate the act of the defendant. It is germane to note that DW1 deposed in cross-examination that he does not know what documents are produced by the plaintiff in the case. It further weakens the contentions of the defendant. To put it succinctly, the defendant has failed to prove the case advanced. On the converse, the evidence of PW1 coupled with Exts.A1 to A5 will prove the case of the plaintiff. In the factual matrix of the case in hand, the plaintiff is also entitled to get the benefit of the statutory presumptions under Section 118 and Section 139 of the Negotiable Instruments Act, 1881. Needless to say, it could not be rebutted by the defendant. Thus it can be concluded that the plaintiff has succeeded in establishing his case. Hence the issues are answered in favour of the plaintiff.

Issue No.6:

17. It is normal rule that the costs shall follow the event. I am not inclined to deviate from the normal rule. Hence considering the facts and circumstance and evidence adduced, the plaintiff is entitled to get the costs of the suit from the defendant.

In the result, the suit is decreed with costs as follows:

The plaintiff is entitled to realise Rs.3,72,000/-(Rupees Three lakhs Seventy Two thousand only) with interest @12% per annum for Rs. 3,00,000/-(Rupees Three lakhs only) from the date of suit till the date of decree, and thereafter @ 6% per annum from the date of decree till entire realization in full from the defendant and his assets.

Dictated to the Confidential Assistant, transcribed by him, corrected and pronounced by me, on this the day of 28th January, 2022.

Pramod Murali

Principal Munsiff.

APPENDIX:-

Plaintiff's Exhibits:-

A1	06.12.2018	Original dishonoured cheque.
A2	13.12.2018	Dishonour memo.
A3	20.12.2018	Copy of Lawyer notice
A4		Acknowledgment card.
A5	04.01.2019	Reply notice.

Defendant's Exhibits:- Nil.

Court Exhibits:- Nil.

Plaintiff witnesses:-

PW1	06.01.2022	K.S Vijayan.

Defendants Witness:-

DW1	04.01.2022	P.K.Sathyan.

Court Witness:- Nil.

an: **Principal Munsiff.**

JUDGMENT IN
O.S No. 89/2019
DATED 28.01.2022