

**IN THE COURT OF THE SUBORDINATE JUDGE, NANGUNERI****Present: Tr. M. Ramadhas, M.L.,****Subordinate Judge,****Nanguneri**Wednesday, this the 29<sup>th</sup> day of March 2023**Original Suit No: 174/2021****Sub Court Valliyoor O.S.No.117/2019****CNR NO: TNTL 270003732021**

S. Lakshmanan ... Plaintiff

/Vs/

Selvi. R.Jeyanthi ... Defendant

This Suit came before me on 27.03.2023 for final hearing in the presence of Advocate Thiru.V.Ramnath Iyer appearing for the Plaintiff and advocate Thiru. R.Sudhakar appearing for the defendant and on 14.03.2023, PW1 was not cross examined, defendant was called absent and set exparte and upon hearing the arguments of the Plaintiff side and having stood over for consideration till this day this Court delivers the following.

**JUDGMENT**

The suit is filed by the Plaintiff, for recovery of a sum of Rs. 9,18,000/- from the Defendant with interest at 12% per annum from the date of this suit to the date of realization and for cost of the suit and other relief.

**2. The averments in the plaint in brief:-**

The defendant is well known to the plaintiff. On 02.06.2019, the defendant received a sum of Rs.9,00,000/- from the plaintiff for the defendant's urgent family

necessity and issued a post dated cheque for Rs.9,00,000/- dated 05.07.2019 in cheque number 408476 drawn on State Bank of Travancore, Valliyoor. On 05.07.2019, the plaintiff presented the cheque for collection as promised by the defendant through the plaintiff's bank Canara Bank, Nanguneri Branch. Unfortunately, the collection bank returned the cheque as dishonor with endorsement funds insufficient. After receiving the Bank memo, the plaintiff issued a notice on 15.07.2019 demanding the cheque amount within 15 days from the date of receipt of notice. The defendant received the notice on 17.07.2019. In spite of due notice of the discharge of the cheque, the defendant has not paid the cheque amount to the plaintiff. The defendant issued a reply notice dated 29.07.2019 denying the defendant's liability. The averments in the reply notice dated 29.07.2019 are false and frivolous. The cheque was issued to the plaintiff only as security is utter false. For the purchase of immovable property, the defendant received Rs.3,00,000/- from the plaintiff for exorbitant interest and the cheque has been issued as security is false. The State Bank of Travancore, Valliyoor branch is not in existence is also false. So these allegation stated in the reply notice dated 29.07.2019 are false and frivolous. In spite of demand by the plaintiff, the defendant is evading to pay the loan amount from the date of receipt of loan from the plaintiff. Hence the suit.

### **3) The Averments of the Written Statement.**

The defendant borrowed a sum of Rs.3,00,000/- from the brother-in-law of the plaintiff, namely, Chidambaram, and he is collecting monthly interest at the rate of Rs.3 for Rs. 100/-. The defendant gave two blank cheques to the above Chidambaram only. But, at the instance of the above said Chidambaram, the plaintiff illegally filled the above cheques and claims the amount as if the defendant borrowed amount from the plaintiff. The above said Chidambaram also filed another case against this defendant on 14.04.2019 as if the defendant borrowed Rs.10,00,000/- to him. On 15.07.2019, this defendant gave the reply notice and STC 4/2021 is pending before the Judicial Magistrate Court, Nanguneri. Plaintiff along with his

brother-in-law made a criminal conspiracy in order to grab the immovable property used the cheque which was given by the defendant to the above said Chidambaram on 05.04.2017. Hence, the suit is liable to be dismissed.

**4. Issues:**

1. Whether the plaintiff is entitled to get the relief of recovery of money as claimed in the plaint?
2. To what other relief if any, the plaintiff is entitled to?

5. Eventhough sufficient opportunities were given to the defendant, PW1 was not cross examined by the defendant. Hence, the defendant was set ex parte.

6. On the side of the plaintiff, the plaintiff has been examined himself as PW1 and Ex.A1 to Ex.A7 were marked.

**7. The Point 1 & 2:-**

It is the case of the plaintiff that, on 02.06.2019, the defendant received a sum of Rs.9,00,000/- from the plaintiff for the defendant's urgent family necessity and issued a post dated cheque for Rs.9,00,000/- dated 05.07.2019 in cheque number 408476 drawn on State Bank of Travancore, Valliyoor. On 05.07.2019, the plaintiff presented the cheque for collection as promised by the defendant through the plaintiff's bank Canara Bank, Nanguneri Branch. Unfortunately, the collection bank returned the cheque as dishonor with endorsement funds insufficient. After receiving the Bank memo, the plaintiff issued a notice on 15.07.2019 demanding the cheque amount within 15 days from the date of receipt of notice. The defendant received the notice on 17.07.2019. In spite of due notice of the discharge of the cheque, the defendant has not paid the cheque amount to the plaintiff.

8. The contention of the defendant is that cheque was given to one Chidambaram as a security and it was unfilled and the plaintiff has filled up the cheque and used as if it was given by the defendant to the plaintiff. It is not the case

of the defendant that he has not signed the cheque. Hence, the presumption u/s 118 of Negotiable Instruments Act has to be drawn in favour of the plaintiff.

9. Section 118 of the Negotiable Instruments Act reads as follows:

“118. Presumptions as to negotiable instruments- Until the contrary is proved, the following presumptions shall be made:-

(a) of consideration- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred, for consideration;”

10. Now, this court has to see whether the presumption infavour of plaintiff was rebutted by the defendant. The Plaintiff has been examined as PW1. Since the defendant has not come forward to cross examine the PW1, the evidence of PW1 remained unchallenged.

11. Ex.A1 is the Aadhar card of the plaintiff. Ex.A2 is the original cheque drawn on state Bank of Travancore Valliyoor branch in cheque number 408476. Pay in slip dated 04.07.2019 and Copy of memo issued by canara bank, Nanguneri are marked as Ex.A3 and Ex.A4 respectively. Copy of notice dated 17.07.2019 issued by the plaintiff to the defendant is marked as Ex.A5. Reply notice dated 29.07.2019 is marked as Ex.A6. Ex.A7 is the acknowledgment card.

12. From the perusal of the above, it is clear that the presumption u/s 118 of Negotiable Instruments Act has to be drawn in favour of the plaintiff and it is not rebutted by the defendant. Moreover, it is clear that this defendant borrowed money from the Plaintiff and he failed to repay the amount as agreed and evenafter demand, he has not come forward to settle the borrowed amount. Therefore he is liable to repay the loan amount due as agreed and suit is filed within the limitation period.

13. Therefore, considering the testimony of PW1 coupled with documentary evidence and also considering the fact that the Defendant has not appeared before the court and had not come forward to put-forth his evidence, this court is of the opinion that Plaintiff has clearly proved the suit claim and the Plaintiff is entitled to recover the amount from the Defendant. Accordingly the point is answered in favour of Plaintiff.

14. In the result, this suit is decreed with costs and the defendant is directed to repay the total amount of Rs. 9,18,000/- and defendant is further directed to pay interest at the rate of 12% per annum on the principal amount of Rs.9,00,000/- from the date of the suit to the date of the decree and with further interest at the rate of 6% per annum from the date of the decree to the date of payment.

Directly, dictated to the steno-typist typed by her in computer corrected and pronounced by me in the open Court this the 29<sup>th</sup> day of March 2023.

Sd/-M.Ramadhas  
Subordinate Judge,  
Nanguneri.

**List of witness on the side of the Plaintiff:-**

PW1 - Tr.Lakshmanan(Plaintiff- Bank Manager)

**List of documents on the side of the Plaintiff:-**

Ex.A1 -- Aadhar card of the plaintiff

Ex.A2 05.07.2019 Original cheque drawn on state Bank of Travancore  
Valliyoor branch in cheque number 408476

Ex.A3 05.07.2019 Pay in slip dated 04.07.2019

Ex.A4 08.07.2019 Copy of memo issued by canara bank, Nanguneri



Sub Court, Nanguneri,

O.S.No.174/2021

Draft/Fair Judgment

Dated: 29.03.2023