

IN THE COURT OF THE SUBORDINATE JUDGE, THODUPUZHA

Present :

Sri. Sunil K.P., M.A, LL.B., Sub Judge.

Friday, the 7th day of September, 2018 /16th day of Bhadra, 1940.

O.S. 15/2017

Plaintiffs :-

1. Suhara Beevi W/o. Muhammed Ismail, aged 55, residing at Jannath, Pangode P.O, Karikkakam, Kallara, Thiruvananthapuram, Kerala.
2. Shereena .A W/o. Late Muhammad Rafi, aged 34, residing at Jannath, Pangode P.O, Karikkakam, Kallara, Thiruvananthapuram, Kerala.
3. Fanad S/o. Late Muhammad Rafi, Minor aged 8, residing at Jannath, Pangode P.O, Karikkakam, Kallara, Thiruvananthapuram, Kerala, represented by his next friend Shereena .A, W/o. Late Muhammad Rafi.
4. Fawsan S/o. Late Muhammad Rafi, Minor aged 6, residing at Jannath, Pangode P.O, Karikkakam, Kallara, Thiruvananthapuram, Kerala, represented by his next friend Shereena .A, W/o. Late Muhammad Rafi.
5. Faziya D/o. Late Muhammad Rafi, Minor aged 4, residing at Jannath, Pangode P.O, Karikkakam, Kallara, Thiruvananthapuram, Kerala, represented by her next friend Shereena .A, W/o. Late Muhammad Rafi.

By Advs.S. Asokan and Prasad Joseph.

Defendants :-

1. Johny Varghese S/o. Kittickal Joseph Varghese, aged about 51 years, residing at Kittickal House, Padinjare Chempanal, Karalam Village, Iringalakuda, Trichur, Kerala, Pin-680711.
2. Biji W/o. Johny Varghese, aged about 47 years, residing at Kittickal House, Padinjare Chempanal, Karalam Village, Iringalakuda, Trichur, Kerala, Pin- 680711.

Set ex-parte

This suit coming on for final hearing on 04.09.2018 in the presence of the above counsel and having stood over for consideration till 07.09.2018 and the Court on the same day delivered the following:

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This is a suit for realisation of money.

2. The plaint averments in brief are as follows:-

The first plaintiff is the mother, the second plaintiff is the wife and the plaintiffs 3 to 5 are the children of Late Muhammad Rafi. They are the only legal heirs of Late Muhammad Rafi. The

plaintiffs 3 to 5 are represented by the second plaintiff, who is their mother and next friend. The defendants are husband and wife and they are partners of business establishments spread over India and abroad. Both the defendants, Late Muhammad Rafi and his brother Muhammad Rasi were working in Riyadh and were closely acquainted with each other. The defendants approached Muhammad Rafi for a loan of ₹20,00,000/- in connection with their real estate business in Kerala. Since the first defendant and Late Muhammad Rafi were in Riyadh, it was mutually agreed that the 2nd defendant will collect the amount from the second plaintiff at Sabano Royal Apartment, Thodupuzha. Accordingly on 14.2.2014 the 2nd defendant received ₹20,00,000/- from Late Muhammad Rafi through the second plaintiff. At the time of receiving the amount the second defendant handed over post-dated cheque bearing Nos.333805 and 304429 dated 15.7.16 for an amount of ₹14,00,000/- and ₹6,00,000/- respectively executed by the first defendant in favour of Late Muhammad Rafi. The above said cheques were drawn on Mumbai Branch of the ICICI Bank Limited, wherein the first defendant maintained his account. But the defendants sought further time for payment and agreed to arrange funds on or before 7.9.16. So Late Muhammad Rafi presented the above said cheque before the Pangode CCPC/Service Branch of the State Bank of Travancore on 8.9.2016. But thereafter on 15.9.2016

Muhammad Rafi became no more. The above said cheques were dishonoured due to insufficiency of funds and returned with memo dated 27.9.2016. So the plaintiffs caused to issue demand notice dated 24.10.16, but the defendants did not care to make payment. So the plaintiffs sought for recovering an amount of ₹27,72,731/- with future interest @12% per annum till the date of realisation charged on the plaint schedule property.

3. The defendants remained ex-parte. The second plaintiff filed an affidavit in lieu of chief examination for herself and on behalf of all other plaintiffs and marked Exts.A1 to A5, A6, A6(a), A7, A8 and A8(a). It is stated in the affidavit that both the defendants, Late Muhammad Rafi and his brother Muhammad Rasi were working in Riyadh and were closely acquainted with each other. The defendants approached Muhammad Rafi for a loan of ₹20,00,000/- in connection with their real estate business in Kerala. Since the first defendant and Late Muhammad Rafi were in Riyadh, it was mutually agreed that the 2nd defendant will collect the amount from the second plaintiff at Sabano Royal Apartment, Thodupuzha. Accordingly on 14.2.2014 the 2nd defendant received ₹20,00,000/- from Late Muhammad Rafi through the second plaintiff. At the time of receiving the amount the second defendant handed over post-dated cheque bearing Nos.333805 and 304429 dated 15.7.16 for an amount of ₹14,00,000/- and ₹6,00,000/- respectively executed by

the first defendant in favour of Late Muhammad Rafi. The above said cheques were drawn on Mumbai Branch of the ICICI Bank Limited, wherein the first defendant maintained his account. But the defendants sought further time for payment and agreed to arrange funds on or before 7.9.16. So Late Muhammad Rafi presented the above said cheque before the Pangode CCPC/Service Branch of the State Bank of Travancore on 8.9.2016. But thereafter on 15.9.2016 Muhammad Rafi became no more. The above said cheques were dishonoured due to insufficiency of funds and returned with memo dated 27.9.2016. So the plaintiffs caused to issue demand notice dated 24.10.16, but the defendants did not care to make payment. So according to the plaintiffs they are entitled to recover an amount of ₹27,72,731/- with future interest @12% per annum till the date of realisation charged on the plaint schedule property. The above said evidence remains unchallenged. But the claim of future interest at the rate of 12% per annum is highly exorbitant. Being a simple money suit the prayer for passing a charge decree is also not maintainable.

In the result the suit is decreed as follows:-

The plaintiff is entitled to recover from the defendants and their assets ₹27,72,731/- with interest @9% per annum on the principal sum of ₹20,00,000/- from the date of suit till the date of decree and thereafter with interest @6% per annum on ₹20,00,000/-

till the date of realisation or payment. The plaintiff is also entitled to recover the cost of the suit from the defendant and its assets.

Dictated to the Confl. Asst., transcribed and typed by her, corrected by me and pronounced in Open Court on this the 7th September, 2018.

SUNIL K.P,
SUB JUDGE

APPENDIX

Plaintiffs' Exhibits:-

- | | | | |
|-------|------------|---|--|
| A1 | 27.09.2016 | : | Copy of the death certificate issued from the Municipal Corporation, Thiruvananthapuram. |
| A2 | 15.07.2016 | : | Cheque No. 33380 of ICICI Bank for ₹14,00,000/-. |
| A3 | 15.07.2016 | : | Cheque No. 304429 of ICICI Bank for ₹6,00,000/-. |
| A4 | 27.09.2016 | : | Cheque return memo |
| A5 | 27.09.2016 | : | Cheque return memo |
| A6 | 24.10.2016 | : | Copy of the Lawyer's notice. |
| A6(a) | 24.10.2016 | : | Copy of the Lawyer's notice. |
| A7 | 24.10.2016 | : | Postal receipts. |

A8 --- : Returned postal cover (unserved) with AD Card.

A8(a) --- : Returned postal cover (unserved) with AD Card.

Defendants' Exhibits :- Nil

Court Exhibits :- Nil

Third Party Exhibits : Nil

Plaintiffs' Witnesses :- Nil

Defendants' Witnesses :- Nil

Court Witnesses :- : Nil

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DATED: 07.09.2018