IN THE COURT OF SUBORDINATE JUDGE, KOZHIKODE

Present:- Smt. Leena Rasheed, II Addl Sub Judge.

Monday, the 10th day of July, 2023.

Original Suit No. 156/2021

Between:

Mahfil Hassan.V., 26 yrs., S/o. Muhammed Hassan, Amar Veed, Feroke Amsom Nallur Desom, Kozhikode Taluk, Kozhikode District.	Plaintiff

And

1. Favas, 36 yrs., S/o. KunhiMoidheen, Valiya Palathingal House, Edappalam (PO) Rayiranellur Amsom, Edappalam Desom, Pattambi Taluk, Vilayur Village, Palakkad District. 2. Faisal 34yrs., S/o. KunhiMoidheen, Valiya Palathingal House, Edappalam (PO) Rayiranellur Amsom, Edappalam Desom, Pattambi Taluk, Vilayur Village, Palakkad District. 3. Subaida(age not Known), W/o. KunhiMoidheen, Valiya Palathingal House, Edappalam (PO) Rayiranellur Amsom, Edappalam Desom, Pattambi Taluk, Vilayur Village, Palakkad District. 4. Faseela(age not Known), D/o. KunhiMoidheen, Valiya Palathingal House, Edappalam (PO) Rayiranellur Amsom, Edappalam Desom, Pattambi Taluk, Vilayur Village, Palakkad District. 5. Fasna(age not Known), D/o. KunhiMoidheen, Valiya Palathingal House, Edappalam (PO) Rayiranellur Amsom, Edappalam Desom, Pattambi Taluk, Vilayur Village, Palakkad District.	Defendants

This Suit Coming on 3rd day of July, 2023 for final hearing, before me in the presence of Sri. Suneesh Mamiyil and Sri. Sujith Kottayil, Advocates for Plaintiff, Sri. Benny Thomas, Advocate for D1 to D5 and having stood over to this day for consideration, the court delivered the following:

JUDGMENT

The suit is for realization of money.

2. The plaint averments in brief are as follows: Plaintiff and first defendant are relatives and other relatives are defendants' siblings and mother. On the close acquaintance, the first defendant borrowed amounts from plaintiff to solve financial constraints in his business. The first defendant used to repay the same on time. From 2018 to November 2019 the first defendant borrowed an amount of ₹50,00,000/- (Rupees fifty lakh only) in total on various occasions promising to repay the sum on request within two weeks. Later, it was promised to repay within six months. In January 2020 the first defendant again requested for ₹35,00,000/- promising to repay within six months as agreed in 2019 November. In May 2020 when he demanded the money back, the first defendant requested for three months enlargement. After the expiry of three months the first defendant again requested for 15 days time to make the repayment. Even after the expiry of that time period the first defendant failed to repay the amount. Later, plaintiff came to know that the first defendant had borrowed money from his father and other relatives. Hence the plaintiff along with his father and other family members from which the first defendant had borrowed money contacted the local political leaders to mediate the matter and they mediated with the first defendant and his father and the liability was settled for ₹50,00,000/- (Rupees fifty lakh only). As the first defendant's father was bedridden the mediators directed the plaintiff to prepare an agreement as settled in mediation talk and to

bring the same to the defendants' residence. The agreement so prepared was shared in whatsapp to mediators and also first defendant. As agreed by them the printout of the agreement was taken in stamp paper and on 5.09.2020 an agreement was executed between plaintiff, first defendant and his father. As per the agreement the first defendant and his father agreed to pay ₹25,00,000/- on or before 31.12.2020 and balance ₹25,00,000/- on or before 30.04.2021. The first defendant's father also issued two cheques maintained with Federal Bank Pulamanthole branch promising that there will be sufficient funds in the account to honour cheques. Before 31.12.2020 the first defendant contacted the plaintiff requesting to delay the presentation of cheque hence he presented the first cheque only on 22.03.2021 and the same was dishonoured with remarks “funds insufficient”. When the plaintiff informed the same to first defendant he was told that the first defendant's father is at his terminal stage and hence he abstain himself from further proceedings. The second cheque was also not presented on the request made by first defendant. Later, he came to know about the death of first defendant's father and he issued lawyer notice demanding the money. Defendants failed to repay the amount but sent a reply notice contending that the plaintiff is first defendant's business partner and had invested in business. Due to covid restrictions business went in loss and he was forced to close the business. As a partner both are liable to bear the loss. It was also stated in reply notice that towards the security for investment plaintiff's father threatened the defendant and his father and had obtained their signature in an agreement and also blank stamp papers and cheques. Plaintiff denied the same and filed the suit against the first defendant and other defendants being the legal heirs of first defendant's father for recovery of amount.

3. The defendants entered appearance and filed joint written statement contending as follows:-

4. Though the defendant denied the entire allegations in plaint. He admitted the relationship between the parties and also the receipt of some amounts initially and its repayment. He denied the financial transaction as alleged in plaint and execution of agreement dated 5.09.2020. The first defendant and plaintiff were business partners and as partners both are liable to bear the loss and profit. During covid the business went in loss and he was forced to close the business. Then the plaintiff's father along with a Notary Advocate approached the first defendant's father and demanded to sign some papers. They also threatened to put an end to first defendant's marital life and thereby obtained the signature of the first defendant and his father in an agreement, blank stamp papers and also cheques. The blank signed stamp papers were later forged by the plaintiff and instituted this suit. Further, the defendants submitted that no amount is due towards the plaintiff. Hence, they prayed for dismissal of suit with costs

5. The following issues are settled for trial.

1. Whether defendant No.1 borrowed ₹85,00,000/- (Rupees eighty five lakhs only) from the plaintiff as alleged?
2. Whether the parties agreed to fix the liability at ₹50,00,000/- (Rupees fifty lakhs only)?
3. Whether defendant No.1 and his father undertook to repay that sum to the plaintiff?
4. Is the agreement dated 5.09.2020 true and genuine?
5. Whether first defendant's father executed and issued cheque Nos.487910 and 487911 in discharge of the liability ?
6. Is the plaintiff entitled to a decree as sought for?
7. Reliefs and costs?

6. To prove the plaintiff's case plaintiff was examined as PW1 and Exts.A1 to A8 were marked. To prove the defendants' case DW1 was examined and Exts.B1 to B5 were marked

7. Heard both sides.

8. **Issue No (1) to (6) :-** The suit is one for realisation of an amount of ₹50,00,000/- (Rupees fifty lakhs only) with interest. It is admitted by both parties that they are close relatives and there is financial transaction between plaintiff and first defendant. It is also admitted by first defendant that he he had repaid the money as stated in plaint. According to plaintiff, after initial transactions the first defendant had borrowed ₹85,00,000/- (Rupees eighty five lakhs only) on a promise to repay the sum within six months and later defaulted in paying the amount. Time was sought twice for repayment and later he came to know that the first defendant had borrowed money from his father and other relatives. Then PW1 approached the mediators and on their intervention an agreement was executed between him, DW1 and his father, and first defendant's father had issued two cheques for ₹25,00,000/- each promising that there will be funds in the account to honour the cheque. The agreement is marked as Ext.A1.

9. However, when the first defendant was examined as DW1, he denied the execution of Ext.A1agreement. According to him, the plaintiff was his partner and he had invested some amount in the partnership business. Due to covid he suffered severe loss in the business and was forced to close down the same. As a partner plaintiff is supposed to bear the loss also. According to him, he had paid the profits to him and the same was admitted by PW1 during cross examination that he had received money from the defendant.

10. The definite case of DW1 is that plaintiff's father approached his father and threatened him and as a security for investment made by plaintiff they were forced to enter into an agreement and their signatures were taken in blank stamp papers and cheque leaves. The blank stamp papers were forged in

which a new agreement was entered as executed between plaintiff, DW1 and his father and instituted this case.

11. PW1 presented Ext.A2 cheque issued by DW1's father before Feroke Co-operative Urban Bank on 22.03.2021. But the same was dishonoured with remarks "funds insufficient." When informed the same DW1 informed him that his father was in his terminal stage and as a result of which being the close relatives PW1 failed to take any action on dishonour and abstained from presenting Ext.A4 cheque. Later, DW1's father expired and hence the legal representatives of DW1's father were brought in party array as D2 to D5 along with DW1.

12. During cross examination of PW1, he failed to state the particulars of the amount borrowed by DW1 and also the date of transaction. According to him, he borrowed the money from his father, sisters, brother-in-law and other close relatives to lend the same to DW1. Learned counsel for the defendant contended that in the absence of document to show that the plaintiff has financial capacity to lend the amount, it cannot be concluded that there is financial transaction between them as alleged in plaint. It is also submitted that PW1 is working in a plumbing material shop and is drawing a salary of ₹20,000/- per month. In the absence of cogent evidence to prove the transaction there is nothing to conclude that DW1 had borrowed ₹85,00,000/- (Rupees eighty five lakh only) from the plaintiff.

13. It is worthwhile to note that in the reply notice issued to the lawyer notice and also the written statement there is no pleading to the effect that the plaintiff has no financial capacity to lend this amount. The definite case of DW1 is that plaintiff had invested money in his business and as a partner the plaintiff is supposed to bear loss in business together with profit. As a result of covid

restrictions DW1 suffered a huge set back in his business and was forced to close down the entire business. Hence, plaintiff is also responsible and liable to suffer the loss along with him.

14. But during cross examination of DW1 when enquired about the particulars of business in which PW1 is the partner it is submitted that he had only two partners in his business. One is his wife and the other is one Muhammed Shameen. It is also admitted by him that there is no legal business with the plaintiff. At the end of cross examination he also admitted that he had borrowed the amount from PW1 on interest. So DW1 himself has given a contradictory version from his stand about partnership in his business and he ended up his version stating that the amount was borrowed on interest.

15. So DW1 put forth a different case during cross examination. In the written statement DW1's case is that he and his father were threatened by plaintiff's father to enter into an agreement and they signed the agreement and also they were made to sign in some blank signed stamp papers and also in blank cheques. He completely denied execution of Ext.A1 document. But with respect to the execution of Ext.A1 agreement, the definite case of plaintiff is that by the intervention of mediators they entered into a settlement by which they agreed to limit the liability to ₹50,00,000/- (Rupees fifty lakh only) and it was promised to be paid in two installments of ₹25,00,000/- on 31.12.2020 and 30.04.2021.

16. Since DW1's father was bedridden the mediators directed them to prepare the agreement and the same was shared over whatsapp to mediators and defendants and thereafter it was drafted in stamp papers purchased in the name of DW1's father and the agreement was executed on 5.09.2020. DW1 though denied the execution of Ext.A1 agreement by producing Ext.B3

agreement to prove that the agreement is entered between PW1's father, himself and his father and the same is for a different amount that is 27,05,076/-. He admitted Ext.B3 agreement and further pleaded discharge. According to him, the entire amount covered by Ext.B3 agreement was paid. But no such evidence was adduced to prove the same. Thereafter, DW1 took an inconsistent plea denying his signature in Ext.A1. He denied not only his signature but also the signature of his father and also the signature of D2 who is a witness to the agreement.

17. But during cross examination and also in the proof affidavit he admitted receipt of an agreement through whatsapp. The same is marked as Ext.B5. His case is that Ext.B5 agreement is dated 7.08.2020 whereas Ext.A1 is dated 5.09.2020. Moreover, the third page in Ext.B5 agreement is not the same as in Ext.A1 agreement and the same was replaced by three stamp papers of twenty rupees each. On a perusal of of Exts.A1 and B5 it can be concluded that the contents in both documents are the same. The only thing is that Ext.B5 is dated 7.08.2020 whereas Ext.A1 is dated 5.09.2020. In the third page of Ext.B5 the amount was shown as ₹62,00,000/- and in Ext.B5 it is stated that ₹50,00,000/- was borrowed from friends and relatives. So the amount was reduced in Ext.A1 as ₹50,00,000 in the place of total amount agreed and ₹40,00,000/- as amount received from friends and relatives. So apart from that there is nothing to show that both agreements are different. There is also an endorsement in Ext.B5 that “തിരുത്തിയത് കക്ഷികൾ അറിയണം സൈൻ ചെയ്യണം”. So it is very clear that initially the agreement entered was altered to ₹50,00,000/- and the same was sent over whatsapp and by removing the third page and due to unavailability of 50 rupees stamp paper three 20 rupees stamp paper was added correcting the amount. So it is very clear from Ext.B5 document produced by DW1 that there is an agreement between PW1, DW1 and DW1's father and they had agreed for ₹50,00,000/-.

18. PW1 further submitted that before the date of presentation of Ext.A2 cheque he was requested by DW1 not to present the same. Hence, he delayed the presentation and later when he presented the same on 22.03.2021 the same was dishonoured with remarks “funds insufficient”. The same was also informed to DW1, in turn PW1 was told about the father's illness who later expired within a few days. But by Ext.B4 document it is evident that DW1's father the signatory to Ext.A1 document and who issued Exts.A2 and A4 documents expired on 19.03.2021. So Ext.A5 lawyer notice was issued to DW1 who received the same and replied to the same and the reply notice was marked as Ext.A6.

19. In the written statement he contended that the blank stamp papers in which his signature and also his father's signature were obtained was forged by plaintiff and thereby produced Ext.A1 agreement to substantiate their claim of ₹50,00,000/-. However, during cross examination he submitted that he couldn't state exactly whether Ext.A1 document is in the blank signed stamp papers in which the signatures were obtained. He denied his signature and father's signature and also brothers signature in Ext.A1. During DW1's cross examination the plaintiff produced Exts.A7 and A8 documents which is another agreement executed between defendant, his father and five other persons. In the same also DW1 had borrowed ₹50,00,000/- from the five persons who are the second party to the agreement and the agreement was to return the same and for them also two cheques of ₹25,00,000/- each was issued by DW1's father. The same was also denied by DW1 but admitted during cross examination that OS.130/2022 is pending against him on the basis of this agreement. There is also OS.328/2022 and 83/2022 against him and all these agreements were prepared by Notary Advocate Karunakaran and lawyer notices in all these cases were send by Advocate Aloor. Ext.A8 is the Caveat OP filed by DW1 and D2 against the plaintiff, his father, and other relatives. The

plaintiffs in those cases were shown as expected applicants. Ext.A8 is filed by DW1 after receipt of lawyer notice.

20. So on an over all analysis of evidence on record there is nothing to show that Ext.A1 is a forged one. From the evidence plaintiff has convinced this court that defendant had borrowed the amount. Though initially defendant pleaded partnership, he himself admitted during cross examination that he had borrowed the amount for interest. In the proof affidavit defendant also admitted the mediation talk held in between the parties and also receipt through whatsapp the agreement and copy is produced as Ext.B5. The change in date and place is well explained by plaintiff and according to learned counsel due to unavailability of fifty rupees stamp papers three twenty rupees stamp papers were used in correcting the third page of affidavit. So it has come out in evidence that DW1 and his father undertook to repay ₹50,00,000/- (Rupees fifty lakh only) due to plaintiff and agreement dated 5.09.2020 is true and genuine. It was also proved in evidence that DW1's father had executed and issued a cheque No.487911 for ₹25,00,000/- in discharge of the liability. Though the defendant denied his father's signature and also the signature of his brother in the Ext.A1 agreements. Normal human contact expects proceeding against the party who forged the document but defendant had no case that he had initiated any action against the plaintiff. It has also come out in evidence that apart from Ext.A1 document DW1 also executed other documents and legal action is pending against him on the basis of those agreement and Ext.A7 is entered in between first defendant, his father and the persons from whom DW1 borrowed the amount.

21. The Hon'ble Apex Court in ***Grasim Industries Ltd. v. Agarwal Steel [2010 KHC 6130]*** has held that *“when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the*

document properly and understood it and only then he has affixed his signature thereon, otherwise no signature on a document can ever be accepted". In the present case the defendant failed to lead cogent evidence to rebut the presumption available to Ext.A1. The defendant failed to establish the payment of consideration as per Ext.B3 agreement with plaintiff's father. Except the self serving oral evidence of DW1, there is absolutely no evidence in support of his case. He didn't produce any documentary evidence to substantiate his claim of discharge. If at all the plaintiff had obtained the signature on blank cheques and blank stamp papers or the signature in Ext.A1 is not defendant's he would have lodged the complaint with the police or court. DW1 did not choose to do so. The materials on record amply proves the plaintiff's case. The defence put up by defendant is clearly an after thought whereby he tried to defeat the claim of the plaintiff. A threadbare reading of the statement given by DW1 it is clear that he lacks consistency. Whatever stand taken by him is contradictory to his own statement and even to his pleadings.

22. Hence, I am of the view that plaintiff has succeeded in proving his case to the satisfaction of the court. Hence, I am of the view that plaintiff has proved the borrowel of ₹85,00,000/- (Rupees eighty five lakh only) by DW1 and limited the liability to ₹50,00,000/- (Rupees fifty lakh only). PW1 also proved the undertaking made by DW1 and his father to repay the same and execution of Ext.A1 document and also issuance of two cheques for ₹20,00,000/- which was later dishonoured. Hence, I am of the view that the plaintiff is entitled to realize an amount of ₹54,27,000/- (Rupees fifty four lakh twenty seven thousand only) from the defendants.

23. **<u>Issue No (7) :-</u>** In view of the findings on issues No.1 to 6, the suit is liable to be decreed as follows:-

1 The plaintiff is entitled to realise an amount of ₹54,27,000/-

(Rupees fifty four lakh twenty seven thousand only) together with interest @ 9% per annum from the date of suit (17.11.2021) till the date of decree and thereafter interest @ 6% per annum till realisation together with costs of the suit from the defendants and their assets.

(Dictated to the Confidential Asst., typed by her, corrected and pronounced by me in the open court, this 10th of July, 2023).

Sd/-

II ADDITIONAL SUB JUDGE.

Plaintiff's Witnesses:-

PW1	-	01.03.2023	-	Mahfil Hassan.V., S/o. Muhammed Hassan

Plaintiff's Exhibits:-

A1	-	05.09.2020	-	Notorised agreement entered into between 1st defendant, his father and Plaintiff
A2	-	31.12.2020	-	Cheque No. 487910 of Federal Bank Ltd. Issued by 1st defendant's father infavour of Plaintiff.
A3	-	23.03.2021	-	Cheque return memo issued by Manager for Co -Operative Urban Bank Feroke .
A4	-	30.04.2021	-	Cheque No. 487911 issued by Kunju Moidheen infavour of plaintiff
A5	-	20.07.2021	-	Photocopy of Lawyer Notice sent by Adv. B.A Aloor to the 1st defendant.
A6	-	08.09.2021	-	Photocopy of Reply notice sent by Adv. Benny Thomas to Adv. B.A.Aloor.
A7	-	08.08.2020	-	Copy of agreement entered into between 1st defendant, his father and Plaintiff.
A8	-	10.11.2021	-	Copy of Coveat OP filed before Sub Court, Ottapalam by Favas.V.P. and Faisal against Filsut Rahman and 16 others.

Defendant's Exhibits :-

DW1	-	15.03.2023	-	Favas.V.P., S/o. Kunhimoidheen

Defendant's Witnesses :-

B1	-	28.07.2021	-	Lawyer Notice sent by Plaintiff counsel to the 1st defendant.
B2	-	28.07.2021	-	Lawyer Notice sent by Plaintiff counsel to the 1st defendant.
B3	-	07.08.2020	-	Photocopy of agreement entered into between defendant, his father and Muhammed Hassan.V.
B4	-	24.03.2021	-	Copy of Death Certificate of Kunji Moidheen.V.P.
B5	-	---	-	Copy of Unexecuted agreement

Sd/-

II ADDITIONAL SUB JUDGE.

RKA

Fair/Copy of Judgment in O.S. 156/2021
Dated: 10.07.2023.