



2025:KER:17593

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

MONDAY, THE 3RD DAY OF MARCH 2025 / 12TH PHALGUNA, 1946

RSA NO. 333 OF 2024

**AGAINST THE JUDGMENT AND DECREE DATED 29.11.2021 IN
AS NO.32 OF 2019 OF SUB COURT AT PUNALUR, KOLLAM. ARISING
OUT OF THE JUDGMENT AND DECREE DATED 19.08.2019 IN OS
NO.103 OF 2016 OF MUNSIF COURT, PUNALUR**

APPELLANT/APPELLANT/DEFENDANT:

**MAYAKUMARI
AGED 45 YEARS
W/O THULASEEDHARAN PILLAI,
MELEVEEDU, KIZHAKKE MURI,
PUNNALA VILLAGE,
PATHNAPURAM TALUK,
KOLLAM,
PIN - 689696**

**BY ADVS.
S.SREEJITH (S-3453)
ANESH PAUL
AKHIL K.MADHAV**

RESPONDENT/RESPONDENT/PLAINTIFF:

**LATHA K.R
AGED 47 YEARS,
W/O VIJUKUMAR,**



2025:KER:17593

RSA NO. 333 OF 2024

2

**MOOLAMANNIL HOUSE,
KIZHAKKEBHAGAM,
PATHNAPURAM VILLAGE AND TALUK,
KOLLAM,
PIN - 689695**

**BY ADVS.
M.RAJENDRAN NAIR (THONNALLOOR)
JESSY S.SALIM(K/742/2008)**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR
ADMISSION ON 03.03.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



JUDGMENT

1. The defendant in a suit for recovery of money is the appellant. The respondent/plaintiff filed the suit on the strength of Exts.A1 to A3 cheques. The said cheques were for Rs.1,25,000/- Rs.1,00,000/- and Rs.1,00,000/-. The plaintiff filed the suit claiming the said amount with interest totaling Rs.3,71,000/- with further interest.
2. The Trial Court decreed the suit for an amount of Rs.3,71,000/- with 12% interest per annum on the amount of Rs.3,25,000/- from the date of the suit till realisation from the defendant. Though the defendant filed appeal before the First Appellate Court, the same was dismissed confirming the judgment and decree of the Trial Court.
3. I heard the learned counsel for the appellant



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4. The learned counsel for the appellant contended that since the execution of Ext.A1 to A3 cheques is denied, the plaintiffs ought to have adduced evidence to prove the execution of the said documents. The reason for not sending a Reply to Ext.A6 Lawyer Notice is clearly explained by the defendant by being examined as DW1. Exts.B1(a), B1(b) and B2 documents would prove that the defendant had chitties with Moolamannil Chit Funds conducted by the husband of the plaintiff. It would substantiate the case advanced by the defendant that the cheques were given as security for the chitty transaction. The plaintiff is not entitled to get the benefit of presumption under Section 118(a) of the Negotiable Instruments Act as the said presumption was rebutted by



the defendant by adducing sufficient evidence.

5. I have considered the contentions raised by the learned counsel for the appellant.
6. The plaintiff filed the suit on the basis of Ext.A1 to A3 cheques. The defendant raised contradictory contentions in the written statement. Genitally, she stated that the writing and signature in the cheques are not that of the defendant. Then, she stated that the she had issued cheques as security for the chitties conducted by the husband of the plaintiff and the same was misused and the present cases are filed. In order to prove the execution of Exts.A1 to A3 documents, the plaintiff examined herself as PW1 and another independent person as PW2. The Trial Court as well as the First Appellate court relied on the evidence of PW1 and PW2



for proving the execution of Exts.A1 to A3 cheques. I could not find any perversity in the appreciation of evidence on the part of the Trial Court or the First Appellate Court with respect to the evidence of PW1 and PW2. That apart, the plaintiff issued Ext.A6 Lawyer Notice to the defendant demanding payment of the cheque amounts. The contention of the defendant was that thereafter the defendant and her husband went to the house of the plaintiff and asked about the legal notice and cautioned the plaintiff for the false legal notice. When the defendant received Ext.A6 lawyer notice, it is difficult to believe that the defendant orally warned the plaintiff by visiting her house. There is no evidence for the same. The fact remains that the defendant did not reply to Ext.A6 Lawyer Notice. This also makes the defense of



the defendant doubtful.

7. It is true that the defendant produced Ext.B1(a), B1(b) and B2 documents to prove that she had chitties with Moolamannil Chit Funds. The plaintiff has specifically stated in evidence that she has no connection with Moolamannil Chit Funds. The Trial Court, as well as the First Appellate Court, found that the defendant failed to prove the said documents by summoning the proprietor of the said Moolamannil Chit Funds. The Trial Court has found that there was no seal of the institution in both the pass books. The DW1 admitted that there are some corrections also in the entries. The evidence of DW1 is that she had taken five chitties. But she produced a passbook of only two chitties, and there was no explanation with respect to the non production of the



2025:KER:17593

RSA NO. 333 OF 2024

8

other three passbooks. The Trial Court as well as the First Appellate Court correctly appreciated the pleadings and evidence and granted decree in favour of the plaintiff. There is nothing to interfere with the impugned judgment and decree. No substantial question of law arises in the matter.

8. Accordingly, this Regular Second Appeal is dismissed.

Sd/-

M.A.ABDUL HAKHIM
JUDGE

sms