C. R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

TUESDAY, THE 6TH DAY OF JUNE 2023 / 16TH JYAISHTA, 1945

RFA NO. 390 OF 2003

AGAINST THE JUDGMENT IN OS 301/1996 OF SUB COURT, MAVELIKKARA

APPELLANT:

ASHOK KUMAR
NALLAVEETTIL THARAYIL, NADUVILE MURI,
PADANILAM PO, NOORNADU.

BY ADVS.
SRI.P.PARAMESWARAN NAIR
SMT.SREELATHA PARAMESWARAN NAIR
SRI.T.S.SARATH
SMT.UMA

RESPONDENTS/DEFENDANTS:

1 SANKARANKUTTY PILLAI
KAVINTE PADEETTATHIL, THRIKKUNNAPPUZHA THEEKKU MURI, SOORANAD SOUTH, KOLLAM NOW WORKING AT ALSAFI DAIRY ESTABLISHMENT, PB NO 580, ALBANA, K.S.A.

2 VIJAYALEKSHMI **[DIED; LRS IMPLEADED]**
ATHIRA NILAYAM, PATHARAM, SOORANAD, KOLLAM.

*** ADDL. RESPONDENTS 3 TO 5**

ADDL. R3 ATHIRA SUNITH
ATHIRA NILAYAM (KAVINTE PADEETTATHIL) SOORANAD SOUTH, KAKKAKUNNU PO, KOLLAM.

ADDL. R4 ARUN SANKAR
ATHIRA NILAYAM (KAVINTE PADEETTATHIL), SOORANAD SOUTH, KAKKAKUNNU PO, KOLLAM

ADDL. R5 ANJALI ARUN,
ATHIRA NILAYAM (KAVINTE PADEETTATHIL), SOORANAD SOUTH, KAKKAKUNNU PO, KOLLAM.

***[THE LEGAL HEIRS OF THE DECEASED SECOND RESPONDENT ARE IMPLEADED AS ADIITIONAL RESPONDENTS 3 TO 5 VIDE ORDER DATED 10/10/19 IN IA 1/19.]**

BY ADVS.
SRI.O.V.RADHAKRISHNAN (SR.)
SMT.K.RADHAMANI AMMA
SRI.ANTONY MUKKATH

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 06.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

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R.F.A. No.390 of 2003

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Dated this the 6th day of June, 2023

J U D G M E N T

The suit for money under a dishonoured cheque, was dismissed by the Court. The plaintiff is in appeal.

2. The second defendant is the wife of the first defendant. The plaintiff and the first defendant were employed in Saudi Arabia and were friends. In March 1995, the first defendant borrowed an amount of ₹ 5,50,000/- from the plaintiff. The amount was agreed to be repaid in three months. The same was not repaid. While they were at the native place, the first defendant issued a post dated cheque dated 02.11.1996 for ₹ 5,50,000/-. The cheque was issued as security and was to be returned when the amount is paid. However, the amount was not paid. The cheque when presented for payment was dishonoured. Thereupon, the suit is filed.

3. The defendant, though denied the plaintiff's claim admitted that, in March, 1995 an amount of ₹ 50,000/- was borrowed from the plaintiff. He contended that, as security for the said amount a blank signed cheque was issued. The cheque was unauthorisedly filled up by the plaintiff. The cheque is not an enforceable instrument. Contending thus, the defendants sought for dismissal of the suit.

4. The trial court found that the court lacks territorial jurisdiction to entertain the suit. It was further held that the plaintiff failed to prove the payment of ₹ 5,50,000/-. Accordingly, the suit was dismissed.

5. Heard learned counsel on either side.

6. The suit is on a dishonoured cheque. It is a statutory liability. The cheque was presented and dishonoured within the jurisdiction of the trial court. Therefore, the trial court had the territorial jurisdiction to entertain the suit. I do not agree with

the finding of the trial court that since the original borrowal was at Saudi Arabia the court did not have territorial jurisdiction to entertain the suit.

7. So also, the defendant had not raised a specific contention regarding lack of territorial jurisdiction. In terms of Section 21(1) of the Code of Civil Procedure, objections with regard to territorial jurisdiction is to be raised at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement. That apart, the trial court had not even raised an issue with regard to the territorial jurisdiction. The only issue that was raised for trial was, “What is the correct amount due to the plaintiff?”. Further, even if the court found that it did not have jurisdiction to entertain the suit, the plaint should have been returned in terms of Order VII Rule 10 of the Code of Civil Procedure. Anyhow, as held earlier, the court was not right in having held that it lacks territorial jurisdiction to entertain the suit.

8. Ext.A1 is the cheque for ₹ 5,50,000/-. The cheque was dishonoured for insufficiency of funds. The learned counsel for the defendant would contend that, without issuance of a notice of dishonour the suit is not maintainable. In the light of Section 98 (c) of the Negotiable Instruments Act, the said contention cannot be sustained. The section provides that no notice of dishonour is necessary when the party charged could not suffer damage for want of notice. When the cheque is dishonoured for insufficiency of funds, the drawer is not entitled for a notice of dishonour *(See **Commercial Finances v. Thressia & Ors., 1990(1) KLT 774)***.

9. The next contention of the defendant is that the cheque was issued only as a security and hence could not have been presented for payment. The very fact that the cheque was issued as security by itself imply that, in the event of non-payment, the security is liable to be enforced. A cheque issued as security would mature for

presentation on default when payment is due *(See **Sripati Singh (since deceased) through his Son Gaurav Singh v. The State of Jharkhand and Ors., 2021(6)KHC207**)*. Consequent on the non-payment of the amount, the plaintiff was compelled to present the cheque for payment. Presentation of the cheque was only for the enforcement of the security. Therefore, the said contention of the defendant also cannot hold good.

10. That the defendant had borrowed amounts from the plaintiff while at Saudi Arabia is admitted. The only dispute is regarding the quantum. According to the plaintiff, the amount is ₹ 5,50,000/- and according to the defendant it is ₹ 50,000/-. There are several communications sent by the first defendant to the plaintiff wherein the liability is admitted. However, those letters do not mention the quantum of the debt. From the cross-examination of the first defendant as DW1, it has come out that the amount borrowed is not ₹ 50,000/- as claimed by him but is much more than that.

Even the trial court held that the contention of the defendant that the amount borrowed is only ₹ 50,000/-, is not correct and cannot be accepted. Though the first defendant would claim that the cheque was handed over at Saudi Arabia at the time of borrowal, while the plaintiff was cross-examined, the suggestion to him is that the cheque was entrusted to the second defendant at their house. Though the defendant would contend that it is a signed blank cheque that was entrusted to the plaintiff, the same is denied by the plaintiff. The first defendant as DW1 has admitted that the borrowed amount has not been repaid. In the circumstances as noticed above, and in the absence of evidence to the contrary, the case of the plaintiff is liable to be accepted. The trial court has not considered the above circumstances. The plaintiff is entitled to realise the cheque amount with interest.

11. With regard to the grant of interest, though in the plaint interest was claimed from the date of suit,

while preferring the appeal the plaintiff has not claimed interest during the pendency of the suit before the trial Court. The appellant has paid court fee accordingly and in terms of Explanation (3) to Section 52 of the Court Fees and Suits Valuation Act, 1959. Explanation (3) reads thus, “In claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished”. Since pendente lite interest was not made the subject matter of the appeal, the plaintiff is entitled for interest only from the date of appeal. Considering the prevailing rate of interest in banking transactions, grant of interest at the rate of 6% from the date of suit till realisation would be reasonable and justified.

In the result, the decree and judgment of the trial court is set aside. The plaintiff is granted a decree

for realisation of an amount of ₹ 5,50,000/- with interest at the rate of 6% per annum from the date of appeal (12.11.2003) till date of decree, and thereafter also at the same rate till realisation in full, from the first defendant and his assets. The appellant is entitled to costs throughout.

Sd/-
SATHISH NINAN
JUDGE

kns/-

//True Copy//

P.S. to Judge