

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

FAO.No. 148 of 2009 ()

AGAINST THE ORDER/JUDGMENT IN OS 75/2005 of SUB COURT, PATHANAMTHITTA
DATED 26-05-2009
APPELLANT(S)/RESPONDENT/4TH DEFENDANT:

VISHNU MOHAN,
GOKULAM, AYYAMKOICKAL MURI, ERATHU
ADOOR, PATHANAMTHITTA DISTRICT.

BY ADVS.DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.MATHEW SUNNY

RESPONDENT(S)/PETITIONER/PLAINTIFF:

JAYACHANDRAN V.V.,
VILAKKATTU VEEDU, VADAKKADATHU KAVU, ERATH VILLAGE
ADOOR, PATHANAMTHITTA DISTRICT.

R,R1 BY ADV. SRI.BECHU KURIAN THOMAS
R,R1 BY ADV. SRI.ROSHEN.D.ALEXANDER

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
20-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
K.P. JYOTHINDRANATH, JJ.**

F.A.O.No.148 of 2009

Dated this the 20th day of May, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant herein is the 4th defendant in O.S. No.75/2005 on the file of the Subordinate Judge's Court, Pathanamthitta. This appeal is filed against the order in I.A.No.1253/2009 in the said case.

2. The plaintiff, viz. The respondent herein filed the above suit seeking to realise an amount of Rs.2,17,593/- with interest at 12% from the defendants. The plaintiff's case is that the father of the 4th defendant, the appellant herein had borrowed an amount of Rs.2,15,000/- from the plaintiff at his residence, in seven instalments. He had issued seven cheques dated 13.4.2005 drawn on Indian Overseas Bank, Adoor Branch for a total amount of Rs.2,15,000/-. The plaintiff had presented four cheque leaves and they were dishonoured on 15.4.2005. The remaining three cheque leaves were presented by the plaintiff before the District Co-operative Bank, Pathanamthitta

Branch and they were also dishonoured on 16.4.2005. The father of the appellant died on 14.4.2005 and thereafter the suit was filed. The remaining defendants include his mother also.

3. The scope of this appeal is limited to the examination of the order passed by the court below, produced as Annexure III. The history of the case shows that an order was passed by the Sub Court in I.A. No.1062/2007 on 13.11.2007 as Annexure I, allowing the said application. Therein, a prayer was made by the defendants to have an expert examination of the signature of the late father in the cheque leaves. This was challenged before this Court by the plaintiff in W.P. (C) No.37193/2007. The operative portion of the judgment of this Court is the following:

“Therefore, I direct the court below to direct the defendants in the case to produce the documents which contains the signature of the alleged executant within one or two years prior to the execution of the alleged cheques. It is always desirable that it must be either in the form of a registered document or some documents kept by the bank so that there is no possibility of any tampering with the signature. The court

may also hear the plaintiff in the case before selecting the signature which is to be sent for comparison along with the disputed signature.”

4. It appears that thereafter on the motion made by the appellant, the court below issued a direction to the Indian Overseas Bank, Adoor Branch to produce documents, in the nature of account opening form signed by the late father. Alleging that the said order has been passed without hearing the respondent, he filed I.A.No.1253/2008 to review the said order which has now been allowed.

5. Learned counsel for the appellant submitted that the reasons stated by the court below to review the order are not correct. It is further pointed out that the review petition was filed beyond time and therefore it could not have been entertained also.

6. Learned counsel for the respondent submitted that in the light of Annexure II judgment rendered by this Court, the appellant had to seek the assistance of the court below for sending for expert examination the documents which have been executed by the late father within a period of two years from the date of issuance of the cheques

and herein the account opening forms are of the year 1993. It is submitted further that the respondent was not heard while passing the order and therefore the application was filed to review the same.

7. Learned counsel for the appellant submitted that the appellant could not trace out any other documents which contain the signature of late father, whereas learned counsel for the respondent submitted that the Bank account in the name of the father was being operated to his knowledge, at least till the year 2005. It is therefore, submitted that there was no difficulty for the appellant to seek a direction to produce those documents for the purpose of expert's examination.

8. We have considered the rival submissions. The court below allowed the review petition mainly for the reason that the documents now called for for comparison of signature are of the year 1993. The defence made by the appellant and other defendants in the suit is one of disputing the signature in the cheques in question. It is in view of the nature of the said defence that the court below allowed an expert examination of the signature contained in the cheques also. Of course,

this Court while disposing of W.P.(C) No.37193/2007 had observed that when the documents are sought for examination by an expert, those may be the documents executed within a period of one or two years.

9. The plea raised by the learned counsel for the appellant is that there is impossibility to get such documents. Of course, it is a matter which could have been considered by the court below while allowing the review petition. The court below also ought to have heard the parties to find out whether other documents are available.

10. We, therefore, are of the view that a fresh opportunity can be given to both sides. We therefore set aside the impugned order and send back the entire matter for fresh consideration by the court below. We find it proper to allow the appellant to file a fresh application in the light of the direction issued by this Court in Annexure II judgment, specifying the documents. The respondent is allowed an opportunity to file objection, if any. The court below will consider various aspects including the availability of documents for comparison of signature,

after hearing both sides. Appropriate orders will be passed within a period of three months from the date of production of a certified copy of this judgment. Since we have allowed both sides fresh opportunity, it is not necessary to consider the review petition filed by the respondent which will stand closed.

The appeal is disposed of as above. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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