

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

OP(C).No. 1725 of 2012 (O)

**AGAINST THE ORDER IN OS 392/2008 of I ADDL.SUB COURT,TRIVANDRUM
DATED 10.10.2011**

PETITIONER(S):

**S.SURESH KUMAR, AGED 46 YEARS,
S/O.SUKUMARAN NAIR, T.C.XXII/435-1, PANTHAPLAVIL VEEDU,
KANCHIRAVILA, MANACAUD, THIRUVANANTHAPURAM 695 009.**

**BY ADVS.SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS**

RESPONDENT(S):

**BABY SAROJAM,
AGED 69 YEARS, W/O.VIKRAMAN NAIR, SRUTHI,
OPP.REGIONAL RESEARCH LABORATORY INDUSTRIAL ESTATE,
PAPPANAMCODE, THIRUVANANTHAURAM 695 018.**

**R BY ADV. SRI.K.L.NARASIMHAN
R BY ADV. SRI.N.KRISHNA PRASAD**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18-08-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

AD

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1 : COPY OF THE PLAINT IN O.S.NO.392/2008 OF THE SUBORDINATE JUDGE'S COURT, THIRUVANANTHAPURAM.
- EXT.P2 : COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENT/ DEFENDANT
- EXT.P3 : COPY OF THE IA NO.5679/2011 IN O.S.NO.392/2008 OF THE SUBORDINATE JUDGE'S COURT, THIRUVANANTHAPURAM
- EXT.P4 : COPY OF THE IA NO. 5678/2011 IN O.S.NO.392/2008 OF THE SUBORDINATE JUDGE'S COURT, THIRUVANANTHAPURAM
- EXT.P5 : COPY OF THE OBJECTIONS FILED BY THE DEFENDANT TO EXT.P3
- EXT.P5(A): COPY OF THE OBJECTIONS FILED BY THE DEFENDANT TO EXT.P4
- EXT.P6 : COPY OF THE ORDER DATED 10.10.2011 IN I.A NO.5679/2011 IN O.S.NO.392/2008 OF THE COURT OF THE FIRST ADDITIONAL SUB JUDGE, THIRUVANANTHAPURAM
- EXT.P6(A) : COPY OF THE ORDERS 10.10.2011 IN IA NO.5678/2011 IN O.S.NO.392/2008 OF THE COURT OF THE FIRST ADDITIONAL SUB JUDGE, THIRUVANANTHAPURAM
- EXT.P7 : COPY OF THE DECISION REPORTED IN 2011 (3) KHC 565

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

PA. TO JUDGE

AD

SUNIL THOMAS, J.

O.P(C).No.1725 of 2012

Dated this the 18th day of August, 2015

JUDGMENT

The plaintiff in a suit for money is aggrieved by Ext.P6 and Ext.P6(a) order in I.A No.5679/2011 and I.A No.5678/2011.

2. The plaintiff instituted a suit for recovery of money on the strength of a cheque for a sum of Rs.3 lakhs, allegedly executed on 10.04.2008 by the defendant. The defendant appeared and contested the proceeding denying the execution of the cheque. Thereafter the matter was included in the list. In the meanwhile, the plaintiff filed two interlocutory applications, from which the impugned order arises, seeking a direction to the defendant to produce the documents containing her admitted signature during the period 2006 to 2009 and to forward the disputed cheque to the State Forensic Laboratory for an expert opinion. The Court below by two different orders, passed on the same day dismissed both the applications, *Inter alia*, on

the ground that the plaintiff has not specified the documents sought to be produced and also on the ground that the applications were highly belated.

3. The above orders are challenged in this original petition. Heard Mr.Mohan Jacob George the learned Counsel for the plaintiff and Ms.Raga Ramakrishnan, the learned Counsel for the defendant/respondent.

4. The learned counsel for the petitioner contented that the Court below was not justified in dismissing the application for referring the matter to the Forensic Laboratory, on the ground that it was not required and for the further reason that the Court could have examined the document by itself under Section 73 of the Indian Evidence Act. Regarding the application for summoning the documents, the Court held the view that the plaintiff has not specified which are the documents sought to be produced. The Court also indicated that the Vakalath and written statement are already available on the record. The learned Counsel for the defendant very effectively countered the contention of the learned Counsel by

arguing that the that the attempt of the Plaintiff was to conduct a rowing enquiry.

5. It is true that Section 73 of the Indian Evidence Act permits the Court to compare the disputed document with the admitted signatures available. In the case at hand, the admitted signatures were the signatures available on the Vakalath as well as on the written statement. However, there is some justification in the contention of the learned Counsel for the plaintiff that since the defendant is disputing the signatures on the cheque, there is a possibility of the defendant having put the signature in the Vakalath and written statement in a slightly different manner. Further, the cheque is seen to have been executed in the year 2008. The admitted signatures available before the Court were the signatures of the period 2011 or sometime thereafter. In the above circumstances for an effective comparison, the Court could not have completely relied on the admitted documents available on record. If the Court was of the view that the disputed cheque was to be compared, it

could have been only with an admitted document of the relevant period, namely 2008. Evidently no such document was available before the Court.

6. Even though Section 73 enables the Court to compare the documents, several decisions including the decision reported in **[2011(3) KHC 565] in Sreekumar C. V. D.Indira Devi** have held that, in disputed cases, expert evidence will enable the Court to adjudicate issues. The general trend of Judicial Pronouncement is that the expert opinion is only an opinion evidence and a weak form of evidence, and Court should search for supporting evidence. There are decisions which says that the Court should not exclusively rely on a comparison of the signature by the Court itself. It has been cautioned that it would be safe to compare the document and to arrive at a conclusion, along with available other evidence. In the light of the above, it would have been better had a opinion of expert been sought by the Court.

7. However, documents of the relevant period was not available before Court. That necessitated the filing of

I.A No.5679/2011. It is true that the plaintiff has not specified the documents which were sought to be produced by the defendant. The learned Counsel for the defendant, Ms.Raga Ramakrishnan vehemently contended that by keeping the application vague, the plaintiff was attempting to fish out evidence by putting the burden on the defendant to produce the document. However, the documents which are admittedly executed by the defendant during the relevant time is a matter within the exclusive knowledge of the defendant. It cannot be expected that the plaintiff will be aware of such documents. On the otherhand, absolute freedom was given to the defendant to produce the documents which were available with her, during the relevant time.

8. It is true that the application was highly belated and that, the court could have regulated by imposing sufficient cost, which was not done at that point of time. However, it could also not be expected that the plaintiff being the master of suit would remain lethargic and protract in the suit instituted by him. The impugned

orders are hence liable to be set aside. In the above circumstances, I feel that in the interest of justice, the Court below could have allowed both the applications.

9. In the result, the O.P(C) is allowed. Both the impugned orders are set aside. The mater is remitted back to the Court below. I.A.No.5679/2011 is allowed. It is made clear, that it will be open to the defendent to produce any documents of her choice which are available with her and if available with her, covering the period 2006 to 2009. If such documents are produced, the Court may pass such orders to forward such document to State Forensic Laboratory at the expense of the plaintiff. The Court shall pass further directions regarding the mode and manner and the time limit within which the documents are to be produced and if not available to file an affidavit.

The original petition is allowed as above.

Sd/-
SUNIL THOMAS,
JUDGE

AD