

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

OP(C).No. 6 of 2015 (O)

AGAINST THE ORDER IN OS 161/2011 of SUB COURT, MAVELIKKARA DATED 18-12-2014

PETITIONER(S)/DEFENDANT:

PONNAMMA AGED 65 YEARS
W/O.JAYACHANDRAN, KOMALEZHATH KOYICKAL HOUSE
PERINGALA P.O., KAYAMKULAM.

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI

RESPONDENT(S)/PLAINTIFF:

BABU JANARDHANAN, AGED 67 YEARS
S/O.JANARDHANAN, ALUMOOTIL PADEETHATHIL,
MUTTOM MURI,CHEPPAD VILLAGE - 690 511.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 12-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 6 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PLAINT DATED 30/06/2011 FILED BEFORE THE SUB COURT, MAVELIKKARA.

EXHIBIT P2: TRUE COPY OF WRITTEN STATEMENT DATED 27/08/2013 IN O.S. 161/2011.

EXHIBIT P3: TRUE COPY OF THE I.A. 1537/2014 IN O.S. 161/2011, DATED 02/12/2014 (AFFIDAVIT PETITION).

EXHIBIT P4: TRUE COPY OF OBJECTION FILED AGAINST EXT.P3

EXHIBIT P5: TRUE COPY OF THE ORDER IN I.A. 1537/14 IN O.S. 161/11 DATED 18/12/2014.

RESPONDENT(S)' EXHIBITS

NIL

// TRUE COPY //

P.S TO JUDGE

SOU.

P. BHAVADASAN, J.

O.P.(C). No. 6 of 2015

Dated this the 12th day of February, 2015.

JUDGMENT

Aggrieved by the order dated 18.12.2014 in I.A. 1537 of 2014 in O.S. No. 161 of 2011, pending before Sub Court, Mavelikkara, the petitioner before the court below came up with this Original Petition under Article 227 of the Constitution of India.

2. The facts absolutely necessary for the disposal of this petition are as follows:

The plaintiff in the suit claimed that the defendant who is the petitioner herein had borrowed a sum of Rs.3,50,000/- from him and in order to discharge the said liability, a cheque was issued to him and the cheque on presentation was returned for want of funds. Notice was issued to the petitioner herein. Amount remained unpaid. The suit was later laid.

3. The suit was resisted by the defendant who is the petitioner herein by contending that she had no transaction whatsoever with the plaintiff and the cheque seems to have been handed over by her husband and that her husband had some transaction with the plaintiff. It is also averred that the cheque could not have been given at the alleged time for various reasons mentioned in the written statement.

4. On the basis of the pleadings, issues were raised and parties went to trial. After the examination of the witnesses, the defendant filed I.A. 1537 of 2014 seeking to have the disputed cheque sent for expert opinion on the allegation that the date found in the cheque was not put by the husband of the petitioner before the court below but by somebody else.

5. The plaintiff in the suit resisted the prayer for expert opinion and pointed out that it is an after thought and a clear attempt to delay the proceedings. The court below after considering the rival contentions accepted the

plea put forward by the respondent before the court below and rejected the petition.

6. Smt. Sumathi Dandapani, learned Senior Counsel appearing for the petitioner contended that the court below was not justified in dismissing the petition. The main ground given by the court below is that it is highly belated. Relying on the decision reported in **Janachaitanya Housing Ltd., Ameerpet v. M/s. Divya Financiers** (AIR 2008 163 (AP)), learned counsel contended that there is no specific time before which a prayer for expert opinion has to be made and it depends upon the facts of each case. There is no rule or law that after the evidence is closed, a prayer to that effect could not have been considered. It is contended that the petitioner came to know about the possible tampering only when her husband told her at a later stage and immediately thereafter she had taken steps to have the document sent to an expert opinion. Learned counsel for the petitioner pointed out that the cheque leaf alleged to have been given to the

defendant was from the cheque book which was issued in 2001 and thereafter subsequent cheque books were also issued. This would probabalise the case of the defendant. At any rate, according to the learned counsel, no particular harm is caused to the plaintiff for having the cheque sent for expert's opinion. Learned counsel therefore contended that the petition ought not to have been dismissed.

7. Shri. Subhash Chandra Bose, learned counsel appearing for the petitioner contended that there is no merit in any of the contentions raised by the learned Senior Counsel for the petitioner. First of all, according to the learned counsel, the defendant has no consistent case at all. She has no case in the written statement that the date was put by somebody else and if that be so, she cannot adduce evidence to that effect without the support of pleadings to that effect. Learned counsel also pointed out that even assuming that the date was subsequently put, that amounts to material alteration and that can be challenged under the relevant provisions of the Act. Learned counsel went on to

contend that the cheque was produced along with the plaint in 2011 and even at the time of filing of the written statement, the defendant was aware of the entries in the cheque and she did not then venture to contend for the position that date had not been put by her husband. As rightly noticed by the court below, according to the learned counsel, this is only an attempt to protract the proceedings.

8. After having heard learned counsel on both sides and on verification of the records, there seems to considerable force in the contention raised by the learned counsel for the respondent. The suit was instituted in 2011 and the written statement was filed as early as on 27.8.2013. It is not in dispute that cheque was produced along with the plaint and it was available for perusal by the defendant. In the written statement, there is no contention that the date found in the cheque has been put by somebody else other than the husband of the petitioner.

9. It is significant to notice that financial transaction between the plaintiff and the defendant's

husband is admitted and the defendant would say that she learned from her husband that in connection with a transaction, he had handed over cheque belonging to her. It is true that the defendant denied any transaction with the plaintiff.

10. In support of the contention that the cheque could not have been issued as alleged, it is pointed out that the cheque book, from which the cheque leaf had been issued, was issued in 2001 and all other cheque leaves had been issued much prior to the date borne by the cheque and that would clearly show that the cheque was not issued as alleged. It is also pointed out that subsequent cheque books have been issued from which cheques have been issued to various persons.

11. May be there is some substance in the above contention. But the fact remains that there is no contention in the written statement that the date found on the disputed cheque was not inserted by the husband of the petitioner. It is also significant to notice that when P.W.1 was

cross-examined, he stated that the date in the cheque was put by her husband and there is no suggestion to him that it was not so and it was put by somebody else.

12. As rightly pointed out by the learned counsel for the respondent that no amount of evidence is of any help to the defendant when there is no pleading that there is material alteration by the plaintiff with regard to the instrument involved.

13. Further, there is no justifiable explanation furnished for the considerable delay in filing the above petition for sending the cheque for expert opinion. The reason given is that on the date of preparing the chief affidavit the defendant happened to know that her husband had not put the date on the cheque. One must remember that he and the defendant had several earlier occasions to look into the cheque and discover the said fact. The court below was therefore perfectly justified in holding the petition to seek expert opinion is clearly an after thought.

14. Even assuming that expert evidence is not available, that does not mean that the petitioner cannot adduce evidence in support of her case. Whether there is material alteration is a matter to be considered on appreciation of evidence in the case. Any how, since there is no suggestion to P.W.1 that date had been put by somebody else, the order of the court below dismissing the petition though may not be supportable on the basis of the reason given, for other reasons the order does not call for interference.

This Original Petition is without merits and it is accordingly dismissed.

P. BHAVADASAN,
JUDGE

sb.