

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

OP(C).No. 298 of 2015 (O)

(O.S.193/2011 OF SUB COURT, ALAPPUZHA)

PETITIONER:

VINOD ALEXANDER, S/O.ALEXANDER, AGED 48 YEARS,
CHENNATTU HOUSE, THATHAMPALLY P.O., ALAPPUZHA.

BY ADV. SRI.J.OM PRAKASH

RESPONDENT:

SHAJI JOSEPH, S/O.JOSEPH
KALLUPURACKAL HOUSE, KALATH WARD, ALAPPUZHA - 688 006.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 298 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

P1-A TRUE COPY OF THE PLAINT IN O.S.NO.193/2011 DATED 5.8.2011.

P2- A TRUE COPY OF THE AMENDED WRITTEN STATEMENT IN
O.S.NO.193/2011 DATED 9.12.2011.

P3- A TRUE COPY OF THE I.A.NO.53/2015 DATED 14.1.2015.

P4- A TRUE COPY OF THE OBJECTION TO I.A.NO.53/2015 DATED 15.1.2015.

P5- A TRUE COPY OF THE ORDER IN I.A.NO.53/2015 IN O.S.NO.193/2011
DATED 19.1.2015.

RESPONDENT(S)' EXHIBITS: NIL.

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.298 OF 2015

Dated this the 4th day of February, 2015.

J U D G M E N T

Aggrieved by the order dated 19.01.2015 in I.A.No.53/2015 in O.S.No.193/2011, the petitioner before the court below has come up with this original petition under Article 227 of the Constitution of India.

2. The petitioner is the defendant in O.S.No.193/2011 which is a suit for money. The suit was based on a cheque as well as a promissory note said to have been executed by the petitioner herein. The petitioner points out that in the written statement filed by him, he had taken a specific contention that the document is a fabricated one and he had not executed any document in favour of the plaintiff nor has he received any amount. He characterized the plaintiff as a total stranger. He pointed out that he had transaction with one Baiju G. Nath who had obtained certain blank cheques and blank papers signed by him. After the trial had commenced, the petitioner had moved

the present application namely, I.A.No.53/2015 to have the promissory note sent for expert's opinion to show that the signature found therein does not belong to the petitioner.

3. The petition was strongly opposed by the respondent. The court below, after considering various aspects, found that there was no need to send the document for expert's opinion and dismissed the petition. The court below also found that there was no specific denial of signature on the promissory note and the only case of the petitioner was that it was a fabricated document. In the light of the fact that there was no specific denial that the signature found on the promissory note did not belong to the petitioner, the court below found that there is no need to send the document for expert's opinion.

4. Assailing the above finding and the dismissal of the petition, the petitioner pointed out that in fact in the written statement it has been specifically stated that promissory note was a fabricated document. At any rate, in order to have a satisfactory decision in the suit, it is only appropriate that the document be sent for expert's opinion. It is also pointed out that

unless it is so done, the petitioner will be put to irreparable loss and injury.

5. After having heard the learned counsel for the petitioner and also after having perused the records, this Court finds no ground to interfere with the order of the court below. True, in the written statement it is stated that the document produced by the plaintiff is a fabricated one. But, as rightly noticed by the court below, there is no specific denial that the signature found on the promissory note does not belong to the defendant. It may be remembered that promissory note was filed along with the suit and there was ample time for the petitioner to seek the relief.

6. If, at the time of trial, the petitioner has a case that the signature found on the promissory note does not belong to him, the court is well within its power under Section 73 of the Indian Evidence Act to compare his signature and reach a conclusion. The only restriction is that in terms of law the court shall not base its decision solely on the basis of the comparison made under Section 73 of the Indian Evidence Act. It is well settled

that after expert's opinion is obtained, if the court is not satisfied, the court can take independent decision on enquiry. When the said right is reserved with the court under Section 73 of the Indian Evidence Act, there is no reason to believe that the same power will not be exercised by the court.

Leaving open the above right of the petitioner to have his signature compared by the court, this original petition is disposed of.

Sd/-

**P.BHAVADASAN
JUDGE**

smp