

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

OP(C).No. 422 of 2015 (O)

**(I.A.NO.155/15 & 156/2015 IN OS.NO. 137/2013 OF MUNSIFF MAGISTRATE
COURT, PATTAMBI)**

PETITIONER/PETITIONER:

**CHANDRAN, AGED 60 YEARS,
S/O.PANIKKATH AMMUKUTTY AMMA, RAYIRANELLUR AMSOM,
EDAPPALAM DESOM, OTTAPALAM TALUK.**

BY ADV. SRI.P.V.JYOTHI PRASAD

RESPONDENT/RESPONDENT:

**ALI MANHAPRA, AGED ABOUT 72 YEARS,
S/O.KORAKOTTIL KUNHAHAMMED, NADUVATTOM AMSOM,
VILATHUR DESOM, VILATHUR P.O,PIN- 679 308,
THIRUVEGAPURA VIA, OTTAPALAM TALUK,
PALAKKAD DISTRICT.**

BY ADV. SRI.P.VENUGOPAL

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(C).No. 422 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE PETITION DTD 4/2/2015 IN IA NO.156/2015 IN OS NO. 137/2013 ON THE FILE OF THE COURT OF THE MUNSIFF-MAGISTRATE PATTAMBI
- P2: TRUE COPY OF THE ORDER DTD 9/2/2015 IN IA NO.156/2015 IN OS NO. 137/2013 ON THE FILE OF THE COURT OF THE MUNSIFF-MAGISTRATE PATTAMBI
- P3: TRUE COPY OF THE AFFIDAVIT DTD 4/2/2015 IN SUPPORT OF THE IN IA NO.155/2015 IN OS NO.137/2013 ON THE FILE OF THE COURT OF THE MUNSIFF-MAGISTRATE, PATTAMBI
- P4: TRUE COPY OF THE ORDER DTD 9/2/2015 IN IA NO 155/2015 IN OS NO.137/2013 ON THE FILE OF THE COURT OF THE MUNSIFF-MAGISTRATE, PATTAMBI

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

B.KEMAL PASHA, J.

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O.P.(C). No.422 of 2015

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Dated this the 8th day of June, 2015

J U D G M E N T

In a suit for money, a dishonoured cheque has been pressed into service as a piece of evidence. According to the plaintiff, the said cheque was issued in discharge of the said liability. Much after the issuance of the cheque and its dishonour, the plaintiff came to know that the cheque leaf was issued from the accounts being maintained by the daughter of the defendant. It has come out that the entries in the cheque were filled in by the daughter of the defendant and at the same time, the signature was affixed by the defendant as if the cheque was issued from his own account.

2. The defendant has denied his signature in the cheque. Therefore, the plaintiff wanted to get the signature in the cheque examined by an expert, for which, Exhibit P3 application was filed. It seems that the court below has dismissed the said application through Exhibit P4 order. Similarly, as the contents of the cheque and the signature are in different hand writings, the plaintiff wanted to show that the contents of the cheque were filled in by the daughter of the defendant, for which Exhibit P1 I.A. was filed for summoning the daughter of the defendant and for getting her specimen hand writing recorded. The court below has dismissed the said I.A. through Exhibit P2. The said orders are under challenge.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. It seems that the court below has dismissed those I.As mainly on the ground that those I.As were belated. The plaintiff is the master of the suit. According to the plaintiff, the said cheque was issued in discharge of the liability of

the defendant. At the time of issuance of the said cheque, the plaintiff thought that it was one issued from the accounts of the defendant. According to the petitioner, the cheque was filled in by the daughter of the defendant and the signature was affixed by the defendant. The learned counsel for the respondent has contended that those pleadings were not taken by the petitioner in the plaint. Those minor particulars need not be expected to be pleaded. It has been averred that subsequent to the issuance of cheque, the plaintiff came to know from the mouth of the defendant that the cheque leaf was one obtained from the accounts of the daughter of the defendant. Those things have been pleaded. On going through Exhibit P2 and P4 orders and on hearing either side, this court is of the view that the court below ought to have afforded such an opportunity to the plaintiff. The said orders have resulted in substantial miscarriage of justice. The court below ought to have allowed the said I.As.

In the result, this Original Petition (Civil) is allowed and

Exhibit P2 and P4 are set aside. Exhibits P1 and P3 are allowed. The court below is directed to act accordingly.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/8/6/15