

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

OP(C) .No. 392 of 2014 ()

AGAINST the ORDER IN I.A.No.2490 of 2013 in O.S.NO.393 OF 2009 OF THE
SUB COURT, TIRUR

PETITIONER:

P.C.KUNJALANKUTTY, AGED 39 YEARS
S/O.MUHAMMED KUTTY HAJI, POTTACHOLA HOUSE
THRIKKANDIYOOR AMSOM, EZHOOR DESOM, TIRUR TALUK
MALAPPURAM DISTRICT.

BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH

RESPONDENTS:

SUNI @ MOITHUNNIKKUTTY,, AGED 38 YEARS
VAYAPPATT MUTHALAKKULANGARA HOUSE, PUNNAYOOR AMSOM
DESOM, CHAVAKKAD TALUK, THRISSUR DISTRICT.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 07-08-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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O.P(C).No.392 of 2014

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Dated this the 7th day of August, 2015

JUDGMENT

The plaintiff in a suit for recovery of money on the strength of a cheque is the petitioner herein.

2. In the suit, defendant appeared and filed written statement disputing the signature in the cheque. Hence, plaintiff filed I.A.No.2490 of 2013 to forward the “signature of the defendant” for an expert opinion. The respondent filed objection. The court below, by Ext.P5 order dismissed the application, essentially on the ground that the evidence of an expert is only an opinion evidence and that cannot be a material to decide the suit. The Court further proceeded to hold that there are other modes of proving the case. Hence, the Court held that there is no necessity for forwarding for expert opinion.

3. This is assailed in this writ petition. Notice was served on the respondent/defendant, who remained absent. Heard the learned counsel for the petitioner.

4. Though the application is styled as one for forwarding the “signature of the defendant” for expert opinion, the respondent/defendant also understood it as an application for forwarding the cheque for expert opinion, which is evident from the

objection filed by him. On going through Ext.P5 order, I find no reason to take a different view, since the report of the expert is only in the nature of an opinion and is only a piece of evidence, which may enable the Court, along with other evidence, to properly appreciate the disputed document.

5. Hence, I find that no sufficient ground has been made out to interfere in the exercise of the jurisdiction by the court below under Article 227 of the Constitution of India. However, it is made clear that in the event of the suit being decided against the plaintiff, he will be free to raise it as a ground in the appeal.

Reserving the above right, the original petition is closed.

Sd/-

SUNIL THOMAS
Judge

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P.A to Judge