

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

OP(C) .No. 3991 of 2013 (O)

I.A.No.9560 of 2013 in O.S.No.3847 of 2011 of the II ADDITIONAL MUNSIFF
COURT, THRISSUR DATED 23.07.2013

PETITIONER/RESPONDENT/PLAINTIFF:

SUBSCRIBERS CHITS (P) LTD.
REP. BY MANAGING DIRECTOR, T.C 26/347/2
LEELA TOWER BUILDING, CONVENT ROAD
CHEMBUKAVU DESOM AND VILLAGE, THRISSUR.

BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENT/PETITIONER/1st DEFENDANT:

RAJAN
S/O. THIRUVILLATH RAMAN
CHERUTHURUTHY DESOM AND VILLAGE, THALAPPILLY TALUK
THRISSUR DISTRICT - 679 531.

R1 BY ADV. SRI.P.J.JUSTINE

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXHIBIT-P1-TRUE COPY OF THE PLAINT IN O.S 3847/2011 BEFORE THE IIND
ADDL. MUNSIFF COURT, THRISSUR.

EXHIBIT-P2-TRUE COPY OF THE WRITTEN STATEMENT FILED IN O.S 3847/2011 OF
IIND ADDL. MUNSIFF COURT, THRISSUR.

EXHIBIT-P3-TRUE COPY OF THE I.A 9560/2013 IN O.S 3847/2011 OF IIND
ADDL. MUNSIFF CORT, THRISSUR.

EXHIBIT-P4-TRUE COPY OF THE ORDER DATED 23/07/2013 IN O.S 3847/2011 OF
IIND ADDL. MUNSIFF COURT, THRISSUR.

RESPONDENT(S) ' EXHIBITS:NIL

True Copy /

P.A to Judge

SUNIL THOMAS, J.

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O.P(C).No.3991 of 2013

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Dated this the 20th day of August, 2015

JUDGMENT

The plaintiff in a suit for recovery of money on the basis of the kuri transaction is the petitioner herein. Plaintiff laid the suit contending that the defendants joined the kuri, bid the kuri and after receiving the money, committed default of its repayment. The suit was filed for the recovery of a sum of Rs.63,165/- with interest, on the strength of the kuri agreement. The defendants appeared and filed written statement wherein, it was inter alia admitted that they had subscribed the chitty. It was further stated that they have not executed a kuri karar in favour of the plaintiff/company but at the time of receiving the prize money, the kuri company had obtained certain signatures on blank papers. When the matter was listed for trial, defendant filed I.A.No.9560 of 2013 for amendment of the written statement. The court below by the impugned order allowed the application and permitted amendment of the pleadings. The amendment that was sought and allowed was to incorporate a

pleading that the defendants had a loan transaction and towards that loan transaction, the amount was received. He denied having joined a kuri. This is assailed in this petition.

2. Heard. Examined the records.

3. The main contention of the learned counsel for the petitioner was that, after having admitted of having joined the chitty, defendants cannot withdraw from it, by way of amendment of pleadings. The premise on which this contention was set up was that in the light of the admission of having joined the kuri, the initial burden of proving otherwise shifted to the defendant, since the plaintiff relied on the kuri agreement for proving the plaint transaction.

4. It is pertinent to note that the admission was in relation to the joining of the kuri alone. However, the agreement as such was denied. The only pleading now brought in is that, they have not joined any chitty and there was only a loan transaction. The only prejudice that may be caused to the plaintiff is only that the plaintiff will be called upon to lead the evidence. However, the burden of proof does not get shifted because the yardstick to be applied was the preponderance of probability. Having regard to this, I find no reason to differ from the view taken by the court below. Since the

impugned application was filed at the belated stage, the Court has rightly imposed cost also. I find no reason to interfere with the impugned order which is confirmed.

The original petition fails and is dismissed.

Sd/-
SUNIL THOMAS
Judge

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