

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

OP(C).No. 1676 of 2015 (O)

**ORDER DATED 27-01-2015 IN IA.NO.1228/2014 IN OS 92/2009 OF SUB COURT,
NEYYATTINKARA**
.....

PETITIONER(S)/PLAINTIFF:

**MADHUSOODANAN, S/O.THANKAYYAN,
THIRUVATHIRA, PALAKKADAVU,
KRISHNAPURAM, NEYYATTINKARA.**

**BY ADVS.SRI.V.G.ARUN
SRI.ANOOP BHASKAR**

RESPONDENT(S)/DEFENDANT:

**VIJAYAKUMARAN NAIR,
S/O.GANGADHARAN NAIR, THACHOORTHENGU VEEDU,
AINGAMAM, PARASSALA P.O. - 695 121.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 14-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 1676 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: THE TRUE COPY OF THE PLAINT IN OS.NO.92/2009 ON THE FILE OF THE SUB COURT, NEYYATTINKARA.

EXT.P2: THE TRUE COPY OF THE WRITTEN STATEMENT IN OS.NO.92/2009 ON THE FILE OF THE SUB COURT, NEYYATTINKARA.

EXT.P3: THE TRUE COPY OF I.A.NO.1521/2011 IN OS.NO.92/2009 ON THE FILE OF THE SUB COURT, NEYYATTINKARA.

EXT.P4: THE TRUE COPY OF THE ORDER DTD.14.12.2011 IN IA.NO.1521/2011 IN OS.NO.92/2009 ON THE FILE OF THE SUB COURT, NEYYATTINKARA.

EXT.P5: THE TRUE COPY OF THE ORDER DTD.20.6.2012 IN OP(C) NO.1923/2012 ON THE FILE OF THIS HONOURABLE COURT.

EXT.P6: THE TRUE COPY OF THE EXPERT OPINION REPORT DTD.30.10.2012 IN OS.NO.92/2009 ON THE FILE OF THE SUB COURT, NEYYATTINKARA FILED BY KHAN SAHIB.

EXT.P7: THE TRUE COPY OF THE OBJECTION DTD.2.12.2013 FILED BY THE RESPONDENT TO THE LETTER IN EXT.P6 REPORT.

EXT.P8: THE TRUE COPY OF THE PETITION DTD.9.10.2014 FILED BY THE PETITIONER IN OS.NO.92/2009 ON THE FILE OF THE SUB COURT, NEYYATTINKARA.

EXT.P9: THE TRUE COPY OF THE JUDGMENT IN CRL.MC.NO.2329/2005 DTD.4.9.2008 PASSED BY THIS HONOURABLE COURT.

EXT.P10: THE TRUE COPY OF THE IA.NO.1228/2014 IN OS.NO.92/2009 ON THE FILE OF THE SUB COURT, NEYYATTINKARA.

EXT.P11: THE TRUE COPY OF ORDER DTD.27.1.2015 IN IA.NO.1228/2014 IN OS.NO.92/2009 ON THE FILE OF THE SUB COURT, NEYYATTINKARA.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

.....
O.P.(C) No.1676 of 2015
.....

Dated this the 14th day of July, 2015

J U D G M E N T

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A witness, allegedly a handwriting expert, was to be examined before the court below. On the date of his examination, the learned counsel for the plaintiff could not be present for cross examination. At the instance of the plaintiff, a request was placed before the court below for an adjournment for cross examination. According to the court below, on the basis of the requirement of that expert, the defendant had deposited a batta of ₹15,000/- by way of a Demand Draft for his examination. The court below has directed the petitioner to pay an amount of ₹15,000/- as cost to the said expert for subjecting him to cross examination.

2. Heard learned counsel for the petitioner.

3. The procedure adopted by the court below is not heard of. The act of the court below in heeding to the illegal

demand of the witness is highly illegal, irregular and improper. A witness, who has to be examined before a court, cannot fix his fee for deposing before court. It is for the court to decide as to the normal batta to which the witness is entitled to. At the most, the petitioner need only pay the amount required by way of expenses towards first class fare in the Indian Railways for enabling the witness to come to the court and the normal batta payable to a witness. The act of the witness in fixing an amount of ₹15,000/- as batta for him for a day's appearance in court for giving evidence is not something that can be appreciated. Courts should not heed to such illegal demands. When such an expert has made it as a condition for his appearance for tendering evidence before the court on his reports, courts shall not send any matters for opinion to such experts.

4. Whatever it is, when he was examined in chief by the defendant, the petitioner has a right to subject the

witness to cross examination. Ext.P11 order passed by the court below is not legally sustainable and the same is liable to be set aside.

In the result, this O.P.(Civil) is allowed and Ext.P11 order is set aside. The court below is directed to summon the witness for cross examination by the petitioner on his depositing the first class fare payable in the Indian Railways from Kozhikode to Neyyattinkara and normal batta payable to any other expert witness.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/14/07

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PA to Judge