

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

OP(C).No. 1138 of 2014 (O)

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I.A. NO.7802/2014 IN OS. NO.830/2012 OF III ADDITIONAL MUNSIF COURT,  
THRISSUR.

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PETITIONER/DEFENDANT:

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VIJAYAN,  
S/O.AARATTUPUZHA VARIYATH SANKARA WARRIAR,  
EDAKUNNY VILLAGE, THYKAKKUSSERY DESOM,  
THRISSUR TALUK, THRISSUR DISTRICT.

BY ADV. SRI.T.N.MANOJ.

RESPONDENT/PLAINTIFF:

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ANTO, S/O.PERINCHERRY OUSEP,  
OLLUR DESOM, EDAKUNNY VILLAGE,  
THRISSUR TALUK, PIN-680 584.

BY ADV. SRI.K.AMAR RAGH.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 21-07-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

OP(C).No. 1138 of 2014 (O)

**APPENDIX**

**PETITIONER'S EXHIBITS:-**

- EXHIBIT-P1: TRUE COPY OF THE PLAINT IN OS.830/2012 OF THE  
3RD ADDL. MUNSIFF COURT, THRISSUR.
- EXHIBIT-P2: TRUE COPY OF THE WRITTEN STATEMENT IN OS.830/2012 OF  
THE 3RD ADDL. MUNSIFF COURT, THRISSUR.
- EXHIBIT-P3: TRUE COPY OF THE REPLY NOTICE DATED 27/02/2012  
SEND BY DEFENDANT.
- EXHIBIT-P4: TRUE COPY OF THE RECEIPT DTD. 02/08/2006 ISSUED BY THE  
PLAINTIFF WHICH IS MARKED AS EXHIBIT-B4.
- EXHIBIT-P5: TRUE COPY OF THE PETITION IA. 7802/2014 IN OS. 830/2012 OF  
THE FILES OF THE 3RD ADDL MUNSIFF COURT, THRISSUR.
- EXHIBIT-P6: TRUE COPY OF THE ORDER DTD. 31/03/2014 IN IA. 7802/2014 IN  
OS. 830/2012 OF THE 3RD ADDL: MUNSIFF COURT, THRISSUR.

**RESPONDENT'S EXHIBITS:-**        **NIL.**

**//TRUE COPY//**

**P.A. TO JUDGE**

**rs.**

**B.KEMAL PASHA, J.**

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O.P.(C).No.1138 of 2014

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*Dated this the 21<sup>st</sup> day of July, 2015*

### **J U D G M E N T**

A suit has been filed before the court below based on a pro note allegedly executed by the petitioner in favour of the plaintiff, for an amount of ₹60,000/-. It is the case of the defendant that he had never borrowed an amount of ₹60,000/- from the plaintiff; whereas he had borrowed an amount of ₹30,000/- only from him. It is further contended that the said amount of ₹30,000/- was repaid with interest also. In Exhibit P3 reply notice and in Exhibit P2 written statement, the very same contention has been specifically taken.

2. When the plaintiff was in Box, during cross-examination, he was confronted with Exhibit P4 document which was allegedly issued by the plaintiff when the petitioner had allegedly repaid an amount of ₹94,000/- on

02.08.2006. It seems that Exhibit P4 was issued as a receipt or acknowledgment for the receipt of an amount of ₹94,000/- from the petitioner by the plaintiff. When he has confronted with Exhibit P4, he has flatly denied the handwriting as well as the signature. According to him, he had never issued any such receipt or acknowledgment. At that juncture, the petitioner wanted to get that document examined by an expert for obtaining an opinion evidence within the meaning of Section 45 of the Indian Evidence Act. An application to that effect was filed. The same has been dismissed through Exhibit P6 order by the court below by stating that the said application was highly belated. It was solely on that ground, the request was denied and I.A.No.7802 of 2014 was dismissed.

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

4. The learned counsel for the petitioner has pointed out that it was only when the plaintiff has denied his signature and handwriting in Exhibit P4, that the petitioner

was forced to file the said I.A. It seems that the plaintiff has no case that Exhibit P4 relates to some other transaction between the parties. When he has flatly denied the execution of Exhibit P4, it is the duty of the petitioner to prove through cogent evidence that it was a document executed and issued by the plaintiff. The court below has found that the petitioner was having Exhibit P4 in his possession and therefore, the petitioner could have sent it for expert opinion at an earlier stage. The said observation is unfounded. Only when the plaintiff has denied the execution of Exhibit P4, the plaintiff gets an opportunity to get it examined through an expert. If as a matter of fact, the document was admitted, the petitioner would not have filed such an application. Moreover, in case the plaintiff has got a case that Exhibit P4 is relating to some other transaction between the parties, then also such a question does not arise. Matters being so, Exhibit P6 order passed by the court below has resulted in substantial miscarriage of justice and therefore, the same is liable to be set aside.

In the result, this Original Petition (Civil) is allowed. Exhibits P6 stands set aside and I.A.No.7802 of 2014 stands allowed. The court below shall sent the said document for examination to a handwriting expert along with the admitted signatures and specimen signatures, if available. The petitioner shall pay the required Batta as may be ordered by the court below.

Sd/-

**B.KEMAL PASHA**  
**JUDGE**