

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

O.P.(C).No. 2303 of 2015 (O)

**O.S. No.114/2011 ON THE FILE OF THE SUB COURT, PATHANAMTHITTA, PENDING I.A.
Nos.737/2015, 804/2015 & 805/2015**

PETITIONER(S)/DEFENDANT:

**N.N.SASI, AGED 53 YEARS,
ADVOCATE, S/O.ACHUTHAN NARAYANAN, VINAYANANDAMADOM,
NELLIMALA VALLIYIL, CHIRAYIRAMBU P.O., MARAMON,
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI. R.SANTHOSH BABU

RESPONDENT(S)/PLAINTIFF:

**KAMALASANAN P.K., AGED 61 YEARS,
S/O. KRISHNAN, PANACHACKAL HOUSE, KAREMVELI MURI,
MALLAPPUZHASSERY VILLAGE, KOZHENCHERRY,
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI. G.UNNIKRISHNAN

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 02-11-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(C).No. 2303 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1:** TRUE COPY OF THE PLAINT IN O.S.No.114/2011 FILED BEFORE THE SUB COURT, PATHANAMTHITTA.
- EXT.P-2:** TRUE COPY OF THE WRITTEN STATEMENT DATED 02.08.2011.
- EXT.P-3:** TRUE COPY OF THE COUNTER FOIL OF THE CHEQUE No.0492514 OF SBI, KOZHENCHERY BRANCH.
- EXT.P-4:** TRUE COPY OF THE NOTICE SENT BY THE RESPONDENT ON 17.03.2008.
- EXT.P-5:** TRUE COPY OF THE IA No.737/2015 DATED 06.09.2015.
- EXT.P-6:** TRUE COPY OF THE IA No.805/2015 DATED 17.09.2015.
- EXT.P-7:** TRUE COPY OF THE IA No.804/2015 DATED 06.09.2015.
- EXT.P-8:** TRUE COPY OF THE CHIEF AFFIDAVIT DATED 17.09.2015 OF THE PETITIONER PRODUCED BEFORE THE SUB COURT.
- EXT.P-9:** TRUE COPY OF THE CHIEF AFFIDAVIT OF THE WITNESS, DW2 DATED 17.09.2015.

RESPONDENT(S)' EXHIBITS - **NIL**

//TRUE COPY//

P.A. TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C). No. 2303 of 2015

Dated this the 2nd day of November, 2015

JUDGMENT

The petitioner is the defendant in O.S. No.114/2011 of Sub Court, Pathanamthitta. The recording of the evidence in the suit is complete. The petitioner filed Exts. P5, P6 and P7 applications in the midst of the trial. The learned Sub Judge has not disposed them of. The trial is complete. The prayer in the Original Petition is to direct the learned Sub Judge to dispose of Ext.P5 application and not to pronounce the judgment till the report from the expert to whom certain documents would be sent in the connected criminal case is received.

2. Heard.

3. The petitioner is a practising lawyer. He allegedly borrowed about ₹6 lakhs from the respondent

who was his client and in discharge of that liability he issued a cheque later. It was dishonoured. The respondent filed S.T. No.278/2009 in the court of Judicial Magistrate of First Class-III, Pathanamthitta. The contention of the petitioner was that the cheque was obtained by force and he is not liable to pay any amount to the respondent.

4. According to the petitioner, he had not received his advocate fees from the respondent and the respondent has endorsed it on the counter foil of the cheque and also that he received the cheque from the petitioner.

5. In Ext.P5 application the request is to send the counter foil of the cheque for expert opinion. The counter foil has nothing to do with the case before the civil court. The petitioner admits genuineness of the cheque. He only says that it was issued under vitiating circumstances. It

is a matter to be proved by oral evidence. Evidence has already been recorded.

6. In the Ext.P6 application, the request is to send back the cheque and the counter foil to the Magistrate Court from where they were summoned. These are documents marked in the Civil suit. Whether they can be sent back before the suit is disposed of is a matter to be decided with suit.

7. The 3rd application is Ext.P7. The prayer is to stay the proceedings in the suit till the report of the expert to whom the Magistrate is expected to send the cheque and the counter foil in the criminal case. It can be only with malicious intention such a prayer is made. If the petitioner wants to disprove or prove any of these facts he should have filed an application in the Civil suit to send those documents for expert opinion.

8. In these circumstances, the only order this

Court can pass is to direct the learned Sub Judge to dispose of the applications before the judgment is pronounced.

In the result, this Original Petition is disposed of with a direction to the trial court to dispose of Exts.P5 to P7 applications before the judgment is pronounced.

Sd/-
K. ABRAHAM MATHEW
JUDGE

ww/02/11/2015