IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

RSA.No. 1303 of 2013 ()

(AGAINST THE JUDGMENT IN AS.NO. 54/2008 OF I ADDL.SUB COURT, ERNAKULAM DATED 22-02-2013)

(AGAINST THE JUDGMENT IN OS.NO. 82/2001 OF MUNSIFF COURT, MUVATTUPUZHA DATED 31-07-2003)

APPELLANT/APPELLANT/DEFENDANT:

SAITHUMUHAMMED,S/O KUNJALLU, AGED 57 YEARS,
PADICKAMATTATHIL HOUSE, MYLOOR KARA,
VARAPPETTY VILLAGE, KOTHAMANGALAM TALUK.

BY ADVS.SRI.T.I.ABDUL SALAM
SRI.PHILIP T.VARGHESE

RESPONDENT/RESPONDENT/PLAINTIFF:

JOSEPH SEBASTIAN,S/O DEVASSIA, AGED 35 YEARS,
PARAYIDATHIL HOUSE, KADUMPADY KARA,
ENANALLOOR VILLAGE, MUVATTUPUZHA TALUK-683 545

BY ADVS. SRI.M.S.UNNIKRISHNAN
SMT.JAYASREE MANOJ
SRI.JITHIN PAUL VARGHESE
SRI.K.SUNIL
SRI.ADITYA MANOJ

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.B.SURESH KUMAR, J.

R.S.A..No.1303 of 2013

Dated 7th October, 2015.

J U D G M E N T

The defendant in the suit for realization of money is the appellant.

2. The case of the plaintiff is that the defendant who borrowed a sum of Rs.60,000/- from him has issued Ext.A1 cheque towards discharge of the said liability and the said cheque was undishonored when presented for collection, for want of funds in the account. The defendant disputed the claim of the plaintiff and contended that he had neither any transaction with the plaintiff nor issued any cheque to him. According to him, he borrowed a sum of Rs.30,000/- from the father of the plaintiff against the security of a signed blank cheque and that the father of the plaintiff failed to return the cheque when the said liability was liquidated. The case of the defendant thus is that Ext.A1 is the cheque entrusted by him to the father of the plaintiff and that the same is not a cheque issued for consideration. The trial court accepted the case of

the plaintiff and decreed the suit and the appellate court, on a reappraisal of the evidence on record, confirmed the decision of the trial court. The defendant who is aggrieved by the concurrent decisions of the courts below, has thus come up in this second appeal.

3. Heard the learned counsel for the appellant.

4. The plaintiff gave evidence in the suit as PW1 in tune with the case set up by him in the plaint. Ext.A1 is the original of the cheque relied on by the plaintiff. The defendant has no case that Ext.A1 is not a cheque issued to him by his banker. He has also no case that the signature contained in Ext.A1 is not that of him. Ext.A2 is the dishonour memo issued by the bank which recites that Ext.A1 cheque was dishonoured for insufficiency of funds. As noticed above, the specific case pleaded by the defendant in the written statement is that Ext.A1 is the cheque entrusted by him to the father of the plaintiff when he borrowed a sum of Rs.30,000/- from him and that the father of the plaintiff failed to return the cheque when the amounts payable to him was repaid. In other words, the

case of the defendant is that Ext.A1 is not a document issued for consideration. There is absolutely no evidence on record in support of the said case of the defendant. The defendant has not even given formal evidence in the suit. Under Section 118 of the Negotiable Instruments Act, until the contrary is proved, every negotiable instrument accepted is presumed to have been accepted for consideration. It is in the aforesaid circumstances, the courts below accepted the case of the plaintiff and decreed the suit. There is no question of law, much less any substantial question of law, involved in this matter. The second appeal, in the circumstances, is devoid of merits and the same is accordingly dismissed *in limine*. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)