

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

RSA.No. 226 of 2015

**AGAINST THE JUDGMENT IN AS 372/2009 of ADDITIONAL DISTRICT COURT II
(SPECIAL), KOTTAYAM**

**AGAINST THE JUDGMENT IN OS 242/2008 of ADDITIONAL MUNSIFF'S COURT,
KOTTAYAM**

APPELLANTS/RESPONDENTS/DEFENDANTS:

- 1. JAGANATHA PRASAD, AGED 58 YEARS
MANAGING DIRECTOR, C.S.COMPANY (CONSTRUCTION) LTD
T.B.RAOD, KOTTAYAM.**
- 2. C.S.COMPANY (CONSTRUCTION) LIMITED, T.B.ROAD,
KOTTAYAM, REPRESENTED
BY ITS MANAGING DIRECTOR
JAGANATHA PRASAD**

BY ADV. SRI.SURIN GEORGE IPE

RESPONDENT/APPELLANT/PLAINTIFF:

**MATHEW.K, AGED 52 YEARS,
PROPRIETOR
ANODE ADVERTISING AND MARKETING SERVICE,
MUGAL PALACE BUILDING
COLLECTORATE P.O., KOTTAYAM-686 002.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AS

A.HARIPRASAD, J.

R.S.A.No.226 of 2015

Dated this the 29th day of May, 2015

J U D G M E N T

Defendants in a suit for money are the appellants. The respondent/plaintiff filed the suit alleging that the defendants approached the plaintiff, a business concern engaged in advertising and marketing services, to make advertisements on their behalf. In that transaction the defendants incurred a liability of Rs.40,272/- towards the plaintiff. In discharge of that liability the defendants issued two cheques. When the cheques were presented for collection they were dishonoured due to insufficiency of funds and exceeding the arrangements. Subsequently demand notices were issued by the plaintiff. The defendants contended that the cheques in dispute were issued only as security and the liability mentioned in the claim is only imaginary. According to the defendants, the plaintiff are not entitled to get any amount.

2. Trial court after considering the evidence dismissed the suit in favour of the appellants. Aggrieved

plaintiff took the matter in appeal. The appellate court after re-appreciating the evidence reversed the judgment and decree of the trial court and decreed the suit. Hence, the second appeal.

3. Heard the learned counsel for the appellant. I have carefully gone through judgments by the courts below. The lower appellate court decreed the suit on a finding that the suit is based on original cause of action.

4. According to the learned counsel for the appellant this finding of the lower appellate court is incorrect. I have gone through averments in plaint, especially the portion where cause of action is mentioned and also the prayers. It would show that the suit is not based on dishonour of cheque. Plaintiff's claim is that in a commercial dealing between the plaintiff and defendants, the latter incurred liability for which 2 cheques were issued to discharge the same. Ultimately those cheques were dishonoured. Exts.A1 and A2 are the bills showing the amount claimed in the plaint for which the cheques were issued. The lower appellate court considered the

evidence correctly and found that the plaintiff has established his case. I do not find any substantial question of law in this appeal. The contentions raised by the appellant in this appeal are questions of fact which cannot be considered in a second appeal.

In the result, the appeal is dismissed.

Sd/-
A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge