

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

RSA.No. 299 of 2015

**AGAINST THE JUDGMENT IN A.S.NO.2/2014 OF DISTRICT COURT,
PATHANAMTHITTA**

AGAINST THE JUDGMENT IN O.S.NO.75/2007 OF SUB COURT, PATHANAMTHITTA

APPELLANT(S)/APPELLANT/2ND DEFENDANT :

**ABRAHAM KALAMANNIL, AGED 66 YEARS, S/O.JOSEPH,
CHAIRMAN, MOUNT ZION COLLEGE OF ENGINEERING
KADAMMANITTA, PATHANAMTHITTA.**

BY ADV. SRI.JESTIN MATHEW

RESPONDENT(S)/RESPONDENTS/PLAINTIFF AND 1ST DEFENDANT :

- * 1. TONY GEEVARGHESE PANICKER, AGED 24 YEARS,
S/O.K.G.PANICKER, THEKKEATTATHU, SIJO BHAVAN,
PUNNAMUKKU, KUNDARA P.O., ELMPALLOOR,
KOLLAM-691 501.**

POWER OF ATTORNEY HOLDER

**K.GEEVARGHESE PANICKER, AGED 64 YEARS,
S/O.LATE G.KOSHY PANICKER, THEKKEATTATHU, SUJO BHAVAN,
PUNNAMUKKU, KUNDARA P.O., ELAMPALLOOR VILLAGE,
KOLLAM TALUK, KOLLAM DISTRICT, KERALA STATE.**

- * IS RECORDED AS THE POWER OF ATTORNEY HOLDER OF RESPONDENT 1
AS PER ORDER DATED 03.12.2015 IN I.A.NO.3004 OF 2015.**

- 2. DR.BHASKARAN NAIR, AGED 75 YEARS,
S/O.GOPALAKRISHNAN NAIR, PRINCIPAL,
MOUNT ZION COLLEGE OF ENGINEERING, KADAMMANITTA,
PATHANAMTHITTA-689 649.**

**R1 BY ADVS. SRI.K.BABU RAJAN
SRI.K.JALADHARAN**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 11-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

R.S.A. No.299 of 2015

Dated 11th December, 2015.

J U D G M E N T

The second defendant in a suit for realization of money is the appellant in this second appeal.

2. The second defendant is the Manager of a private engineering college and the first defendant is its Principal. The plaintiff was a student in the said college for B.Tech course. According to the plaintiff, when he joined the college during the year 2001, he paid a sum of Rs.1,00,000/- towards refundable caution deposit and though he completed the course, the said deposit was not refunded. The defendants admitted the receipt of the aforesaid sum of Rs.1,00,000/- towards refundable caution deposit. However, they contended that the said amount was subsequently adjusted by them towards the tuition fee payable by the plaintiff. Exts.B1 and B2 registers maintained by the defendants in the college were produced by them to substantiate their contention. The trial court rejected

the contention raised by the defendants and decreed the suit. Though the second defendant took up the matter in appeal, the appellate court, on a reappraisal of the evidence, confirmed the decision of the trial court. Hence, this second appeal by the second defendant.

3. Heard the learned counsel for the appellant as also the learned counsel for the first respondent, the plaintiff.

4. As noticed above, the plea of the defendants was one of discharge. Discharge is a fact to be proved by the defendants. Though the defendants attempted to prove the discharge, the courts below did not accept the case set up by them on the ground that the documents relied on by them to establish the defence are self serving documents. The question as to whether the defendants have discharged the liability, is a pure question of fact. The findings rendered on the said question, in the circumstances, cannot be challenged in a second appeal filed under Section 100 of the Code of Civil Procedure. That apart, there is no merit also in the plea of discharge raised by the defendants. As noted above, the plea

of discharge is that the caution deposit collected from the plaintiff was adjusted towards the tuition fee payable by him. Caution deposit is normally collected for a definite purpose. Such deposits will be adjusted towards tuition fee only if requested for by the students concerned. In the instant case, there is nothing on record to indicate that the plaintiff has ever requested the college authorities to adjust the caution deposit towards tuition fee payable by him. There are no exceptional circumstances in this case to infer that the caution deposit of the plaintiff has been adjusted by the college authorities towards the tuition fee payable by him even without a formal request. In the said view of the matter, there is no merit in the second appeal and the same is, accordingly, dismissed. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)