IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

RFA NO. 462 OF 2019

AGAINST JUDGMENT AND DECREE DATED 28.01.2019 IN OS NO.6 OF 2014 OF SUB COURT, VADAKARA

APPELLANT/DEFENDANT:

MOHANDAS KARANDOTE PARAMBATH,
S/O. KANNAN KARANDOTE PARAMBATH, AGED 52 YEARS, RESIDING AT KARANDOTE PARAMBATH HOSUE, MOKERI.P.O., MOKERI AMSOM, KARANDOTE DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT.

BY ADVS.
U.K.DEVIDAS
SRI.K.K.ANILRAJ

RESPONDENT/PLAINTIFF:

JAMAL PAIKKATT
S/O. KUNHAMMAD, PAIKKAT, AGED 46 YEARS,
RESIDING AT PAIKKAT, KUMMANKODE AMSOM, NADAPURAM DESOM,
P.O. NADAPURAM, VATAKARA TALUK,
KOZHIKODE DISTRICT - 673 504.

BY ADVS.
SRI.P.B.KRISHNAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SMT.B.ANUSREE
SRI.MANU VYASAN PETER
SMT.MEERA P.

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 08.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN &
SHOBA ANNAMMA EAPEN, JJ.
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R.F.A. No.462 of 2019
= = = = = = = = = = = = = = = = = = =
Dated this the 8th day of April, 2025

J U D G M E N T

Sathish Ninan, J.

The decree in a suit for money due under four cheques (Exts.A1 to A4), was decreed by the trial court. The defendant is in appeal.

2. According to the plaintiff, both the plaintiff and the defendant were businessmen in Manama, Bahrain. The plaintiff invested money in the gold jewellery business of the defendant at Manama. In August, 2013 the plaintiff decided to withdraw his investment. It was agreed to settle the account when the parties reach India. In November 2013 when the parties were in India, the accounts were settled and Exts.A1 to A4 cheques were issued for ₹ 48 lakhs towards full and final settlement. Exts.A1 to A2 cheques when presented, were dishonoured for the reason “account blocked” and “funds

insufficient”. Ext.A3 cheque was returned with the endorsement “funds insufficient”. It is thereupon that the suit has been filed for realisation of ₹ 48 lakhs with interest.

3. The defendant denied the plaint allegation that he was doing business at Manama. He contended that he did not have business. He was a gold smith and was an employee in a jewellery shop. The plaintiff never invested any amount with the defendant. The plaintiff was conducting chitty business without the sanction of the Government. The defendant had joined in such Kuries from the year 2006. Repayments of the chitty amounts were noted down by the plaintiff in a paper maintained by the defendant. The plaintiff used to obtain signed cheques of the defendant as security for repayment of the amounts due under the chitty transactions. Though the chitty accounts were closed and the defendant sought return of the cheques, the plaintiff informed that the same were destroyed. Such cheques have been misused by

the plaintiff, is the contention. The defendant denied the issuance of the cheques and contended that they are not supported by consideration.

4. The suit was originally dismissed by the trial court. The plaintiff challenged the same in appeal before this Court, in RFA 422/2017. This Court held that the defendant has admitted the issuance of the cheque, more particularly the signatures in the cheque and hence he is entitled for the presumption under Section 118(a) of the Negotiable Instruments Act (for short, “N.I. Act”). It was held that the burden is on the defendant to rebut the presumption. Holding that the trial court failed to draw the presumption, the decree and judgment of the trial court were set aside and the suit was remanded for fresh disposal.

5. After remand no further evidence was adduced by either side. On appreciation of the evidence, the trial court held that the defendant has failed to rebut the presumption under Section 118(a) of the N.I. Act, and

accordingly decreed the suit.

6. We have heard learned counsel on either side.

7. The points that arise for determination in this appeal are:-

(i) Was the trial court right in having held that the defendant failed to rebut the presumption under Section 118(a) of the N.I. Act?

(ii) Do the decree and judgment of the trial court warrant any interference?

8. At paragraph 8 of the written statement it is contended that, towards security for repayment of the amount due under the Kuri transaction, the signed cheques of the defendant were entrusted with the plaintiff. It was also pleaded that the said cheques given as security were misused by the plaintiff. The relevant sentences in the said paragraph reads thus :-

"When bidding the kuries the plaintiff used to collect signed cheques of this defendant as security for due payment of the balance amount. ... Now after getting summons in the case this defendant could learn that the cheques, earlier given as security were misused by the plaintiff without the knowledge and consent and concurrence of this defendant with sole intention to make illegal gain. This defendant has not executed and issued those cheques."

PW1 the plaintiff, when cross-examined, it has been suggested to him that the blank cheques entrusted during the period 2006-2010 for the Kuri transactions were misutilised by him. The relevant sentence reads thus :-

> "കുറി ഇടപാടിൽ സെക്യൂരിറ്റിയായി 2006 മുതൽ 2010 കൂടിയ കാലത്ത് പ്രതി എനിക്ക് നൽകിയ ബ്ലാങ്ക് ചെക്കുകളിൽ പ്രതിയുടെ അറിവോ സമ്മതമോ ഇല്ലാതെ സംഖ്യയും എന്റെ പേരും കോളങ്ങളും Fill ചെയ്ത് present ചെയ്തതാണ്. Ext.A1 മുതൽ A4 കൂടിയ ചെക്കുകൾ എന്ന് പറഞ്ഞാൽ ശരിയല്ല."

Similar is his stand as DW1. The signatures on Exts.A1 to A4 are admitted to be that of his. In the light of the judgments of the Apex Court in ***Bharat Barrel and Manufacturing Company v. Amin Chand Payrelal (AIR 1999 SC 1008), Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm (2008 (7) SCC 655),*** when the signature on the cheque is admitted, the plaintiff is entitled for the presumption under Section 118(a) of the N.I. Act. In matters under Section 139 of the N.I. Act, the Apex Court in ***Bir Singh v. Mukesh Kumar (2019 (4) SCC 197) and Dattatraya v. Sharanappa (2024 (8) SCC 573)*** held the same view. This Court in the remand order in RFA 422/2017 also held that the plaintiff is entitled for the presumption under

Section 118(a) of the NI Act. Therefore, it is for the defendant to rebut the presumption.

9. The presumption can be rebutted by the defendant even relying on the evidence adduced by the plaintiff, by disproving his case. It is not necessary that the defendant should adduce evidence and rely upon the same alone to rebut the presumption. In ***Regi Isac v. Philomina Pious [MANU/KE/1840/2010]*** a Division Bench of this Court, after referring to the judgments in ***Bharat Barrel and Drum Mfg. Co. v. Amin Chand Payrelal (1999 (3) SCC 35), Joseph v. Gladis Sasi 2010 (3) KLT 379, Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm (2008 (7) SCC 655), M.S. Narayana Menon v. State of Kerala (2006 (6) SCC 39)*** held:-

> *"..... At the risk of repetition, one may notice that it may not be necessary for the defendant to adduce evidence to show that the document is not supported by consideration. He can rely on the evidence of the plaintiff himself to show that the document is not supported by consideration. Once that burden is discharged by the defendant, the onus of proof shifts to the plaintiff."*

Once both sides have let in evidence, it is for the Court to appreciate the same and find if the

presumption has been rebutted, and if so, whether the plaintiff has established his case entitling him for a decree.

10. According to the plaintiff, he had invested amounts with the defendant in his jewellery business. In the year 2013, since the plaintiff did not intend to proceed with the arrangement further, the accounts were settled and Exts.A1 to A4 cheques were issued to him by the defendant. The defendant denied that he had any such business as claimed by the plaintiff. He contended that he was only a goldsmith in a jewellery shop. Though the plaintiff as PW1 claimed that the defendant was the owner of a jewellery shop, in the latter portion of his cross-examination he admitted that the defendant was only an employee. He also stated that he has not seen any business or shop owned by the defendant. Ext.B1 is the evidence given by the plaintiff in the proceeding under Section 138 of N.I Act relating to the cheques in question. Therein also

he has admitted that the defendant is only an employee. Therefore, the very contention of the plaintiff that the defendant is doing business in gold and that the plaintiff invested money in such business of the defendant, is disproved.

11. While appreciating the rival evidence, Ext.B2 series documents are of significance. Ext.B2 series are certain paper slips wherein certain figures are entered. The defendant filed an application as IA 518/2015, delivering interrogatories to the plaintiff. The interrogatories read thus:-

> *"1) Whether you are admitting your handwriting in the paper slips produced along with the written statement as document No.1 to 4, 6 and 7?*
>
> *2) According to you for what purpose you made such entries against the receipt of money?*
>
> *3) Have you seen any document showing that defendant is doing or having any jewelry business elsewhere including Bahrain?"*

To the same, the plaintiff replied admitting that Ext.B2 series is in his handwriting. He also stated that such

entries were made towards the payment of share of profit on his investment in the business with the defendant. As PW1, in his cross-examination he has sated that the profits of his investment with the gold jewellery business of the defendant was being paid by the defendant once in a month or bimonthly or quarterly. In Ext.B1 deposition he deposed that the payment of profits was not on daily basis or not even on alternate days. He deposed "ദിവസേനയോ അതോ ഒന്നോ രണ്ടോ ദിവസം ഇടവിട്ടോ ഞാൻ പ്രതിയിൽ നിന്നും ഞാൻ പണം കൈപ്പറ്റാറില്ല." However, a perusal of Ext.B2 series reveal that the entries therein are made almost on a daily basis. This cuts at the very root of the plaintiff's case that, the entries in Ext.B2 represents the payment of profits towards his investment.

12. When the plaintiff admits that Ext.B2 is in his own handwriting and that it represents the payment of share of profits, the burden was heavy on him to explain the inconsistency noted above. However, the plaintiff has not attempted to do so. The trial court has found

fault with the defendant for not having elicited from the plaintiff the purpose behind Ext.B2 and the inconsistencies in the entries in Ext.B2 series with the case set up by the plaintiff. It was not something for the defendant to question and elicit, but was for the plaintiff to explain the incongruity. But he did not even attempt the same. We are unable to agree with the view adopted by the trial court. All that the defendant had to do was to bring out materials to demonstrate the irreconcilability of the plaintiff’s case. The plaintiff ought to have explained away the same, if he had any explanation.

13. It is the plaintiff's case that, in August 2013 he decided to withdraw his investment and the defendant informed him that the accounts can be settled while they are in India, since his investments are in India. Apparently the said reason is difficult to be accepted when the parties had transactions abroad and according to the plaintiff the defendant is a business man there

at Manama.

14. The plaintiff claimed that the accounts were settled in November, 2013 while both parties were in India. According to him, on settlement of accounts it was found that ₹ 50 lakhs is payable by the defendant to the plaintiff. However, he accepted the defendants offer to pay ₹ 48 lakhs in full and final settlement. The relevant pleading in the plaint reads thus :-

> *"3. The Defendant arrived in India on 20.11.2013. The matter had been talked over between the Plaintiff and the Defendant in the last week of November, 2013. Eventually, it was fund that Rs.50,00,000.00 (Rupees Fifty Lacs Only) in Indian Rupees is payable by the Defendnat to the Plaintiff on account of the said business. On 28.11.2013 the Defendant had offered to pay Rs.48,00,000.00 (Rupees Forty Eight Lacs Only) to the Plaintiff in full and final settlement, in Indian Rupees. The Defendant had also offered to make payment in four installments and had agreed that he would issue and deliver post dated cheques in respect of the four installments at once. Since the Defendant had agreed to issue such post dated cheques at once, the Plaintiff had accepted the offer. ....."*

As PW1 he would claim that the entire accounts for the period from 2007-13 were settled between them and the cheques were issued. However, in his cross-examination

he would depose that the entire profits payable were paid by the defendant earlier and that only the principal amount remained outstanding. He has also deposed that, there were no accounts to be settled. The relevant portion of his deposition reads thus :-

> "പ്രതി എനിക്ക് തരാനുള്ള ബിസിനസ്സിലുള്ള മുഴുവൻ profit ഉം പ്രതി എനിക്ക് മുമ്പ് തന്നെ തന്ന് തീർത്തിരുന്നു. എനിക്ക് മുതൽ മാത്രമേ കിട്ടാനുണ്ടായിരുന്നുള്ളൂ. അന്യായത്തിലും ചീഫിലും പറഞ്ഞ പ്രകാരം എനിക്ക് പ്രതിയുമായി settle ചെയ്യാൻ അക്കൗണ്ടൊന്നും ഉണ്ടായിരുന്നില്ല. അക്കൗണ്ട് സെറ്റിൽ ചെയ്യാൻ ഞാൻ പ്രതിയോട് ആവശ്യപ്പെട്ടിട്ടില്ല. പ്രതിക്ക് ഞാൻ അങ്ങോട്ട് കൊടുക്കാൻ ഒരു തുകയും ഉണ്ടായിട്ടില്ല."

Similar was his deposition in Ext.B1. He deposed "എനിക്ക് തരാനുള്ള profit മുഴുവനായും എല്ലാ മാസവും അയാൾ തന്നിരുന്നു." If that be so, then there were no accounts to be settled between the parties, and all that remained was, repayment of the principal amount paid by the plaintiff to the defendant. Therefore, the plaintiff's case that the defendant wanted the accounts to be settled while he is in India seem improbable.

15. So also, going by the plaintiff's case as is evident from the pleading at paragraph 3 of the

plaint(extracted supra), on settlement of accounts though it was found that the total amount payable by the defendant to the plaintiff is ₹ 50 lakhs, as a concession, he agreed for a full and final settlement at ₹ 48 lakhs. However, in his further cross-examination he would state that 2 lakhs was the amount to be given by him to the defendant towards adjustment of profit. The relevant deposition reads thus :-

> "പ്രതിക്ക് ഞൻ അങ്ങോട്ട് കൊടുക്കാൻ ഉണ്ടായിരുന്ന തുക കൊടുക്കാനുണ്ടായത് profit adjustment ലേക്ക് രണ്ട് ലക്ഷം രൂപയാണ്, രണ്ട് ലക്ഷം രൂപ കൊടുക്കാൻ ഉണ്ട് എന്നുള്ളതും 48 ലക്ഷം രൂപ കിട്ടാനുണ്ട് എന്ന് പരസ്പരം കണക്ക് കിഴിച്ചാണ് മനസ്സിലാക്കിയത്."

This is apparently at variance from the pleading in the plaint. In Ext.B1 deposition also at page 12 the plaintiff has deposed that, "പ്രതിക്ക് ഞാൻ അങ്ങോട്ട് കൊടുക്കാൻ ഉണ്ടായിരുന്ന തുക കൊടുക്കാനുണ്ടായത് profit adjustment ലേക്ക് രണ്ട് ലക്ഷം രൂപയാണ്." Therefore, evidently the plaint case and the evidence does not tally. The case of concession vanishes.

16. In the plaint it has not been pleaded as to how much amount was invested by the plaintiff in the

defendant's business and also as to when such investments were made. PW1 admitted that there is no document evidencing the investment. He admitted that there is no evidence with regard to the source of the funds. He has also admitted that there is no document evidencing the liability of the defendant to the plaintiff under the alleged investment. Similar was his deposition in Ext.B1 also. It is to be noted that, the amount claimed to have been paid to the defendant is not too small, to be advanced without any document evidencing the same.

17. The evidence of PW2, who claims to have witnessed the issuance of the cheque is apparently artificial. He claims to be a chance witness who went to the house of the plaintiff for some other purpose and happened to witness the issuance of the cheques. According to him, the plaintiff explained to him of the transactions between the plaintiff and the defendant and the plaintiff had asked him to keep memory of the

transaction in case necessity occurs. The evidence is not at all reliable.

18. In the light of the irreconcilability in the evidence of the plaintiff as above, we are of the opinion that the defendant was able to dislodge the presumption available to the plaintiff under Section 118(a) of the N.I.Act. Once the presumption stands rebutted, it was for the plaintiff to prove the transaction as pleaded by him. The plaintiff failed in the said regard. We are unable to agree with the finding of the trial court that the defendant failed to rebut the presumption. The evidence on record is overwhelming to hold otherwise. The finding of the trial court to the contrary is liable to be set aside and we do so.

19. On the findings as above, the suit is bound to fail.

Resultantly, the appeal is allowed. The decree and judgment of the trial court are set aside. The suit will stand dismissed. The appellant shall be entitled for the

costs in the appeal.

Sd/-
SATHISH NINAN
JUDGE

Sd/-
SHOBA ANNAMMA EAPEN
JUDGE

kns/-

//True Copy//

P.S. To Judge