
(2022) 02 KL CK 0076

In the High Court Of Kerala

Case No : Original Petition (C) No. 147 Of 2022

Ganga Devi @ Ganga Dr.Lathakumari.K

Date of Decision : 09-02-2022

Acts Referred:

Citation : (2022) 02 KL CK 0076

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : V.Philip Mathews, Gibi.C.George, E.Radhakrishnan, Amal Parthasaradhy, Manu Govind, A.Jayasankar

Final Decision : Dismissed

Judgement

A. Badharudeen, J

1. Petitioner herein is the defendant in O.S. No.26/2015 pending before the Sub Court, Karunagappally.
2. The petitioner herein filed I.A. No.3/2022 before the court below to send the cheque relied on by the plaintiff to realise the money alleged to be due from the defendant. But the learned Sub Judge dismissed the application holding that no sufficient reason was offered by the petitioner for not filing this petition at an earlier date and also for filing the petition only after remand of this matter by this Court.
3. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.
4. I have perused I.A.No.3/2022. In this petition, it has been contended by the petitioner that the petitioner borrowed some amount during 2013 and for which the present cheque was issued. Therefore, the disputed cheque shall be sent to Forensic Science Laboratory, Thiruvananthapuram for ascertaining the age of the signature and subsequent writings therein.

5. According to the learned counsel for the petitioner, in order to prove the case of the plaintiff, such a course of action is necessary and the finding of

the court below that no such facility at FSL, Thiruvananthapuram, if true, then also there is facility to analyse the age of the writings in the cheque by

sending the same to FSL, Hyderabad.

6. Per contra, the learned counsel for the respondent/plaintiff filed counter affidavit and specifically contended that as per Ext.R1(a) produced in this

case, the petitioner herein filed similar petition before this Court when the appeal (RFA No.658/2016) was pending, as I.A.No.2554/2016. However in

the remand judgment, nothing was discussed with regard to the contention in the I.A. and the judgment of this Court remanding the case back to the

trial court does not say anything as to the necessity of getting an expert opinion as prayed for in I.A.No.2554/2016. The learned counsel for the

respondent would urge that the intention of the petitioner is to drag the matter in a case involving Rs.30 lakh. Therefore, the dilatory tactics cannot be

permitted.

7. While allowing the dispute, I have gone through paragraph No.9 of the remand judgment. The same is extracted hereunder:

9. The decree and judgment of the court below hence cannot be sustained and liable to be set aside. I do so. The case is remanded back to the trial court so as to

afford an opportunity to cross examine the plaintiff on the additional proof affidavit and documents Exts.A3 to A5. The parties may also be permitted to adduce

additional evidence, if any and shall dispose of the suit within a time schedule of four months from the date of appearance of parties. The parties shall appear

before the trial court on 22/11/2021.

8. As per the order extracted above, without much ado, it could be seen that the purpose of remand was for cross-examining the plaintiff with regard

to the matters mentioned in the additional proof affidavit. It is true that parties were also permitted to adduce additional evidence, if any.

9. Here, as per Ext.R1(a), I.A. No.2554/2016 in RFA No.658/2016, no relief was granted by this Court. It pre-supposes the fact that the prayer in the

I.A.No.2554/2016 stands rejected. The learned counsel for the respondent would submit that no such argument mooted when RFA No.658/2016 was

considered by this Court and without raising the said contention at the time of remand of this matter, the petitioner herein filed the present I.A. to send

the documents for ascertaining the age of the writings at a much belated stage, that too after remand. Another Original Petition also was filed to

amend the written statement, which also was dismissed by this Court at the time of admission.

10. The learned counsel for the petitioner placed a decision reported in Chandran v. Ramachandran and Another [2006 (6) KHC 620] to contend

that mere fact that the High Court fixed a time limit for disposal of the case, the trial court should not dispose of the case mechanically. Further time

limit fixed by the High Court by itself is not a sufficient ground to reject application filed by the parties without considering the merits. I have no

quarrel with the legal position. Therefore, merit of the application is decisive in this matter.

11. Another decision reported in Civil Revision Petition No.2646/2019 dealt by the Andhra Pradesh High Court has been placed to establish that Truth

Labs and Truth Finders, Hyderabad has the facility to check the age of the ink. I am not disputing this fact also.

12. Coming back, though in the written statement in paragraph No.3 filed by the petitioner herein, it was admitted that there were transaction during

2013 and 2014 and three blank signed cheques were issued as security during 2013, nothing stated in the written statement with regard to the

discharge of the liability, which led to issuance of signed blank cheque, as contended by the defendant.

13. Here is a suit of the year 2015, which was once decreed. Thereafter, in appeal the decree was set aside and the matter was remanded by this

Court on finding an irregularity that the plaintiff was not cross-examined with regard to the averments in the additional proof affidavit that too specific

with direction to dispose of the same within a period of four months from the date of appearance of parties. However, it is relevant to note that in the

remand judgment, despite having pendency of I.A. No.2554/2016 in the appeal, this Court not passed any order and the same, virtually, stands

dismissed. Therefore, the relief virtually denied by this Court cannot be granted by the trial court even otherwise. I am of the view that much belated

application of this nature, that too filed after remand, cannot be allowed as dilatory tactics is moulded in it.

Therefore, I find no reason to interfere with the order of the learned Sub Judge and accordingly, this Original Petition fails and is dismissed.