
(2001) 01 KL CK 0046
In the High Court Of Kerala
Case No : C.R.P. No. 2168 of 1994

Sankaranarayanan

APPELLANT

Vs

Charumathi

RESPONDENT

Date of Decision : 02-01-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2001) 01 KL CK 0046

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : K.G. Balasubramanyan, for the Appellant; T.H. Abdul Azeez, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Mohamed Shafi, J.—This C.R.P. is directed against the order dated 11.8.1994 in I.A.No. 281/1994 in O.S. No. 443/93 passed by the Munsiff's Court, Kodungallur.

2. The petitioner as plaintiff filed the above suit for realisation of Rs. 15,000/- due under a dishonoured cheque issued by deceased Peethambaran, the predecessor-in-interest of the respondents. In the plaint the petitioner alleged that the consideration for the cheque was the amount due towards rent etc. The petitioner filed the above I.A. to amend the plaint by deleting the words mentioned in the plaint as the consideration for the cheque. The lower court dismissed the application by stating that the petitioner has not made out sufficient grounds to amend the plaint.

3. The petitioner has contended that those words were inserted in the plaint due to an inadvertent mistake committed by his advocate's clerk and he came to know of the mistake committed by the advocate's clerk only on 23.2.1994 when he read the written statement filed by the defendants in this case.

4. It is seen that after the suit was filed in the year 1993, the respondents filed

written statement on 25.11.1994 and the lower court had settled the issues on 22.2.1994. It is only thereafter the petitioner filed the above I.A. to amend the plaint deleting those words.

5. It is pertinent to note that the respondents had contended in the written statement that the consideration stated in the plaint is incorrect and there was no rent due from their predecessor-in-interest who issued the cheque in favour of the petitioner at the time when the cheque was issued. They have produced rent receipts issued by the petitioner in favour of their predecessor-in-interest.

6. The contention of the petitioner that he came to know about the inadvertent mistake committed by his advocate's clerk only on 23.2.1994 is not at all believable. After the suit was filed in the year 1993 the respondents filed written statement denying the very allegation made by the plaintiff on 25.1.1994. The lower court settled the issues after the written statement was filed, on 22.2.1994. Therefore, it cannot be contended that the petitioner came to know of the mistake only on 23.2.1994.

7. It is also pertinent to note that the petitioner who has alleged a specific consideration for the cheque in the plaint seeks to amend the plaint by deleting the allegation regarding consideration after the respondents-defendants filed written statement denying that allegation and produced documents to disprove that allegation. Even though the cause of action for filing the suit is the dishonour of the cheque, the petitioner who has alleged a particular mode of consideration in the plaint cannot turn round and contend that the consideration mentioned in the plaint was incorrect. If the amendment sought for by the petitioner is allowed, it will alter the very cause of action for the suit alleged by the petitioner. Therefore, the lower court is perfectly justified in disallowing the amendment sought for by the petitioner.

8. Hence I find no ground to interfere with the order passed by the lower court. Accordingly the C.R.P. is dismissed.