
(2021) 09 KL CK 0054
In the High Court Of Kerala
Case No : OP(C) NO. 657 OF 2017

Unnikrishnan (Died)

APPELLANT

Vs

Sivakumar S/o Velayudhan Nair

RESPONDENT

Date of Decision : 07-09-2021

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2021) 09 KL CK 0054

Hon'ble Judges : V.G.Arun, J

Bench : Single Bench

Advocate : M.H.Hanis, J.Om Prakash

Final Decision : Dismissed

Judgement

V.G.Arun, J

1. The petitioners are the legal heirs of the deceased defendant in O.S.No.3 of 2014 on the files of the Sub Court, Cherthala. The suit is filed by the respondent seeking to recover Rs.9,95,000/- with interest from the defendant. The allegation in the plaint is that the defendant had borrowed an amount of Rs.9,95,000/- from the plaintiff and had issued a cheque for the amount towards discharge of the said liability. The cheque was dishonoured for insufficiency of funds and despite issuance of notice, the amount was not repaid.

2. In their written statement, the defendant denied the transaction and alleged that the actual transaction According to the defendants, the actual transaction was between the plaintiff and one Sindhu Akhileshan and the defendant's wife (1st respondent herein) had stood as a mediator for the transaction. When Sidhu Akhileshan failed to repay the amount borrowed by her, the plaintiff, who is a money lender, threatened the defendant and obtained blank cheques from him. Even though the defendant repaid the principal amount borrowed by Sindhi Akhileshan, the suit was filed raising false allegations.

3. After the suit was listed for trial, the respondent moved an application for

amendment which the court below allowed vide

4. Heard Sri.Hanis M.H., learned counsel for the petitioners and Sri.J.Om Prakash, learned counsel for the respondent.

5. Learned counsel for the petitioners contended that by the amendment, the very structure of the suit is changed and the respondent will succeed in filling up the lacuna in his pleadings. Moreover, the facts sought to be incorporated through the amendment were known to the respondent prior to the time of filing the suit. Hence, the court below is not justified in allowing the belated amendment application.

6. Learned counsel for the respondent contended that the amendments are only clarificatory in nature and will not in any manner alter the nature of the suit or the cause of action.

7. In the impugned order, after referring to the amendments, the learned Sub Judge has found that the amendments to be explanatory and clarificatory in nature, which does not affect the basic structure or the nature of the suit or pleading. It is also found that the amendment sought is necessary for determining the real controversy and will not in any way cause prejudice or irreparable injury to the respondents.

8. It is settled law that Courts should adopt a liberal approach in the matter of amendment. The general principle is that amendment of pleadings cannot be allowed when the attempt is to introduce a new case, or substitute the cause of action or the nature of the claim. A perusal of the plaint and the amendment application reveals that the basic pleadings were made in the plaint itself and that the amendment is only for the purpose of bringing clarity to those pleadings. As such, neither will the nature of the suit be changed nor the defendants be put to prejudice by allowing the amendment. Hence I find no reason to interfere with the order in exercise of the power under Article 227 of the Constitution of India.

In the result, the original petition is dismissed.