IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 30th DAY OF JULY 2026 / 8th SRAVANA, 1948

RFA NO. 13 OF 2016 (B)

AGAINST THE JUDGMENT & DECREE DATED 10.12.2015 IN OS NO.561 OF 2012 OF PRINCIPAL SUB COURT, ERNAKULAM

APPELLANT/PLAINTIFF:

FRANCIS T. CHACKO, AGED 55 YEARS,
S/O. LATE T.J CHACKO, VILLA NO.2,
SOWPARNIKA GARDENS, BEHIND MISSION SCHOOL,
THRIPUNITHURA, ERNAKULAM

BY ADVS. SRI.V.V.ASOKAN (SR.)
SRI.K.I.MAYANKUTTY MATHER (SR.)
SRI.P.RAHUL

RESPONDENT/DEFENDANT:

T.K.SAJEEVAN, PROPRIETOR,
SPAN TRAVELS, HIMA COMPLEX,
KOMBARA JUNCTION, KOCHI 18

BY ADVS. SRI.DINESH R.SHENOY
SRI.SANIL JOSE

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 08.07.2026, THE COURT ON 30.07.2026 DELIVERED THE FOLLOWING:

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JUDGMENT

The defeated plaintiff in a suit for realisation of money is the appellant.

2. The plaintiff is a Chartered Accountant by profession. The defendant is running a business by the name “Span Travels” dealing with hiring of taxis and other ancillary services. The plaintiff contended that the defendant and he are close friends for the past 15 years and the plaintiff used to audit the accounts of the defendant till 31.03.2010. The defendant had borrowed money from the plaintiff on several occasions in the past, which were repaid. The plaintiff contended that the defendant approached him for financial help to overcome his financial business crisis and also for augmentation of business. It is alleged that the defendant had borrowed an amount of Rs.14,15,000/- on four dates. Rs.1,00,000/- was borrowed on 09.08.2010, Rs.3,00,000/- on 11.08.2010, Rs.10,00,000/- on 23.10.2010 and Rs.15,000/- was borrowed on

09.04.2011. It is stated that the defendant had executed a demand promissory note for an amount of Rs.14,15,000/- on 19.04.2011.

3. Though the plaintiff demanded the amount covered by the promissory note on 18.04.2012, the defendant did not repay the same and sought two months to clear the liability and agreed to pay interest at 12% per annum from the date of the promissory note. Thereafter, the defendant issued a cheque for Rs.16,13,000/- dated 18.06.2012 bearing number 939007 drawn on Catholic Syrian Bank Ltd., Banerjee Road, Ernakulam. The defendant had also acknowledged the issuance of the cheque covering the amount. The cheque, when presented, was dishonoured due to the reason of "payment stopped by drawer". Thereafter, the suit was filed claiming the amount with interest.

4. The defendant filed a written statement admitting that the plaintiff and the defendant were closely acquainted for the last 12 years and that the plaintiff used to audit the defendant's accounts for the past several years from 2001 onwards. It is the

specific case that the defendant had not borrowed any amount from the plaintiff at any point of time and that he did not need funds for his business purposes in 2010 or 2011. It is alleged that though the plaintiff is a Chartered Accountant, he is also a moneylender. It is contended that the plaintiff had taken the defendant's signature on several blank papers on several occasions for preparing and filing the defendant's returns. The defendant had also given the plaintiff signed cheques for payment of tax, and some of the cheques and papers, though not used, were left with the plaintiff, who was maintaining a fiduciary relationship with the defendant as his Chartered Accountant.

5. The defendant suspects that the plaintiff has misused the papers and cheques and fabricated the same. It is also contended that the defendant, as requested by the plaintiff, had introduced several persons for availing loans from the plaintiff, and two such persons by name Omanakuttan and Raveendran defaulted in payment, and since the plaintiff could not trace out those

persons, he turned against the defendant and demanded money from the defendant for the dues made by the persons mentioned above.

6. The trial court framed issues as to whether the defendant has executed a cheque in favour of the plaintiff for Rs.16,13,000/- in discharge of an existing liability as alleged. The plaintiff examined himself as PW1 and marked Exts.A1 to A9 on his side. The defence evidence comprises the testimonies of DW1 to DW3 and Exts.B1 to B13.

7. The Trial Court considered the issues and found that the plaintiff failed to prove execution of Ext.A4 cheque with cogent evidence in the context of specific denial of its execution by the defendant. The Trial Court further found that the underlying transaction of Ext.A4, which is a promissory note and the alleged borrowing of Rs.14,15,000/- based on Ext.A1 promissory note was not proved. The Trial Court further found that Exts.A2 and A3 cast a cloud of suspicion on the genuineness and veracity of Exts.A1 and

A4 documents. Accordingly, the suit was dismissed, against which the instant appeal is filed.

8. The learned Senior Counsel for the appellant Sri. K.I. Mayankutty Mather, instructed by Adv. Krishnendu S.R., contends that the judgment is wrong both on facts and law. He specifically refers to the plaint and the written statement, where the defendant stated that several cheques and papers were signed by him as part of filing of his return. Referring to the evidence of DW1, it is stated that though Ext.A2 acknowledgement is dated 19.04.2011 in a stamp paper bought on 19.04.2011, DW1 deposed that the said stamp paper was given to the plaintiff in 2010 in connection with a service tax dispute. It is also argued that for income assessment purposes of filing of returns, no signature of the assessee is required, nor is there any necessity for the Chartered Accountant to collect signed papers from the parties. The practice of filing statements of accounts along with the income acknowledgment was dispensed with from the assessment year 2007-2008 onwards. Further, the

income tax acknowledgments for the assessment year 2009-2010 and 2010-2011 disclosed that the tax liability of the defendant was adjusted against the TDS deducted by companies and the defendant was in fact entitled to a refund of tax, and under such circumstances there is no need to hand over blank signed cheques to the plaintiff.

9. He further argued that there were various contradictions in the written statement and in the complaint filed before the Association of Chartered Accountants and the plaintiff need not have examined any independent witness to prove the execution of the promissory note, as the defendant had, by his own case and evidence, falsified his version. It is particularly argued that there is no denial of signatures in Exts.A1 to A4 documents and under such circumstances the burden was entirely on the defendant to prove his defence and in the absence of the same, a decree ought to have been granted.

10. Countering the argument of the appellant, the learned

counsel for the respondent/defendant Sri. Dinesh R. Shenoy argued that the very case in the plaint regarding execution of the cheque stands disproved by the evidence of the plaintiff and under such circumstances no presumption can be drawn under Sections 118(b) and 139 of the Negotiable Instruments Act. Though it was pleaded in the plaint that the defendant had executed the cheque in favour of the plaintiff, his cross-examination clearly shows that he has not even seen who wrote the cheque; thereby the very basis of the plaint allegation is found to be false. It is also argued that the plaint proceeded as if the defendant was in financial distress for which payments to the tune of Rs.1,00,000/-, Rs.3,00,000/-, Rs.15,000/- etc could not have mattered. Thus the theory of financial distress of the plaintiff was also falsified.

11. The further case that the plaintiff helped the defendant to augment his business also cannot be believed as the payment of Rs.1,00,000/- or Rs.3,00,000/- will not be sufficient to buy any vehicle. It is also submitted that the execution of A2 was not

pleaded. The contradictory versions in the pleadings and the evidence, and also the specific statement of the plaintiff in the box that he had no cheque transactions with the defendant, were against the evidence on record. There is ample evidence to show that the plaintiff was a moneylender and that he was the Chartered Accountant of the defendant even after 31.03.2010. The unusual writings in the acknowledgment clearly show that the same is one created by the plaintiff. The trial court, after an overall consideration of the evidence, both oral and documentary, clearly found that there was no execution, that the borrowal of money put forth by the plaintiff cannot be believed. Under such circumstances, it is contended that the judgment of the trial court calls for no interference.

12. Heard both sides and perused the records.

13. The point for determination is whether Ext.A1 pronote and the cheque were duly executed and also whether the plaintiff is entitled to a decree as prayed for and whether the impugned

judgment can be sustained?

14. The specific case in the plaint is a borrowal of Rs.1,00,000/- on 09.08.2010, Rs.3,00,000/- on 11.08.2010, Rs.10,00,000/- on 23.10.2010 and Rs.15,000/- on 09.04.20211 and the refusal to repay the same which resulted in issuance of a pronote and a cheque besides the acknowledgment. The plaint proceeds on the footing that the cheque was executed in his office at Thengummottil Building. The defendant, on the other hand, denied the execution of the cheque and contended that since the plaintiff was the Auditor of the defendant, he had left several blank cheques and papers with the plaintiff, which were misused and Exts.A1 to A4 created. True, there is no specific case for the defendant that a signed stamp paper was also left with the plaintiff. It is in the above context that the issue of execution of the pronote and the cheque are to be adjudicated.

15. The expressions “signing”, “issuance”, and “execution” of a cheque are closely related but are not synonymous. The

distinction is important in proceedings under the Negotiable Instruments Act, 1881, particularly in deciding when the statutory presumptions under Sections 118(a) and 139 arise. Signing is merely the act of affixing one's signature to the cheque. It is a physical act which by itself does not necessarily mean that the cheque has been delivered or intended to be acted upon. A person may sign a blank cheque or an incomplete cheque and retain it in its possession. In such a case the cheque is signed but has not yet been issued. Signing alone does not create liability under Section 138 of the N.I. Act.

16. Issuance means putting the cheque into circulation by voluntarily delivering it to the payee or holder with the intention that it be acted upon. It involves signing the cheque, delivering it to another person and intending that the recipient may use or present it. Without delivery, there is generally no issuance. Execution is a broader legal concept. It means completing the cheque as an operative legal instrument by consciously signing it and delivering or authorising its delivery so that it becomes effective. Execution

therefore ordinarily includes the signature of the drawer, completion of the instrument or authorising the holder to complete it where permissible, voluntary delivery to the payee or holder and an intention that it operates as a cheque. Therefore, execution generally comprehends both signing and issuance.

17. In the cases under Section 138 of the N.I. Act, the distinction becomes significant in practice, as if the account holder denies the signature, the complainant must first prove that the cheque was signed by the accused before the statutory presumptions arise. If the account holder admits the signature but denies execution, the court examines what is actually meant by that denial. If the defence is that the cheque was signed but never voluntarily delivered (for example, it was stolen or lost), the accused is disputing execution. If the court finds that the cheque was voluntarily delivered, execution is established. If the accused admits signing and issuing the cheque but disputes the existence of the underlying debt, execution is no longer in issue. The

presumptions under Section 118(a) and 139 apply and the accused must rebut them. Therefore, under the Negotiable Instruments Act, the word execution is often used in a wider sense than mere signing. When courts say that execution of the cheque is admitted, they generally mean that the accused admits having signed and voluntarily delivered the cheque as his act, thereby making it an operative instrument. Once execution is admitted or proved, the presumptions under Section 118(a) and 139 ordinarily arise, leaving it to the accused to rebut them by showing a probable defence.

18. There can also be cases where there will be admission of issuance/execution but plea of coercion or threat; a person may admit that he signed the cheque or that he voluntarily handed over the cheque, thus admitting its issuance or execution yet contend that his consent was obtained by coercion, threat, undue influence or duress. This is not a denial of execution. Rather, it is an admission of execution coupled with a challenge to the legal validity of the transaction. In such a case, the presumptions under

Sections 118(a) and 139 of the Negotiable Instruments Act arise because execution is admitted. The burden shifts to the accused to establish a probable defence that the cheque was obtained by coercion or that there was no legally enforceable liability. If the accused succeeds in raising a probable defence, the burden shifts back to the complainant.

19. Likewise, there can be an admission of execution but raising a plea of no consideration. Again, this cannot be treated as a denial of execution. Execution is admitted. What is disputed is the existence or enforceability of the underlying obligation. When the accused says, I never signed the cheque, or although I signed it, I never voluntarily delivered it, or the cheque was stolen before it was issued, or someone filled it up and circulated it without my authority, here the accused is disputing the very coming into existence of the instrument as his act. Until execution is proved or admitted, the statutory presumptions do not ordinarily arise.

20. Legally speaking, execution concerns whether the cheque

became the act of the drawer. Coercion, fraud, undue influence, absence of consideration or failure of consideration concern whether the transaction creating liability is legally enforceable. Thus a person may fully admit execution while accepting that the legal obligation is unenforceable because it was procured by coercion or lacked consideration. The distinction is significant because the presumptions under the Negotiable Instruments Act attach to the admitted execution of the cheque, while the accused remains entitled to rebut those presumptions by showing that despite execution the cheque was not supported by a legally enforceable debt or liability or that the transaction was otherwise vitiated.

21. The Supreme Court has consistently applied those principles in decisions such as ***Rangappa v. Mohan*** **[**AIR 2010 SC 1898], ***Basalingappa v. Mudibasappa*** [AIR 2019 SC 1983] and ***Bir Singh v. Mukesh Kumar*** [AIR 2019 SC 2446]. These decisions affirm that once the signature on the cheque is admitted, the statutory

presumptions strongly favour the holder and the accused bears the evidentiary burden of rebutting them on a balance of probabilities. The crucial distinction therefore is that the denial of signature requires the complainant to prove execution first; denial of liability or denial of the circumstance of issuance, despite admitting the signature, merely calls upon the accused to rebut the statutory presumptions.

22. In the instant case, the specific plea in the plaint regarding the execution of the cheque reads as follows:

> *"Defendant signed, executed and handed over the cheque at the office of the plaintiff at Thengummottil Building, High Court Road, Ernakulam. The defendant also acknowledged the issuance of cheque covering the above amount in supercession of the pro-note."*

23. Learned Senior counsel for the plaintiff would stick to the stand taken in the plaint, while the learned counsel for the respondent would argue that the evidence of PW1 clearly shows that he did not know as to who had written the cheque. This, according to him, shows lack of proof of execution. This is refuted

by the learned counsel for the plaintiff/appellant, contending that the above pleading could mean two things: either the cheque was prepared and brought over or that it was prepared in the place mentioned in the plaint.

24. The trial court, however, proceeded on the basis that in all probability blank cheques, signed cheques and blank papers would have been given by the defendant to the plaintiff as the plaintiff continued to be the Chartered Accountant of the defendant even beyond 31.03.2010. Learned Senior counsel for the appellant submits that there is no requirement at all of signing anything or preparing anything after the change in the income tax regime as regards the filing of the return, from the year 2008, more particularly when the offices of the plaintiff and the defendant admittedly were situated very close to each other. There is a serious dispute on that as the plaintiff alleges that he ceased to be the Chartered Accountant by the end of the financial year 2009-2010, while the defendant would say that he continued even thereafter.

Additional documents are produced in appeal by the defendant to substantiate their contention. Thus, it is seen that the basis of the said finding of the trial court that the plaintiff would have taken signed papers is not based on the evidence, but on assumption.

25. The trial court considered whether there was execution of the cheque; and it found that the plaint case was that the cheque was executed by the defendant in the office of the plaintiff in Thengummottil Building, near the High Court, but when he was asked about the handwriting in the said cheque, he said he was not aware of the handwriting, and moreover no other witness was examined to prove the execution. Hence, the case of the plaintiff/appellant that the defendant did not have a case of handing over of a signed stamp paper assumes crucial significance. This aspect was not at all considered by the trial court.

26. The trial court also found that the plaintiff was not able to prove the existence of a legally enforceable debt or liability, as the plaintiff had alleged borrowing of the money for business

augmentation and to get over the financial distress, which the plaintiff could not prove. The trial court also relied on the evidence of DW2 and DW3 to hold that the plaintiff had lent money to them and that blank-signed stamp papers were taken while lending. Their statements given before the Institute of Chartered Accountants of India were also taken note of to corroborate the defence of the defendant with respect to fabrication of documents alleged against the plaintiff. This plea of the defendant was accepted by the court below without any evidence to support and as such the said finding is totally misplaced. It is also to be noted that the trial court found that A2 and A3 are found to be suspicious despite the admission of the signature, which is not backed by any acceptable reason.

27. Thus, on an appreciation of the pleading and evidence on record, I hold that the trial court has not considered the correctness or otherwise of the execution pleaded with reference to the pleadings/evidence on record. It has rather gone by certain

presumptions/assumptions. The impact of admission of the signature of the defendant in Exts.A1 to A4, particularly with reference to the defence taken, was not at all adverted. The correctness of the plea of the defendant that the plaintiff chose to sue the defendant as two persons, namely Omanakuttan and Raveendran, who had borrowed money from the plaintiff and failed to repay, and that is the reason why the plaintiff went after the defendant, was not considered. A reading of the judgment shows that the trial court found that, in all probability, blank cheques or blank papers would have been handed over to the plaintiff. This is again under the assumption that since the plaintiff was the Auditor of the defendant, the same was possible.

28. The entire approach of the trial court appears to be flawed. The principles of law stated above, in a case of this nature, were not adverted to while arriving at the findings. Therefore, when the very execution, an issue which is framed by the trial court, was not answered based on the pleadings and evidence and

the findings thereon are not satisfactory, it is difficult for this court to pronounce the judgment on the same with the available materials on record.

29. That apart, the appellant has filed I.A.No.2 of 2025 to receive additional documents under Order 41 Rule 27 of the Code of Civil Procedure. A certified copy of the judgment in the prosecution under Section 138 of the Negotiable Instruments Act showing that the defendant was convicted and also the copy of the criminal appeal filed by the respondent against the judgment of conviction were produced. The appellant has also produced a certified copy of the sale deed which showed that the appellant had transferred a property to one Mr N.M. Sebastian on 21.01.2011, to show that he had the means to pay the defendant. I.A. No. 4 of 2025 is filed producing income tax return for the assessment year 2011-2012 and also the intimation received under Section 143(1) of the Income Tax Act, again to show that the appellant had the requisite financial resource during the relevant time to advance money to the

respondent. The said income tax return also shows that the appellant had received an amount of Rs. 25,00,000/- as per the transaction pursuant to the sale deed mentioned above.

30. The defendant had produced Annexure R1(a) to R1(c) documents to show that the plaintiff continued to be his Chartered Accountant even beyond the financial year 2009-2010 and that the finding of the trial court that the plaintiff would have taken blank papers and cheques for the purpose of filing the return as his Auditor. Given the above, an issue arises as to the period the plaintiff was the Auditor of the defendant.

31. Though the documents produced by the appellant and the respondent are very relevant in the background of their contentions, the trial court did not have an opportunity to deal with them as it is produced for the first time in this appeal only. By a separate order, the applications filed for reception of additional evidence in the appeal stand allowed. Though other issues have also been raised by the learned counsel for the parties, since the matter

is being remitted for a fresh disposal, they are not being considered.

In view of the findings above referred to, and in the light of this court allowing the applications under Order XLI Rule 27, I am inclined to set aside the judgment and decree in question and remand the suit to the trial court to decide afresh on merits in the light of the entire evidence. Taking note of the fact that the suit is of the year 2012, the trial court will endeavour to finally dispose of the suit within five months from the date of the first appearance. The parties are directed to appear before the trial court on 09.09.2026. The court fee paid by the appellant shall be refunded under Section 67 of the Kerala Court Fees and Suits Valuation Act.

Sd/-

MOHAMMED NIAS C.P.

JUDGE

DMR/-

Judgment reserved	08/07/26
Date of Judgment	30/07/26
Judgment dictated	13/07/26
Draft judgment placed	14/07/26
Final judgment uploaded	30/07/26

APPENDIX OF RFA NO. 13 OF 2016

PETITIONER'S ANNEXURES

Document No.1	**CERTIFIED COPY OF THE JUDGMENT DATED 27.06.2019 PASSED BY THE HON'BLE JUDICIAL 1ST CLASS MAGISTRATE COURT - I, ALAPPUZHA IN S. T. NO. 3712 OF 2012**
Document No.2	**CERTIFIED COPY OF THE CRIMINAL APPEAL NO. 145 OF 2019 FILED BY THE RESPONDENT BEFORE HON'BLE SESSIONS COURT, ALAPPUZHA**
Document No.3	**CERTIFIED COPY OF THE SALE DEED NO. 324/2011 OF ALAPPUZHA S.R.O. EVIDENCING TRANSFER OF PROPERTY FROM THE APPELLANT TO MR. N. M. SEBASTIAN**
DOCUMENT NO.1	**INCOME TAX RETURN UNDER SECTION 139 DATED 08.03.2012 FOR THE AY - 2011-12**
DOCUMENT NO.2	**INTIMATION RECEIVED UNDER SECTION 143(1) OF THE INCOME TAX ACT DATED 30.05.2012**

RESPONDENT'S ANNEXURES

ANNEXURE R1(a)	**TRUE PHOTOCOPY OF LETTER NO. OC NO. 86/2010 DATED 9/2/2010 ISSUED FROM THE SUPERINTENDENT OF CENTRAL EXCISE COCHIN 17.**
ANNEXURE R1(b)	**TRUE PHOTOCOPY OF E-FILED RETURN DATED 11/7/2014 ISSUED BY THE INCOME TAX DEPARTMENT, GOVERNMENT OF INDIA.**
ANNEXURE R1(c)	**TRUE PHOTOCOPY OF LETTER DATED 23/8/2013 SUBMITTED BY THIS RESPONDENT BEFORE THE SUPERINTENDENT,SERVICE TAX (PREVENTIVE), ERNAKULAM.**