IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

MONDAY, THE 20TH DAY OF JULY 2026 / 29TH ASHADHA, 1948

RFA NO. 170 OF 2017

AGAINST THE JUDGMENT AND DECREE DATED IN OS NO.468 OF 2009 OF ASSISTANT SESSIONS COURT/I ADDITIONAL SUB COURT,ERNAKULAM

APPELLANTS/DEFENDANTS:

1 M/S. GISA INTERNATIONAL
GISA BHAVAN, OPPOSITE PONEL CHURCH, PONEKKARA,ELAMAKKARA P.O, COCHIN - 682 026.REPRESENTED BY ITS MANAGING PARTNER SADHANA GILBERT.

2 MRS. SADHANA GILBERT
MANAGING PARTNER M/S. GISA INTERNATIONAL, AGED 46 YEARS, W/O. GILBERT M, ANTONY (M.A GILBERT)MALIYEKKAL HOUSE, GISA BHAVAN, OPPOSITE PONEL CHURCH,PONEKKARA, ELAMAKKARA P.O, COCHIN - 682 026.

3 GILBERT M. ANTONY (M.A GILBERT)
AGED 49 YEARS, S/O. ANTONY, MALIYEKKAL HOUSE, GISA BHAVAN, OPPOSITE PONEL CHURCH, PONEKKARA, ELAMAKKARA P.O, COCHIN - 682 026.

4 SEBASTIAN @ ACHAYAN(DIED)
AGED 50 YEARS, MALIYEKKAL HOUSE, GISA BHAVAN, OPPOSITE PONEL CHURCH PONEKKARA, ELAMAKKARA P.O, COCHIN - 682 026.

BY ADVS.
SRI.P.MARTIN JOSE
SHRI.K.S.ARUN KUMAR
SRI.JUSTINE JACOB
SMT.RESMI THOMAS

RESPONDENT/PLAINTIFF/ADDL. RESPONDENTS 2 TO 9:

1 SOPHIE CEEVI
AGED 35 YEARS, W/O. C.P. CEEVI, CHOWARAN HOUSE, MATOOR,KALADY PIN - 683574 ERNAKULAM DISTRICT, KALADY PANCHAYATH MATTOOR VILLAGE.

ADDL.R2 SALIMA,
D/O.DEVASSIA, AGED ABOUT 72 YEARS, PUNNASSERY HOUSE,

PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R3 LISSAMMA,
D/O.DEVASSIA, AGED ABOUT 70 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R4 ROSAMMA,
D/O.DEVASSIA, AGED ABOUT 66 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R5 KOCHURANI,
D/O.DEVASSIA, AGED ABOUT 60 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R6 SOOSAMMA
D/O.DEVASSIA, AGED ABOUT 58 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R7 ALFY,
D/O.DEVASSIA, AGED ABOUT 54 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R8 KOCHUMOL,
D/O.DEVASSIA, AGED ABOUT 50 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R9 JOSEKUTTY
S/O.DEVASSIA, AGED ABOUT 62 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504.

ADDITIONAL RESPONDENT NOS.2 TO 9 ARE BEING IMPLEADED AS LEGAL REPRESENTATIVES OF DECEASED APPLICANT/APPELLANT NO.4 , VIDE ORDER DATED 15.09.2025 IN IA NO.1/2025 IN MJC NO.43/2025 IN RFA NO.170/2017.

BY ADVS.
SHRI.BIJU K.C.
SRI.MATHEW KURIAKOSE

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 02.07.2026, ALONG WITH RFA.263/2017, THE COURT ON 20.7.2026 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

MONDAY, THE 20TH DAY OF JULY 2026 / 29TH ASHADHA, 1948

RFA NO. 263 OF 2017

AGAINST THE JUDGMENT AND DECREE DATED 23.12.2015 IN OS NO.528 OF 2009 OF I ADDITIONAL SUB COURT,ERNAKULAM

APPELLANTS/DEFENDANTS:

1 M/S.GISA INTERNATIONAL
GISA BHAVAN,OPPOSITE PONEL CHURCH,PONEKKARA, ELAMAKKARA P.O.COCHIN-682026, REPRESENTED BY ITS MANAGING PARTNER SADHANA GILBERT.

2 MRS. SADHANA GILBERT
MANAGING PARTNER,M/S.GISA INTERNATIONAL, AGED 46 YEARS,W/O GILBERT M.ANTONY (M.A.GILBERT)MALIYEKKAL HOUSE, GISA BHAVAN, OPPOSITE PONEL CHURCH, PONEKKARA, ELAMAKKARA P.O.,COCHIN-682026

3 GILBERT M.ANTONY (M.A.GILBERT)
AGED 49 YEARS,S/O ANTONY, MALIYEKKAL HOUSE, GISA BHAVAN,OPPOSITE PONEL CHURCH,PONEKKARA, ELAMAKKARA P.O.COCHIN-682026

4 SEBASTIAN @ ACHAYAN(DIED)
AGED 50 YEARS,MALIYEKKAL HOUSE, GISA BHAVAN,OPPOSITE PONEL CHURCH,PONEKKARA, ELAMAKKARA P.O.COCHIN-682026

BY ADVS.
SRI.P.MARTIN JOSE
SHRI.K.S.ARUN KUMAR
SRI.JUSTINE JACOB
SMT.RESMI THOMAS

RESPONDENT/PLAINTIFF/ADDL. RESPONDENTS 2 TO 9::

1 JINCY JOSEPH
AGED 33 YEARS,W/O BENNY GEORGE,PULIKKAL HOUSE, THIRUVAMPADY P.O.PASHUTHURUTHU, VAIKOM TALUK, KADUTHURUTHY, KOTTAYAM DISTRICT. PIN-686612.

ADDL.R2 SALIMA

AGED 72 YEARS
D/O.DEVASSIA, AGED ABOUT 72 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R3 LISSAMMA,
AGED 70 YEARS
D/O.DEVASSIA, AGED ABOUT 70 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R4 ROSAMMA,
AGED 66 YEARS
D/O.DEVASSIA, AGED ABOUT 66 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R5 KOCHURANI
AGED 60 YEARS
D/O.DEVASSIA, AGED ABOUT 60 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R6 SOOSAMMA
AGED 58 YEARS
D/O.DEVASSIA, AGED ABOUT 58 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R7 ALFY,
AGED 54 YEARS
D/O.DEVASSIA, AGED ABOUT 54 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R8 KOCHUMOL,
AGED 50 YEARS
D/O.DEVASSIA, AGED ABOUT 50 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504

ADDL.R9 JOSEKUTTY,
AGED 62 YEARS
S/O.DEVASSIA, AGED ABOUT 62 YEARS, PUNNASSERY HOUSE, PUNNAKUNNAM, PULINCUNNU P.O, ALAPPUZHA DISTRICT, PIN-688504.

ADDITIONAL RESPONDENT NOS.2 TO 9 ARE BEING IMPLEADED AS LEGAL REPRESENTATIVES OF DECEASED APPLICANT/APPELLANT NO.4 , VIDE ORDER DATED 15.09.2025 IN IA NO.1/2025 IN MJC NO.31/2025 IN RFA NO.263/2017.

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 02.07.2026, ALONG WITH RFA.170/2017, THE COURT ON 20.7.2026 DELIVERED THE FOLLOWING:

MOHAMMED NIAS C.P., J.

....

RFA 170 & 263 of 2017

....

Dated this the 20th day of July, 2026

JUDGMENT

R.F.A. Nos. 170 and 263 of 2017 arise out of O.S. Nos. 468 of 2009 and 528 of 2009, respectively, which were disposed of by the common judgment and decrees dated 23.12.2015 passed by the Court of the Sub Judge, Ernakulam. The plaintiffs in the suits are the respondents, and the defendants are the appellants in these appeals. Since both suits arose out of substantially the same transaction, involved common questions of fact and law, and were jointly tried and disposed of by a common judgment, these appeals are also being considered together.

2. O.S. No.468 of 2009 was instituted by the plaintiff for recovery of Rs.2,98,625/- with interest. The plaintiff alleged that pursuant to Ext.A3 dated 10.04.2007, preliminary confirmation of employment issued by Global Employment Consultancy (GEC), she paid Rs.50,000/- to the defendants towards service charges and thereafter, on 19.07.2007, remitted Rs.2,48,625/- to the joint account of defendants 2 and 3, as directed by the defendants, for securing employment abroad, as evidenced by Ext.A6, counter foil issued by Federal

Bank Ltd. According to the plaintiff, the promised employment did not materialise, and GEC was only a sham entity floated by the defendants for collecting money from job aspirants. It was therefore contended that the defendants were liable to refund the amounts received from her.

3. O.S. No.528 of 2009, from which R.F.A. No.263 of 2017 arises, was filed by the plaintiff seeking recovery of Rs. 3,76,800/- with interest. According to the plaintiff, pursuant to the preliminary confirmation of employment issued by GEC, she paid Rs. 50,000/- towards service charges and thereafter remitted a total amount of Rs. 2,52,668/-, as evidenced by the corporate receipt issued by GEC, besides other amounts as directed by the defendants. It was alleged that when the promised employment did not materialise, the parties arrived at a settlement and the defendants issued a cheque dated 05.04.2009 for Rs. 3,76,800/- towards full and final settlement. The cheque, when presented for collection, was dishonoured with the endorsement "Account Blocked", giving rise to the suit.

4. The defendants filed a common written statement in both suits, contending that the first defendant acted only as an authorised agent of Global Employment Consultancy (GEC) and that GEC was the principal and a necessary party to the suits. According to the defendants, they had received only Rs.50,000/- towards service charges, and all other amounts were directly remitted by the plaintiffs to GEC. They further contended that they were not

personally liable in view of Section 230 of the Indian Contract Act. In O.S. No.528 of 2009, while admitting the cheque, it was contended that the same had been obtained through coercion and threat with the intervention of the police when the defendants were in judicial custody, and that there was no voluntary settlement or legally enforceable liability. The defendants also disputed the status of the first defendant as a partnership firm and denied the liability of the fourth defendant as a partner.

5. The suits were jointly tried, taking O.S. No.468 of 2009 as the leading case. The trial court framed the following common issues for consideration:

(i) Whether the defendants had offered employment to the plaintiffs?

(ii) Whether the plaintiff is entitled to recover any amount from the defendant?

(iii) Whether the decree of money as sought for is allowed?

(iv) Relief and costs?

6. On the side of the plaintiffs, PW1 was examined in O.S. No.468 of 2009 and PW2 in O.S. No.528 of 2009 and Exts.A1 to A16 were marked. On the side of the defendants, DW1 was examined in O.S. No.468 of 2009 and DW2 in O.S. No.528 of 2009.

7. The learned counsel for the appellants, Sri. Martin Jose argues that the defendants acted only as agents to facilitate the plaintiffs' attempt to secure employment abroad and collected only a service charge. All the other amounts

were admittedly paid by the plaintiffs directly to GEC. The plaintiffs obtained the cheque from the police, who took them from the defendants under threat and duress, and they were presented when defendants 2 and 3 were in jail between 26.02.2009 and 12.05.2009. The plaint is totally silent as to who gave the cheque, what was the nature of the settlement, how the amounts were quantified, or even the date of issuance of the cheque. Except for the self-serving evidence of the plaintiffs, there is nothing on record to substantiate their contentions.

8. It is argued that only the signature on the cheque was admitted, but denying the execution, and therefore, no presumption under the Negotiable Instruments Act would apply. The learned counsel also relied on the provisions of Section 118(2), Section 46, 47, and 50 of the Negotiable Instruments Act in support of his contentions. It is further argued that, as the privity of contract was between the plaintiffs and the principal, GEC was a necessary party to the suits.

9. Learned counsel also argues, based on Section 230 of the Contract Act, that the claim ought to have been made against the principal for the payments made directly to them and for which corporate receipts were admittedly issued, and thus no claim could have been made against the appellants.

10. It is also argued that Defendant No. 4 was impleaded, alleging that

he was a partner and that his property was attached, which was in fact sold by the other defendants long before the suit. It is also argued that Defendant No. 4 was never a partner of the firm. It is further argued that the power of attorney holder was examined in O.S. 528/2009. The learned counsel relied on the judgment in **Janki Vashdeo v. IndusInd Bank [2005 KHC 573]** to argue that the evidence led by the power of attorney holder cannot be accepted, and only for matters for which the power of attorney was granted, and where they had direct knowledge, their evidence will be relevant. Their evidence, therefore, cannot be treated as admissible or relevant. It is also argued that no cheque was issued in O.S No. 468/2009 from which RFA 170/2017 arises. However, a cheque was issued in O.S. 528/2009 from which RFA 263/2017 arises.

11. It is also argued based on the judgments in **Premshanker v. I.G. of Police [2002 KHC 792]** and **Seth Ramdayal Jat v. Laxmi Prasad [2009 KHC 483]** as well as the provisions of Sections 40 to 43 of the Evidence Act, that even a judgment of a criminal court will not be binding or conclusive and therefore the charge sheet in a case filed by an Investigating Officer is nothing but an opinion and cannot be treated as an admissible piece of evidence. He also relied on the judgments in **Khushalbhai Mahijibhai Patel v. A. firm of Mohammadhussain Rahimbux [1980 KHC 449]** and **James Machintosh** and **Co. Pvt. Ltd. v. Shree Yamuna Milk Co. Ltd. [1990 KHC 365]** to support his contentions.

12. Opposing the contentions of the appellants, the learned counsel for the respondents, Sri. Biju K. Chacko argues that they specifically pleaded that the defendants 1 to 3 were misrepresenting themselves as the agents of GEC. In fact, the evidence showed that there was no agency and that GEC was a sham company. The advertisement leading to the payments by the plaintiff was in the year 2004, and after amassing wealth, they purchased several properties in 2006. All these facts were clearly proved in the investigation conducted by the CBI pursuant to the directions issued by this court in a writ petition. Though GEC was impleaded as the additional 5th respondent, notice could not be served, and after the filing of the charge sheet, which said that there was no such entity in existence, an application was filed to delete them from the party array. Accordingly, no plea of non-joinder of a necessary party will arise in the instant case.

13. It is also argued that the address of GEC shown in the exhibits varies, and even the details given are completely inaccurate and incomplete; that it was not possible to get the identity of the principal, and therefore, Section 230 cannot apply. The cross-examination of the second defendant clearly showed that, although they claimed to be the authorised agent of GEC, no documents were produced, and defendant No. 2 was completely ignorant of even the constitution of GEC. There were no documents produced to show the relationship between defendants Nos. 1 to 3 and GEC. It is also argued that the

bank's SWIFT messages handed over by the second defendant showed a Bangkok address, whereas the corporate receipts, which were issued for the payments made by the plaintiff, showed GEC as functioning in the USA, Canada, and the Netherlands without any address. Relying on the decisions in **Aramukhan Nayadi v. Chandu Kunhiraman [1957 KHC 212], Midland Overseas v. M.v. "CMBT Tana" and others [1999 KHC 3003], Nagnath Kaulwar and sons v. M/s. Govindram Shyamsunder [2004 KHC 3371],** and **Cochin Frozen Food Exports (P) Ltd. v. Vanchinad Agencies and others [2004 KHC 1975],** it is argued that Section 230 will have no application in a case where there is non-disclosure of the principal, and also because the charge sheet proved that there was no such entity in existence.

14. The specific contention of the plaintiff was that there was a promise to return the money if the job offered was not materialised, and therefore the cheque was given to the plaintiff in RFA 263/2017. It is also submitted that A1 showed the defendant as a managing partner, which shows the existence of a firm. It is also argued that in OS 468/2009, the plaintiff had directly paid into the account of D2 and D3, and therefore, there was no cheque issued to them. This also shows that payments were being taken by defendants 1 and 2 on the promise of getting employment abroad. As regards the presumption, the learned counsel relies on the judgment in **Neeraj Dutta v. State (Govt. of NCT of Delhi) [2022 (7) KHC 647].**

15. As regards the execution of the cheque, the pleadings as well as the evidence on behalf of the plaintiffs clearly showed who issued the cheque and who signed the cheque. It is also argued that the plaint alleged that a settlement was arrived at based on which the cheque was issued to the plaintiff in OS No. 263/2017. The proof affidavit also stated the same. It was specifically alleged that the third defendant had issued the cheque. The suggestion to the plaintiff by the defendants was that the Circle Inspector of Police, Kalamassery, coerced the plaintiff, and the cheque had to be given, which was denied. As a matter of fact, the cheque on presentation was not honoured, stating that the account was blocked.

16. The learned counsel points out that the evidence of the defendant shows that when she was in hospital, the police took the cheque, and therefore, there is no contention that the cheque was taken when she was in jail, and this admission clearly goes against the pleading in the appeal itself. The evidence would further show that the cheques were not issued when the defendants were allegedly in jail.

17. It is further argued that there was no document at all to show the period of detention or the detention itself. The inconsistencies in the pleadings in the written statement and the evidence of the defendant would clearly prove this. Thus, it is submitted that there was no consistent case at all regarding the issuance of the cheque. The case that the police threatened and they had to give

away the cheques cannot be accepted, as no complaint whatsoever was given, and no material was produced to substantiate their contention that a complaint was given to the City Police Commissioner. Since the foundational facts required for proving the execution of the negotiable instrument stand proved, the presumption under the N.I. Act also applies. Learned counsel also points out that at some places the case of the defendants was that a signed cheque was taken by the police, whereas they had another version where they said blank cheques were taken by the police. Learned counsel also relies on the judgment in **Dr Jyothi Prasad Bhat v. Sundara Rajan & another [2013 (3) KHC 141]**, where a similar contention that the cheque was forcefully taken by the police was considered.

18. The learned counsel for the appellants, in reply, submits that there is no attempt to implead GEC even after furnishing the full address. Though an application was filed to implead GEC, and the same was allowed, GEC could not be served. However, after the defendants furnished the correct address, no steps were taken to implead GEC. It is also argued that no evidentiary value can be placed on a final report relying on the judgment in **Rajesh Yadav & another etc. v. State of U.P. [MANU/SC/0158/2022]**. It is the plaintiffs who pleaded a partnership, and therefore, they ought to have given some proof regarding the partnership between D1 and D4. As to the issuance of the cheque, there is no evidence other than the interested testimony of the

plaintiffs, while the defendants clearly showed the circumstances in which the cheque was taken by the plaintiffs. It is argued that there was no legally enforceable debt for which a cheque had been given. It is also argued that the decree against the 4th defendant was totally wrong, as there is no proof to show that he was a partner, and the sale of the property to him was long before the suit.

19. The point for determination is whether the appellants in RFA 263/2017 had executed the cheque in question and whether the appellants have the liability to pay the amounts claimed to the respondents/plaintiffs in both cases.

20. I have considered the rival submissions and perused the records.

21. The principal contention of the appellants is that they were only agents of Global Employment Consultancy (GEC) and that, except for the service charges, all other amounts were paid directly by the plaintiffs to GEC, and as such, no liability can be fastened upon the appellants, and that GEC was a necessary party to the suits. This contention cannot be accepted for more than one reason. It is to be noted that the defendants 1 to 3 had admitted in the reply notice that they are the sole authorised agents in Kerala by GEC. It is also to be noted that the amounts were transferred to GEC only on the instructions issued by defendants 1 to 3. The evidence of PWs 1 and 2, read along with the connected documents, clearly establishes that the plaintiffs approached only

the defendants, based on their representation, paid the service charges to them, obtained the preliminary employment confirmations through them, and transferred the balance amounts only because of the directions issued by them. There is absolutely no material to show that the plaintiffs had any independent dealings with GEC.

22. The pleadings themselves disclose that the plaintiffs had specifically alleged that GEC was only a sham entity projected by defendants 1 to 3 and that the defendants themselves were the real beneficiaries of the transactions. Though the defendants consistently claimed to be authorised agents of GEC, they failed to produce any agreement of agency, authorisation, or any document establishing the legal existence or constitution of GEC. The cross-examination of the defendant further demonstrates that he was unable to furnish even the basic particulars regarding the constitution of GEC. The different addresses shown for GEC in the corporate receipts and the SWIFT documents also support the plaintiffs' contention that GEC was not a genuinely disclosed principal.

23. Even if GEC was a genuine entity, the liability of the defendants stands independently established by the oral and documentary evidence on record. Significantly, in O.S. No.468 of 2009 (R.F.A. No.170 of 2017), a substantial part of the payments was made directly to defendants 2 and 3, as evidenced by Ext.A6. This circumstance further demonstrates that the defendants themselves

were direct recipients of the plaintiffs' money and cannot avoid personal liability by merely projecting GEC as the principal.

24. As regards the argument based on Section 230 of the Contract Act, it is relevant to note that no documents were produced by defendants 1 to 3 giving the full address of the alleged principal. There is no case that, apart from transferring the amounts to GEC as directed by defendants 1 to 3, of course, after the issuance of a letter of confirmation, there was any correspondence between the plaintiffs and GEC. In such circumstances, they cannot invoke the protection available under Section 230 of the Indian Contract Act. The principle that emerges is that where the principal is undisclosed, not properly identified, or incapable of being sued, the agent incurs personal liability. Equally, a contracting party cannot be expected to repose exclusive reliance on a foreign principal whose identity has not been properly disclosed or whose legal existence cannot be verified. It is only where the principal is disclosed and capable of being impleaded that the agent ordinarily escapes personal liability. Conversely, where the principal is not disclosed, is non-existent, or otherwise cannot be proceeded against, the liability falls upon the agent who entered into the transaction. In the present case, the defendants have failed to disclose the identity of the alleged principal in a manner known to the law, and the materials on record do not establish that GEC was a legal entity capable of being sued. The defendants are, therefore, not entitled to

claim the protection under Section 230 of the Indian Contract Act. (See: **Aramukhan Nayadi v. Chandu Kunhiraman [1957 KHC 212], James Machintosh and Co. Pvt. Ltd. v. Shree Yamuna Milk Co. Ltd. [1990 KHC 365], Midland Overseas v. M.V. "CMBT Tana" and others [1999 KHC 3003], Nagnath Kaulwar and Sons v. M/s. Govindram Shyamsunder [2004 KHC 3371], Cochin Frozen Food Exports (P) Ltd. v. Vanchinad Agencies and others [2004 KHC 1975]** and **Link International and another v. Mandya National Paper Mills Ltd. [2004 KHC 1454]**).

25. It is also significant that though GEC was initially impleaded as an additional party, notice could not be served, and, thereafter, the investigation disclosed that no such entity was traceable. The varying addresses shown in the records and the complete absence of any material establishing the legal identity of GEC reinforce the conclusion that the alleged principal was never properly disclosed. The defendants also failed to produce any document evidencing their relationship with GEC. Consequently, the plea based on non-joinder of GEC is wholly untenable.

26. Even otherwise, Section 28 of the Negotiable Instruments Act also answers the contention of the appellants. In **Sivagurunatha Pillai v. Padmavathi Ammal and another [AIR 1941 Mad 417 (FB)]**, the Full Bench held that the liability under Section 28 has to be determined from the instrument itself and that the Court cannot look beyond the negotiable

instrument to ascertain whether the maker intended to exclude personal liability. The same principle was reiterated in **M. Mahadevan Pillai v. Vedavalli Ammal [1991 SCC OnLine Mad 223]**, wherein it was held that an agent who signs a promissory note, bill of exchange, or cheque without indicating therein that he signs as an agent or that he does not intend to incur personal responsibility is personally liable on the instrument. It was further held that mere knowledge on the part of the holder that the executant was acting as an agent does not absolve the executant of personal liability, and that the only exception under Section 28 is where the holder induced the maker to sign on the belief that the principal alone would be liable, which must be specifically pleaded and proved. In the present case, the disputed cheque do not indicate that the defendants signed them merely as agents of GEC or that they intended to exclude personal liability. There is also no pleading or evidence that the plaintiffs induced the defendants to sign the cheque on the understanding that only GEC would be liable. Therefore, even assuming that the defendants were acting as agents of GEC, they cannot avoid personal liability on the cheque.

27. The specific case of the defendants is that the cheque has been issued under threat by the police. A consideration of the pleadings and the evidence on record shows that the signature and the execution of the cheque as such are admitted. The written statement also does not contain the details of

the alleged threat/duress of the police by which the cheque was forced to be handed over. Once execution stands admitted, the presumptions available under Sections 118(a) and 139 of the Negotiable Instruments Act come into operation. It was therefore incumbent upon the defendants to rebut those presumptions by leading satisfactory evidence to substantiate the defence taken. Except for the interested testimony of DW1, no acceptable evidence has been adduced to probabilise the defence. The trial court was therefore justified in holding that the statutory presumptions remained unrebutted. Once execution and delivery are proved, the controversy is not one relating to the mode of delivery, negotiation, or endorsement contemplated under Sections 46, 47, and 50 of the Negotiable Instruments Act. Those provisions, therefore, have no application to the facts of the present case and do not advance the case of the appellants. The pleadings and the oral evidence also specifically identify the person who issued the respective cheque and the circumstances in which the settlement was arrived at. The defendants themselves suggested in cross-examination that the cheque were obtained by the Circle Inspector under coercion, thereby acknowledging the existence and delivery of the instruments while disputing only the voluntariness of the transaction.

28. In **Dr. Jyothi Prasad Bhat v. K. Sundara Rajan & Ors. [2013 (3) KHC 141]**, this Court rejected a similar defence where the accused alleged that the police had forcibly obtained his signature on the

cheque. The Court held that the plea was only a bald allegation unsupported by any evidence, noting that the accused had failed to produce any contemporaneous complaint or other material establishing coercion. It was therefore held that such an unsubstantiated plea was insufficient to rebut the statutory presumptions arising in favour of the holder of the cheque. The same principle applies here, as the accused has failed to produce any reliable material to establish that the cheque was obtained under threat or coercion. The defence taken by the defendants is also mutually destructive. At one stage, their case is that signed cheque was taken away by the police; elsewhere, they contend that blank cheque was taken under threat. The evidence of DW1 further suggests that the cheque was allegedly taken while she was in hospital, whereas the appeal proceeds on the footing that the cheque was taken while defendants 2 and 3 were in judicial custody. These inconsistent versions seriously impair the credibility of their defence.

29. There is nothing on record to show that any complaint was made to any authority regarding the police action in forcing the defendants to hand over the cheque. The mere fact that defendants 2 and 3 were subsequently in judicial custody does not probabilise the defence, particularly when the plaintiffs' case is that the cheque was issued before their arrest. No material has been produced to establish that the cheque was, in fact, executed during the period of judicial custody. Such facts were within the exclusive knowledge of

the defendants, and the burden to establish the same rested entirely upon them. That burden has not been discharged. The total absence of such evidence renders the plea wholly improbable.

30. The above discussion relating to the execution of the cheque is confined to O.S. No.528 of 2009 (R.F.A. No.263 of 2017), where the plaintiff's claim is additionally supported by the cheque admittedly signed by the defendants. These principles relating to statutory presumptions under the Negotiable Instruments Act do not govern O.S. No.468 of 2009, where no cheque forms the foundation of the claim. Insofar as O.S. No.468 of 2009 (R.F.A. No.170 of 2017) is concerned, the plaintiff has proved the transaction independently of any cheque. Ext.A6 establishes that a sum of Rs.2,48,625/- was remitted directly to the joint account of defendants 2 and 3 pursuant to their directions. This documentary evidence, read together with the oral testimony of PW1 and the admitted payment of service charges, clearly establishes that the defendants received the amounts in connection with the promised overseas employment. The defendants have neither disputed the receipt of the amount covered by Ext.A6 nor established that it was refunded. Consequently, the decree in O.S. No.468 of 2009 rests upon independent documentary evidence and is wholly unaffected by the absence of a cheque.

31. It is the specific case of the plaintiffs that money was transferred to GEC on instructions from defendants 1 to 3. There is nothing on record to

discredit the same. At this juncture, it is pertinent to note that the case of the plaintiff is that there was no statutory licence for the first defendant at the relevant time, as the application for a licence was made only on 05.07.2006 and the same was granted on 02.03.2007. It is clear that the payments made by the plaintiffs stand independently, as proved by the bank records, passbooks, corporate receipts, and the oral evidence, and the decree granted does not rest solely upon the said document.

32. The contention that there was no pleading about the circumstances under which the settlement was arrived at, or when the cheque was handed over, also deserves rejection. The pleadings, read as a whole, disclose that after the failure of the promised overseas employment, the defendants agreed to refund the amounts received and, in part performance thereof, made certain cash payments and thereafter issued the respective cheques towards the balance amounts. These acts surely show the nature of the settlement which led to the issuance of the cheque in question. The specific contention of the plaintiff was that there was a promise to return the money if the job offered was not materialised, and therefore the cheque was given in OS No. 528/2009. It is also submitted that Ext.A1 showed the defendant as a managing partner, which shows the existence of a firm.

33. The contention that the plaintiffs failed to prove the transaction through their own evidence and that the evidence of the power of attorney is

not admissible also cannot be accepted. In the instant cases, even the case of the defendants was that they were the authorised agents of GEC and that, except for the service charges, the amounts were paid directly by the plaintiffs to GEC. The defendants have also admitted the receipt of the service charges, and their case is that they had already refunded the same. The evidence on record further shows that the defendants acknowledged their liability, made part payments to the plaintiffs, and thereafter issued the disputed cheques towards the settlement of the balance amounts. Therefore, even assuming that the oral evidence of any particular plaintiff is kept out of consideration, the admitted facts, the documentary evidence, and the conduct of the defendants themselves sufficiently establish the plaintiffs' entitlement to the reliefs claimed.

34. As regards the question as to whether the 4th defendant was a partner, Ext.A1 clearly showed the 2nd defendant as a managing partner, and the joint account in a bank also showed that it was a firm operating the account, despite which the partnership deed was not produced by defendants 1 to 3. Under such circumstances, the finding of the trial court that the 4th defendant is also liable cannot be said to be wrong.

35. The trial court rightly found that GEC was not a necessary party to the suits, and the agent had not disclosed the name of the principal, and that the defendants had failed to establish that they were merely agents without

personal liability. It is found that the defendants have not pleaded that they are partners or proprietors, and that they registered a fictitious company to recruit candidates for foreign employment and cheated several job aspirants. The trial Court also found that the defendants cannot be heard to contend that they simply introduced job seekers to the plaintiffs. It is not proven that after receiving the amount from the plaintiffs, the same was sent to the GEC. The trial court also found that there is no evidence to prove the return of any amount to the plaintiffs and therefore, the plaintiff is entitled to realise the money from the defendants with interest. The Trial Court found that the money was deposited by the plaintiffs as per the instructions of the defendants, and a cheque was issued in RFA 263/2017 for refund; there is no evidence to show that it was issued by force or coercion, etc. RFA 263/2017 is a fit case to draw a presumption under Section 139 of the N.I. Act that the statutory presumption under the Negotiable Instruments Act had not been rebutted. The trial court further found that the cheque had been issued towards a legally enforceable liability. Accordingly, O.S. No.468 of 2009 was decreed directing the defendants to pay Rs. 2,98,625/- with interest at 6% per annum from the date of suit till realisation and costs, and O.S. No.528 of 2009 was decreed directing the defendants to pay Rs. 3,76,800/- with interest at 6% per annum from the date of suit till realisation and costs. Aggrieved thereby, the defendants have preferred these appeals.

36. The absence of a cheque in O.S. No.468 of 2009 (R.F.A. No.170 of 2017) is of no consequence, as the liability of the defendants is independently established by the oral and documentary evidence, including Ext.A6, which evidences the remittance made directly to the joint account of defendants 2 and 3. In O.S. No.528 of 2009 (R.F.A. No.263 of 2017), apart from the evidence relating to the underlying transaction, the cheque issued by the defendants furnishes an additional basis for fastening liability by reason of the statutory presumptions under the Negotiable Instruments Act, which the defendants have failed to rebut.

37. An appreciation of the entire facts and circumstances of the case clearly shows that the findings recorded by the trial court are based upon a proper understanding of the pleadings and evidence, both oral and documentary. No material evidence has been ignored, nor has any inadmissible material been made the sole basis of the decree. The conclusions reached by the trial court are perfectly in order, and I find no reason to interfere with the common judgment and decrees passed by the court below.

Accordingly, the appeals are dismissed.

Sd/-
MOHAMMED NIAS C.P.
JUDGE

okb/

Judgment reserved	02/7/26
Date of Judgment	20/7/26
Judgment dictated	3/7/26
Draft judgment placed	10/7/26
Final judgment uploaded	20/7/26