106556 - The debtor who is taking too long to repay should pay any costs incurred by the lender in order to retrieve the loan

the question

A person has borrowed an amount of money from me, and he does not want to pay back. When he took the money he signed a blank cheque to me, and I'm going to complain to the court, is it permissible for me to write down in the cheque a bigger amount of money adding what I will pay my lawyer to get my money back?.

Detailed answer

Praise be to Allah.

Firstly:

If this person is in financial difficulty and is unable to pay the debt, then it is not permissible for you to take the matter to court, rather you should be easy going with him until Allaah makes him independent of means and able to pay, because Allaah says (interpretation of the meaning):

"And if the debtor is in a hard time (has no money), then grant him time till it is easy for him to repay"

[al-Baqarah 2:280]

al-Sa'di (may Allaah have mercy on him) said (p. 120):

"And if the debtor is in a hard time" i.e., he cannot afford to pay off the loan, "then grant him time till it is easy for him to repay". It is obligatory for him to wait and give him time until he finds money with which to pay off the debt. End quote.

Shaykh Muhammad ibn 'Uthaymeen (may Allaah have mercy on him) said:

One of the things that we learn from this verse is that it is obligatory to give the debtor who is in difficulty time until things become easier for him, because Allaah says (interpretation of the meaning): “then grant him time till it is easy for him to repay.” So it is not permissible to demand repayment of the debt from him. End quote.

Tafseer Soorat al-Baqarah (3/391).

Secondly:

If this person is able to pay it off, but he is taking too long and is trying to avoid it, to such an extent that you are forced to take him to court, then he should be made to pay all the money that it is going to cost you to get your rights from him, whether that is by hiring a lawyer or otherwise.

1-because he is the reason why this money is being spent, because of his delaying and wrongdoing, so he is liable for it, just as if he had damaged or destroyed it.

2-because not making him liable for these expenses would encourage debtors to delay payment, thus leading to a great deal of wrongdoing and causing the loss of people’s wealth.

3-because that may lead to the loss of people’s rights and wealth, as the lender would not take the matter to court, because it may cost more than the debt itself.

But these expenses should be reasonable; so you should not exaggerate about them or give the lawyer more than he deserves on the basis that someone else (the debtor) is going to pay for it.

This was stated by the scholars:

Shaykh al-Islam Ibn Taymiyah (may Allaah have mercy on him) said:

If the one who owes the debt is able to pay it off, but he delays in giving it to the one who is entitled to it, until the latter is forced to take the matter to court, then whatever costs are incurred as the result of that are to be borne by the wrongdoer, so long as the costs are reasonable. End quote from Majmoo’ al-Fataawa (30/24).

It says in Kashshaaf al-Qinaa’ (3/419):

If the debtor delays payment to the lender until he takes the matter to court, then whatever expenses are incurred by the lender are to be paid by the debtor who delayed payment, so long as the costs are reasonable, because he has caused these expenses unlawfully. End quote.

It says in Sharh al-Muntaha (3/441):

Any expenses that are incurred by the lender because of him, i.e., because the debtor’s delay forced the lender to take the matter to court, are to be borne by the one who delayed payment, because he is the cause of these expenses being incurred. End quote.