

GJAH030008232019



Received On : 27-03-2019
Registered On : 27-03-2019
Decided on : 10-05-2024
Duration : Y M D
05 01 13

**IN THE SMALL CAUSE COURT No.3 AT AHMEDABAD
SUMMARY SUIT No.440 OF 2019**

Exh.--49

Plaintiff : Umeshbhai Arvindbhai Patel
Aged about 58 Years, Occupation : Service
Residing at :
401, Hathishah Ni Pole,
Vadigam, Dariyapur,
Ahmedabad - 380 001

VERSUS

Defendant : Rajesh Valjibhai Jadhav
Aged about 40 Years, Occupation : Business
Residing at :
B/203, Derprime New Chandkheda
Inside Shah Plaza Lanem
Opp.Satyam Hospital,
I.O.C.Road, Chandkheda,
Ahmedabad - 380 025

Appearance :-

Mr.K.N.Sheth, Learned Advocate for the plaintiff.

Mr.B.R.Parmar, Learned Advocate for the defendant.

Coram:- A.S.Pande, Judge.

- : J U D G E M E N T : -

1. The plaintiff has filed the suit against the defendant for recovery of Rs.3,00,000/- along with the interest at the rate of 18% under Order 37 of Civil Procedure Code as summary suit.
- 2 The brief facts of the plaintiff's suit are as under:-
 - 2.1 The plaintiff resides at the address mentioned in the cause title of the suit and carries on livelihood by rendering service.
 - 2.2 The defendant is friend of the plaintiff and as and when economic crisis arose, defendant approached and contacted the plaintiff for economic assistance and in turn plaintiff advanced in pieces Rs.3,00,000/- (Rupees Three Lakh only) at different time, which defendant agreed to pay.
 - 2.3 The plaintiff further stated that after accepting the advanced amount of Rs.3,00,000/- (Rupees Three Lakh Only), the defendant never turned back to repay and on the contrary kept giving empty assurance when plaintiff recalled the defendant to repay the amount of Rs.3,00,000/- (Rupees Three Lakh Only).
 - 2.4 The plaintiff further stated that he served notice upon the defendant through advocate. After receiving the notice, defendant has made agreement of understanding on 19-09-2017 on judicial stamp paper of Rs.100/- and notarized the same before the Notary and given assurance to repay the amount of Rs.3,00,000/- (Rupees Three Lakh Only) in installment of Rs.3,000/- per month. Though on receiving the

notice and written agreement made on stamp paper, defendant did not bother to repay the said amount, hence plaintiff compelled to file recovery suit against the defendant.

The plaintiff pray to pass decree against the defendant for an amount of Rs.3,00,000/- (Rupees Three Lakh Only) alongwith interest at the rate of 18% p.a.

2. On serving of summons, defendant appeared before the Court and filed his leave to defend application vide Exh.21 which was allowed unconditionally. Thereafter, defendant had filed adoption purshis vide Exh.27 to consider his leave to defend application as his written statement.
3. The defendant denied the facts of summons for judgment filed by the plaintiff. The defendant contended that he has borrowed Rs.30,000/- from the plaintiff and defendant paid the said amount to the plaintiff. The defendant has taken contention that he has borrowed Rs.30,000/- from the plaintiff, but plaintiff has added "One Zero" and filed false suit to recover Rs.3,00,000/-. The defendant further contended that plaintiff has taken the defendant into confidence and prepared one agreement on 20-09-2017 before the Notary and written Rs.3,00,000/- instead of Rs.30,000/- in the said agreement. The plaintiff said he would not do anything with defendant, therefore, having trust and confidence in plaintiff, defendant made signature on the said agreement. The defendant further contended that plaintiff has filed the suit for Rs.3,00,000/- while in the notice and in agreement amount mentioned as Rs.3,10,000/-, hence plaintiff is not sure for amount. Hence, suit filed by the plaintiff against the defendant deserves to be

dismissed with costs.

4. My learned predecessor has framed following issues at Exh.25.

ISSUES

- 1 Whether the plaintiff proves that he is entitled to get the amount as prayed for towards legal dues from the defendant ?
 - 2 Whether the plaintiff is entitled to get interest as alleged ? If yes, at what rate ?
 - 3 Whether the plaintiff is entitled to get relief as prayed for ?
 - 4 What order and decree ?
5. My findings to the above issues with reasons are as under:-
- 1 In the affirmative.
 - 2 Partly in the affirmative.
 - 3 Partly in the affirmative.
 - 4 As per final order.

Evidence of both Side

6. The plaintiff has produced following oral as well as documentary evidence.

ORAL EVIDENCE

Sr.No.	Evidence	Exhibit
1	Chief-examination of plaintiff Umesh Arvindbhai Patel	30

DOCUMENTARY EVIDENCE

Sr.No.	Evidence	Exhibit
1	Agreement executed between plaintiff and defendant	34

The plaintiff has filed closing purshis vide Exh.37.

7. The defendant has produced following oral as well as documentary evidence.

ORAL EVIDENCE

Sr.No.	Evidence	Exhibit
1	Chief-examination of defendant Rajeshbhai Valjibhai Jadav	41

DOCUMENTARY EVIDENCE

Sr.No.	Evidence	Exhibit
1	Hand written Receipt	43

The defendant has filed closing purshis vide Exh.44.

8. Heard the learned advocate of plaintiff as well as learned advocate of the defendant at length.

:: REASONS ::

ISSUE No.1 :

9. The plaintiff has stated that he has given amount of Rs.3,00,000/- (Rupees Three Lakh only) at different time on need which defendant agreed and abide the same. On the other hand, after accepting the advanced amount of Rs.3,00,000/- (Rupees Three Lakh only) and as per the promise to repay the advanced amount of Rs.3,00,000/- never turned back and on the contrary kept giving empty assurance when the plaintiff recalled the defendant to repay

the amount of Rs.3,00,000/- (Rupees Three Lakh only). After receiving the notice, defendant has given in writing on judicial stamp paper of Rs.100 to repay the amount Rs.3,00,000/- (Rupees Three Lakh only) in E.M.I.instalment of Rs.3,000/- per month and notarized before the Notary on 19-09-2017.

10. As per Exh.34, plaintiff has produced the agreement cum contract and as per the said document, defendant has admitted Rs.3,10,000/- paid by the plaintiff in peace-meal and it is admitted by the second party Jadav Rajesh Valjibhai. As per Exh.34 defendant has admitted legal debt and also admitted to pay Rs.3,000/- (Rupees Three Thousand only) per month to first party. In cross-examination of the defendant, defendant has admitted in Exh.41 the document of Exh.34, and stated that first party is plaintiff and second party is myself. The defendant admitted his signature in Exh.34 and stated that it is true I have affixed my signature and it is my signature and it is my photograph. The defendant further stated that it is true that the said document is true. As per the admission of the defendant in cross-examination of Exh.41 plaintiff has proved the document of Exh.34 and hence plaintiff has proved that he has given Rs.3,10,000/- and the said amount admitted by the defendant.
11. As per the chief-examination of the plaintiff, plaintiff has stated the contention of Exh.34, on cross-examination plaintiff has stated that It is true that suit amount which I shown as legal due not given in one time then voluntarily stated it is given in peace-meal. It is true that I have not given Rs.3,10,000/- to the defendant in one time, but it is given in peace-meal. It is true that I have no written document to show that in which date I had given the said amount.

12. The learned advocate of the defendant argued that actually Rs.30,000/- (Rupees Thirty Thousand only) lent by plaintiff to the defendant but after Rs.30,000/- plaintiff has added one "Zero", Rs.3,00,000/- and to prove the said contention, defendant rely on the document vide Exh.43, but defendant has not proved the contention of Exh.43. Even as per order passed below Exh.39, defendant has not proved the signature of the plaintiff in Exh.43. Even on the time of cross-examination of the plaintiff, defendant has not referred document of Exh.43, if the said document executed by the plaintiff then why defendant has not produced said document on the time of cross-examination of the plaintiff? and why defendant has not referred the said document in cross-examination of plaintiff?, per contra, plaintiff has denied the contention of Rs.30,000/- and hence document vide exh.43 not proved.
13. As per the deposition of the plaintiff as well as defendant vide Exh.30 and Exh.41, plaintiff has proved that plaintiff is entitled to recover suit amount from the defendant and defendant has admitted the said amount in Exh.34 and hence plaintiff is entitled to recover the said amount as per written contract vide Exh.34. So, I conclude **issue no.1 as affirmative.**

ISSUE No. 2 :

14. The plaintiff has stated that he is entitled to get interest. As per the plaintiff's plaint, plaintiff has demanded 18% interest, but as per Exh.34 it is agreement between plaintiff and defendant. They had agreed relating any interest, even as per the document vide Exh.34 it is also found that there is no commercial transaction between the plaintiff and defendant. On that circumstances, plaintiff is not

entitled to recover interest as prayed, but after filing the suit till actual realization of the amount, plaintiff will entitle to get interest at the rate of 6% per annum simple interest as per Section 34 of the Civil Procedure Code and hence I conclude **issue no,2 as partly affirmative.**

ISSUE No.3 :

15. As per the above discussion, plaintiff is entitled to recover Rs.3,00,000/- from the defendant. As per agreement vide Exh.34 plaintiff is not entitled to recover said amount at 18% interest and hence plaintiff is entitled to get relief without interest of 18% per annum. So, I conclude **issue no.3 as partly affirmative**, hence I pass the following final order for issue no.4.

::FINAL ORDER::

- 1 The plaintiff's suit is partly allowed.
- 2 It is hereby directed to the defendant to pay Rs.3,00,000/- (Rupees Three Lakh only) within 90 days from today to the plaintiff at the rate of 6% interest per annum from the date of 23-07-2019 till actual realization.
- 3 Decree be drawn accordingly.
- 4 Cost of the Plaintiff as well as cost of defendant will bear by the defendant.

Pronounced and signed in the open court on this 10th day of May, 2024.

Date : 10-05-2024
Place : Ahmedabad

(Arvindkumar Shivprasad Pande)
Judge,
Code GJ00854
Small Causes Court No.3
Ahmedabad.