



GJAH030021892019

Registration No.: SMST-R/1003/2019

Filing No.: SMST-R/1003/2019

Filed On: 20.07.2019

Registered On : 20.07.2019

Decided On : 22.04.2026

Duration : DD-02 MM-09 YY-06

Exh. 51

**IN THE SMALL CAUSE COURT NO.3
AT AHMEDABAD**

SUMMARY SUIT NO.1003 OF 2019.

Plaintiff/s:

- 1. Vipin R. Panchal director of Harsiddhi
Electro Mech. Pvt. Ltd.,
through POA holder Chirag Rameshbhai
Panchal**

Age: Adult, Occupation : Business
Address: 1907/A, Nr. Jagdish Udhyog
phase-IV, Vatva, G.I.D.C., Ahmedabad.

VERSUS

Defendant/s:

- 1. Yogi Electricals
Add.:- 26, Trikeniya Shopping,
Rambharose Chawk,
Station Road, Veraval.**

Appearance :-

Ld. Adv. for plaintiff/s. Mr. C. J. Pahcnal
Ld. Adv. for defendant. Mr. A. C. Thaker

Coram :- Kishorkumar G. Patel, Judge

-::: JUDGMENT :::-

1) That, the plaintiff has filed the present suit against the defendant/s under the provisions of Order XXXVII of The Code of Civil Procedure, 1908 (hereinafter referred to as “The Code” for short) inter alia praying for decree to recover Rs.1,27,681/- along with interest at the rate of 18% p.a. till the realization of the said amount. The facts leading the plaintiff to file this suit are as under.

The plaintiff has pleaded in the plaint that the plaintiff has filed the present suit against the defendant for recovery of Rs.1,27,681/- with 18% interest. The plaintiff has stated that, the plaintiff is carrying on his business of selling of Iron, Sheet metal and job work of fabrication at the address mentioned in the cause title of the suit and the defendant has also doing his work at the address mentioned in the cause title of the suit. There is business relationship taken place between the parties and defendant often took the iron for selling and used to do the metal fabrication job work from the plaintiff hence the credit account of the defendant has maintained by the plaintiff. The plaintiff has further contended that, the job work of the sheet metal fabrication of Rs.1,27,681/- has been done to the defendant by the plaintiff on dtd.01/09/2013 and the bill of said work has been given to the defendant which is not paid by the defendant to the plaintiff. Therefore the plaintiff has repeatedly asked his outstanding dues from the defendant by telephonic communication or by sending a

persons though the defendant has not paid the same. Therefore the plaintiff has issued notice dtd.02/04/2019 for demanding of the outstanding dues from the defendant though the defendant has not replied the said notice till today but after receiving the notice, he visited the plaintiff personally and given Rs.10,000/- to him and also given assurance that he would be paid the rest amount within one month and the plaintiff has made trust over the defendant and taken Rs.10,000/- but after completion of one month, defendant has not paid the outstanding dues and therefore plaintiff has instituted the present suit to recovery Rs.1,27,681/- alongwith 18% p.a. interest as prayed in para-12 of the plaint.

2) Process has been duly served to the defendant and he has appeared through his learned advocate and filed leave to defend application vide Exh.21 against the summons for judgment at exh.12, wherein he has denied almost all allegations made by the plaintiff in his plaint as well as summons for judgment and further stated that, the plaintiff's suit is barred by limitation because the plaintiff has filed the suit on dtd.05/08/2019 and the dispute has been arisen on dtd.01/09/2013. The defendant has not paid any amount in cash or in any other manner in this six years duration, therefore the plaintiff's suit is not maintainable. The plaintiff's suit is barred by jurisdiction because defendant is doing his work at Veraval, Somnath and the plaintiff has filed this suit before this Hon'ble Court. The plaintiff has to prove that

defendant is doing the job work of the electric. The defendant was paid for all the job works which were assigned to the plaintiff. The plaintiff relied on the bill dtd.01/09/2013 for the job work which has barred by limitation hence the plaintiff has no any right to asked the above mentioned amount. The defendant has denial the facts narrated in para- 5 to 9 and further stated that, he has not given any assurance that he would be paid the outstanding dues within one month and he has not paid any amount to the plaintiff. The plaintiff is not entitled to ask for 18% interest from the defendant because there is no any written contract taken place between the parties. Therefore, the triable issues are involved in the present matter. Hence, the defendant has prayed to allow the leave to defend application with compensatory cost. Thereafter this court has passed an order and the leave to defend application at exh.21 is allowed unconditionally and further defendant is directed to file written statement within period of four weeks from the date of said order. It is pertinent to note here that defendant tendered adoption pursis vide exh.23 whereby defendant has adopted the leave to defend application as his written statement.

3) Upon above facts, the following issues together with my findings emerges for determination at exh.24:

Sr. No	Issues	Findings
1.	Whether the plaintiff is entitled to recover suit claim from the defendant?	Partly In Affirmative.

2. Whether the plaintiff is entitled to interest, if yes, at what rate? **Partly In Affirmative.**

(Interest at the rate of 9% p.a.)

3. What order and decree?

As per final order.

4) The plaintiff's Amratbhai S. Panchal director of Harsiddhi Industries POA holder Chirag Rameshbhai Panchal has filed his examination in chief at exh.28 and further produced documentary evidence vide exhs.29 to exh.32. The plaintiff's witness (PW-2) Yogeshbhai Chhotabhai Khair has filed his examination in chief at exh.34 and lastly filed closing pursis vide exh.36.

5) The defendant Mr. Kiritbhai Madanbhai Solanki has filed his examination in chief at exh.41 and further not produced any documentary evidence and lastly filed closing pursis vide exh.49.

6) Heard the learned advocate for the plaintiff C. J. Panchal and Learned Advocate for the defendant Mr. A. C. Thaker at length and further perused the written arguments produced by plaintiff at exh.50.

7) My reasons to the above finding are as under.

-:::REASONS:::-

Issue Nos.1 to 3.

As Issues No.1 to 3 are connected with each other and to avoid repetition of fact, discussed herein as under :

1. To prove the claim, plaintiff has pleaded in the plaint as well as deposed in affidavit of evidence produced at exh.28 that the plaintiff has filed the present suit against the defendant for recovery of Rs.1,27,681/- with 18% interest. The plaintiff has stated that, the plaintiff is carrying on his business of selling of Iron, Sheet metal and job work of fabrication at the address mentioned in the cause title of the suit and the defendant has also doing his work at the address mentioned in the cause title of the suit. There is business relationship taken place between the parties and defendant often took the iron for selling and used to do the metal fabrication job work from the plaintiff hence the credit account of the defendant has maintained by the plaintiff. The plaintiff has further contended that, the job work of the sheet metal fabrication of Rs.1,27,681/- has been done to the defendant by the plaintiff on dtd.01/09/2013. It is further averred that plaintiff has maintained ledger account of defendant which is produced by plaintiff at exh.29 and entry of sale was also shown in the said ledger account of consideration amount of goods sold. It is further stated that the plaintiff has done the job work for the defendant and plaintiff has drawing invoice no.008 on dated 01.09.2013. As such the plaintiff has delivered the said job work of total Rs.1,27,681/- by delivery challan no.64/2013-2014 which is

also produced by plaintiff at exh.31. It is further pleaded by plaintiff that the invoice of said work has been given to the defendant which is not paid by the defendant to the plaintiff. Therefore the plaintiff has repeatedly asked his outstanding dues from the defendant by telephonic communication or by sending a persons though the defendant has not paid the same. Therefore the plaintiff has issued notice dtd.02/04/2019 for demanding of the outstanding dues from the defendant though the defendant has not replied the said notice till today but after receiving the notice, he visited the plaintiff personally and given Rs.10,000/- to him and also given assurance that he would be paid the rest amount within one month and the plaintiff has made trust over the defendant and taken Rs.10,000/- but after completion of one month, defendant has not paid the outstanding dues and therefore plaintiff has instituted the present suit to recovery Rs.1,27,681/- alongwith 18% p.a. interest as prayed in para-12 of the plaint.

2. The plaintiff has further produced documentary evidence from exhs.29 to exh.32 wherein invoice no.008 of dated 01.09.2013 has been produced at exh.30. The copy of the delivery challan no.64/2013-14is produced at exh.31. The plaintiff has further relied on the ledger account of defendant maintained by him for the year of 2013 to 2023 produced at exh.29. As such considering exh.30, it reveals that defendant has assigned job work to plaintiff which was

delivered to defendant on dated 23.08.2013. While perusing cross-examination of PW-1, it reveals that PW-1 has reiterated the facts as mentioned in the plaint and further supported the documentary evidence as produced by plaintiff. However, PW-1 is Director of plaintiff company and therefore, the said witness has given his evidence as per his personal knowledge. In other words, PW-1 has given his deposition on the basis of record maintained by plaintiff company. It is noteworthy here that nothing comes on record which can impeach the reliability of the documentary evidence produced by plaintiff. As such considering the deposition and documentary evidence produced by plaintiff, it can be ascertained that the plaintiff has relied upon the delivery challan alongwith invoice which have not been controverted by defendant in a manner known to law. Mere denial of existence of such documents or allegation regarding forge and manipulated document, without any specific pleading as to how and in what manner such documents are fabricated, cannot be said to be a valid denial. Under Section 101 and 102 of Indian Evidence Act, the initial burden lies on plaintiff to prove delivery of the goods and going through the deposition and documentary evidence place during the trial, it can be said that the plaintiff has discharge the burden by producing relevant evidence in form of invoice and delivery challan, which in the ordinary course of business reflect the movement and supply of job work done by plaintiff for defendant. Once

such primary evidence is adduced the onus shifts upon the defendant to rebut the same.

3. Now if we perused what evidence alongwith deposition has been produced by defendant to rebut the evidence produced by the plaintiff, it found that the defendant has produced the deposition of Kiritbhai M. Solanki exh.41 wherein the said witness has reiterated the contents of the leave to defend application at exh.21 which was later on adopted as written statement by tendering pursis at exh.23. During the cross-examination of DW-1, the said witness has admitted that the notice issued by the plaintiff on dated 02.04.2019 was received by defendant.

4. In present case, the defendant has neither produced any documentary evidence nor elicited anything substantial in cross-examination to discredit the delivery challan, invoice, ledger account produced by plaintiff. No suggestion has been put to the plaintiff witness disputing the execution of delivery challan. In absence of such challenge, the documents remain uncontroverted and a liable to be accepted. Additionally under Section 34 of Evidence Act, entries in books of account, regularly kept in course of business, are relevant. Though such entries may not sufficient alone to charge liability, when read in conjunction with delivery challan and invoices, they lend corroborative value to the plaintiff case regarding supply of delivery of goods.

5. It is noteworthy here that plaintiff has instituted the

present summary suit for recovery of the outstanding amount against the defendant after issuing a legal notice dated 02.04.2019, which remained unreplied by the defendant. The plaintiff has, in support of his claim, produced on record a receipt voucher at Exh.32 evidencing payment of Rs.10,000/- made by the defendant, which has remained unchallenged and uncontroverted during the course of trial. It is pertinent to note that though the question of limitation is a mixed question of law and fact, the defendant has neither raised a specific plea regarding limitation during cross-examination of the plaintiff. Furthermore, after framing of issues, the defendant did not file any application for recasting or framing of an additional issue pertaining to limitation, as contemplated under Order XIV Rule 5 of the Code of Civil Procedure, 1908.

6. As per Section 3 of the Limitation Act, 1963, it is the duty of the Court to consider whether the suit is within limitation even if not raised as a defence. In the present case, the receipt voucher at Exh.32 clearly indicates acknowledgment of liability by the defendant, which attracts relevant provision of the Limitation Act, 1963, thereby extending the period of limitation. Hence, the suit filed by the plaintiff cannot be said to be barred by limitation. In view of the above discussion, it is evident that the defendant has failed to raise or substantiate any plea of limitation either at the argument stage or during trial, and the documentary evidence on record sufficiently establishes that the claim of the plaintiff is within the prescribed period

of limitation.

7. *The defendant has also failed to establish that the documents are forged nor has any expert evidence been led to dispute of delivery of goods. In absence of such evidence the plea of forgery remains unsubstantiated. It is settled principle that a document, when not specifically denied or challenged and rebutted or controverted in accordance with law, it affirmatively add value as an evidence. Thus, in light of documentary evidence produced by the plaintiff, the absence of effective cross-examination and the failure of the defendant to rebut the same, this court is inclined to hold that the plaintiff has successfully proved that the goods of total Rs.1,27,681/- was delivered to defendant as per the delivery challan and corresponding invoice. Further it appears from the record that defendant has paid Rs.10,000/- to the plaintiff and the plaintiff has issued receipt voucher in that regard which is produced at exh.32. Hence, the plaintiff seems entitled to get the consideration amount of Rs.1,17,681/- from the defendant. Hence, reply for the **Issue No.1** is given as **“Partly Affirmative”**.*

8. *As regards the claim of interest, it is undisputed that the transaction is commercial in nature. Under Section 34 of CPC, the court is empowered to grant reasonable interest in such cases. It is a cardinal principle that the interest such awarded must be compensatory and reasonable, keeping in view the nature of transaction. Considering the fact and*

circumstances of the case, the plaintiff seems entitled to get prevailing rate of interest in commercial transaction ie at 9% p.a on Rs.1,17,681/- which is outstanding amount to the defendant from the date of suit till its realization. Hence, reply for **Issue No.2** is given as **“Partly in Affirmative”** at the rate of 9% pa. from the date of filing of the suit and I pass following final order for **Issue No.3** in the interest of justice.

-:::O R D E R::: -

1. The plaintiff's suit is hereby partly allowed. Defendant is hereby directed to pay an amount of Rs.1,17,681/- to plaintiff alongwith interest at the rate of 9% p.a from the date of filing of the suit till its realization.
2. Defendant shall bear the cost of plaintiff and bear its own.
- 3 Interim application pending (if any) stands disposed off accordingly.
4. Decree be drawn accordingly.

Signed and Pronounced in the open Court to-day i.e. 22nd day of April, 2026.

**Date : 22.04.2026
Place: Ahmedabad.**

**(Kishorkumar Gajanan Patel)
Judge, Small Cause Court No.3,
Ahmedabad
Judge Code :- GJ00762**

OutBart