

	 सत्यमेव जयते	Received on	:	16-07-2024		
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**IN THE OF COURT OF ADDITIONAL CIVIL JUDGE
AT TALUKA-SANAND,
DISTRICT- AHMEDABAD (RURAL)**

[PRESIDED OVER BY - KANISHA V. PATHAK]

REGULAR CIVIL SUIT NO. 170 of 2024.

EXHIBIT –

PLAINTIFF :-

**ARUNKUMAR TRILOKNATH BHARGAV,
POWER OF ATTORNEY HOLDER
ON BEHALF OF MODERN DENIM LIMITED,
Age: 62 Years, Occupation: Job,
R/o. Modern Terry Towels,
Sanand-Kadi Road, Nidharad,
Taluka: Sanand, District Ahmedabad.**

-VERSUS-

DEFENDANTS :-

**1. Artex Fabrics Pvt Ltd. Company,
2. Kusumdevi Dheliya,
3. Shraddha Dheliya,
4. Balkrishna Dheliya,
R/o. 178, Mahatma Gandhi Road,
2nd Floor, Room-11, Kolkata,
West Bengal – 700007.**

SUBJECT:- SUIT FOR RECOVERY OF MONEY.

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APPEARANCE : - **Ld. Advocate Mr. N.G.Thakor** for the ***Plaintiff***.
None for the ***Defendants***.

-----//:-**JUDGMENT**:--//-----

THE BRIEF FACTS FROM THE PLAINTIFF SIDE ARE AS FOLLOWS:-

1. The brief facts of the plaintiff's case are that, the plaintiff is currently working as "Consultant" in Modern Denim Limited at the above mentioned address and he is the Power of Attorney Holder of the said company for all its legal matters. Further the Plaintiff-Company is a Company registered under the Indian Companies Act, 1956 and is engaged in the business of manufacturing and trading of denim fabrics.
2. Further, the plaintiff has stated that the Plaintiff-Company sold the denim fabrics to the defendants in the year 2022-23 worth Rs.1,61,68,375/- and the defendants have paid Rs1,60,87,711/- out of Rs.1,61,68,375/- to the Plaintiff-Company, and hence the Plaintiff- Company is entitled to receive the outstanding amount of Rs.80,664/- from the defendants.
3. Thereafter, the Plaintiff-Company had requested the defendants to pay the outstanding due amount of Rs.80,664/- many a times and in person and through messages, but the defendants had not paid the said due amount of the Plaintiff-Company till date and and since the defendants have willfully refused to return the said amount, the Plaintiff-Company had sent a legal notice through its Ld. Advocate Mr. Brijesh.A. Khandhar dated 01/09/2023 for the said due

amount alongwith interest through Registered A.D. which was duly served upon the defendants, but the defendants have not paid the due amount till date and hence, since then, reason has arisen to file this present suit against the defendants praying that the suit of the plaintiff may be allowed and decree be passed in its favour.

4. The defendants in this suit, despite being served with a summons/notice through the Ld. Advocate for the plaintiff and purshish to this extent has also been produced vide **Exh.5**, and a service affidavit vide Exh.25 has also been submitted by the plaintiff and despite giving sufficient opportunity, did not remain present before the Court. Therefore, the matter was proceeded ex-parte against him *vide* order below **Exh.1**.

5. Considering the pleadings of the present matter, the following issues have been framed vide **Exh.10** dated 24.11.2025 in order to decide the present suit:-

-// :: **ISSUES FOR DETERMINATION OF THE SUIT**:: //-

- [1] Whether the plaintiff proves that he had supplied goods of denim fabrics to the present defendants and out of the total amount advanced to the plaintiff, a total of Rs.80,664/- (Rupees Eighty Thousand Six Hundred and Sixty Four Only) is yet to be recovered?
- [2] Whether the plaintiff is entitled to recover the said amount from the defendants with interest? If yes, at what rate?
- [3] Whether the plaintiff is entitled to get the reliefs as prayed for?
- [4] What order and decree?

6. **My Findings to the above issues are as under:-**

[1]	In Affirmative.
[2]	In Partly Affirmative.
[3]	In Affirmative.

[4]	As per final order.
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7. To support his claim, the plaintiff has produced the following oral as well as the documentary evidences.

[A] - :: ORAL EVIDENCE ::-

<u>Sr. No.</u>	<u>Particulars</u>	<u>Exh.</u>
1.	Examination in chief of the Plaintiff through Jayesh Jayrambhai Thakor	Exh.11

[B] - :: DOCUMENTARY EVIDENCES :: -

<u>Sr. No.</u>	<u>Particulars</u>	<u>Exh.</u>
1.	True Copy of Authority Letter of the Plaintiff Company	Exh.14
2.	Ledger report for Artex fabric Pvt Ltd. of the Plaintiff Company during the period from 01-04-2017 to 10-01-2023 and statement of account for 01-08-2023 to 12-01-2026	Exh.15
3.	Office copy of original legal notice sent to the defendants	Exh.16
3.	Copies of the postal receipts of the notice sent to the defendants	Exh.17 to - Exh.20
4.	Online track consignment regarding the legal notice sent to the defendants	Exh.21 to Exh.24

8. The Plaintiff-Company has been provided with sufficient opportunity to produce his part of evidence and after producing the above evidences declared his part of evidence to be closed. On the other hand, the defendants have not

submitted any documentary evidence in support of the suit. Later on, the defendants have been provided with sufficient opportunity to take a part during the plaintiffs' evidence and to cross-examine the plaintiffs' witness, but no one turned back to this Court. Thereafter, the defendants herein were also provided with an opportunity to lead his part of defence evidence. And as the defendants or his Ld. Advocate have not appeared before this court during the pendency of the suit despite giving sufficient opportunity, the matter was proceeded ex-parte against him *vide* order below **Exh.1** passed by this court.

ARGUMENTS ADVANCED:-

9. Thereafter the matter was kept for arguments and the Ld. Advocate for the plaintiff has argued in line with his plaint and mainly stated the reasons mentioned in the plaint and has argued that in view of the oral and documentary evidence produced on record, the plaintiff is entitled to recover the claim amount with interest from the defendants as prayed for and he has urged to grant his prayer in the suit. Thereafter the matter was kept for the arguments of the defendants and despite giving opportunity, the defendants have not appeared and not argued in the matter. Hence their right for arguments had been closed.

-//:- REASONS :-//-

10. In the present suit, before discussing of the issues, it is pertinent to refer to some relevant provisions of the **Indian Evidence Act, 1872** which provides as under :-

10.1. In civil proceedings, the burden of proving the facts of the case lies on the plaintiff side. It is settled position of law and the cardinal principle of the Indian Evidence Act, which mandates the burden of proof and according to the **Indian Evidence Act Section-101**: Burden of proof. - Whoever desires any Court to give judgment as to any legal right or liability dependent on the

existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

10.2. In civil proceedings the burden of proof is on the plaintiff side. The plaintiff side has to prove their case on the basis of their evidence. And the burden of proof rests primarily on him to produce clear, cogent and convincing evidence and by preponderance of evidence to prove his case. The facts are said to be proved or disproved based on the understanding of a common man. If the plaintiff proves his case positively then the burden of proof shifts on the defendant. The word “**burden of proof**” has not been defined in Indian Evidence Act. Burden of proof in simple words means responsibility to prove a fact in a case or obligation to prove a fact. **Section 101** of the **Indian Evidence Act, 1872** defines ‘**burden of proof**’ which clearly lays down that whosoever desires any court to give judgment as to any legal right or law dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party. **[Ratnagiri Nagar Parishad Vs. Gangaram Narayan Ambekar, (2020) 7 SCC 275, State of M.P. Vs. Ushadevi, (2015) 8 SCC 672 (Para 33), Union of India Vs. Vasavi Co-operative Housing Society Limited, (2014) 2 SCC 269, T.K. Mohammed Abulbucker vs. P.S.M. Ahamed Abdul Khader, AIR 2009 SC 2966].**

11. The Hon'ble Supreme Court in the case of **Anilbhai Rushibhai v/s Gurbakshsingh (AIR 2005 SC 1971)**; has laid down that the first rule of section 101 is unchangeable and the initial burden is on the plaintiff and if the plaintiff obeys that and proves that he is entitled to claim the relief as prayed for then contrary to that the burden of proof shifts on the defendant.

12. The present suit is for recovery of money filed under **Section 9 of Civil Procedure Code, 1908**. *It is a settled position of law that the onus of proof in civil trial is the obligation on the plaintiff that the plaintiff would adduce evidence that proves his claims on preponderance of probability against the defendant. As per the principles of law, until and unless an exception is created by law, the burden of proof lies on the person making any claim or asserting any fact. A person who asserts a particular fact is required to affirmatively establish it. Thus, the burden of proof in the suit recovery of money lies on the plaintiff. When a person makes a claim, the burden lies on him to establish his case by cogent and admissible piece of evidence.*

13. Since the Issues No. 1 to 3 are so interconnected with each other that deciding each of them separately will amount to repetition of pleadings & evidence hence, Issues No. 1 to 3 are taken up together for consideration.

ISSUES NO'S. 1 to 3:-

14. In the present case, it has been averred by the plaintiff that, the Plaintiff-Company is a Company registered under the Indian Companies Act, 1956 and is engaged in the business of manufacturing and trading of denim fabrics and that the Plaintiff-Company sold the denim fabrics to the defendants in the year 2022-23 worth Rs.1,61,68,375/- and the defendants have paid Rs1,60,87,711/- out of Rs.1,61,68,375/- to the Plaintiff-Company, and hence the Plaintiff-Company is entitled to receive the outstanding amount of Rs.80,664/- from the defendants. As

per the principles of law, until and unless an exception is created by law, the burden of proof lies on the person making any claim or asserting any fact. In the circumstances, the initial burden of proof in the suit recovery of money lies on the plaintiff.

15. The burden to prove all the Issues squarely lies upon the plaintiff in view of the **Section 101 of the Indian Evidence Act, 1872** as asserted by it. To prove its case, the Authorized Person of the Plaintiff has filed his examination-in-chief by way of affidavit, *vide Exh. 9*, and has supported all the facts of the plaint. And has also submitted the documentary evidence vide DE List at **Exh. 10** which also provides corroboration to the facts asserted by the plaintiff, with regard to transaction made between the parties.

16. Perusing the pleadings in the matter alongwith other documents, it appears that the present suit has been duly instituted by the Authorized Signatory of the Plaintiff-Company, who was serving at the relevant point in time, for the Plaintiff – Company. The pleadings of the suit appears to have been duly verified on oath by the said authorized person before the Court, for the Plaintiff - Company. Looking at the entire case record, no contrary record or reason appears, which may either contradict the same or raise reason to believe otherwise.

16.1. This Court on considering the case record as well as the documents submitted vide DE List at **Exh.12** and also considers the submissions made on the part of the Ld. Advocate for the plaintiff. Considering the entire record, it is crystal clear on record that the defendants herein in spite of being served with the notice, has failed to cause their appearances before the Court. The defendants have also not taken any defence and nor have objected to the plaintiff's contentions. On behalf of the Plaintiff-Company, the affidavit has been filed at **Exh.11** and no dispute has been raised by the

defendants against **Exh.-11** affidavit. The said affidavit is on oath and hence also there no reason to disbelieve the same.

17. As regards the relation between the parties, as that of giving of denim fabrics to the defendants and accepting the said materials is not disputed by the defendants. No disputes as regards the liability of the defendants to repay the outstanding amount has been raised by the defendants. It is also an undisputed fact that total of Rs.1,61,68,375/- worth of fabrics item has been given by the Plaintiff-Company to the defendants and thereafter, the defendants have paid Rs.1,60,87,711/- out of Rs.1,61,68,375/- to the Plaintiff-Company and the remaining amount of Rs.80,664/- is yet to be recovered. The defendants have not raised any kind of objection as regards the quality of the product or signature below the documentary evidences which are received in evidence vide DE List at **Exh.12** and hence, it is clear from the records that the Plaintiff-Company had supplied goods of denim fabrics to the present defendants and defendants have paid Rs. 1,60,87,711/-out of Rs.1,61,68,375/- to the Plaintiff-Company and there is an outstanding due of Rs.80,664/- and despite frequently, intimating and requesting the defendants through notice, the defendants had not paid the said outstanding amount. The defendants have not challenged the averments of plaint and the genuineness of the documents and the signature therein on record and neither rebutted the contentions of the plaintiff and hence the Plaintiff-Company is entitled to recover the amount from the defendants.

18. Further, on behalf of the Plaintiff-Company, by way of companies authorization letter/resolution submitted vide Exh.14, its Authorized Person Mr. Jayesh Jayrambhai Thakor, has filed his affidavit vide **Exh.11**. And the same is on oath and hence there is no reason to disbelieve the same. As stated above, on going through the documents received in evidence on record, they have been duly proved by the Plaintiff-Company as per the provisions of Indian Evidence Act. It has been specifically stated that documents on record bears the signature of the defendants. No

disputes as regards the liability of the defendants to repay the outstanding amount has been raised by the defendants. The defendants have not raised any kind of objection as regards the signature below the documentary evidence which are received in evidence vide DE List at **Exh.12** and hence it is clear from the records that the defendants had purchased denim fabrics from the Plaintiff-Company and has paid Rs. 1,60,87,711/-out of Rs.1,61,68,375/- to the Plaintiff-Company and there is a due of Rs.80,664/- and despite frequently, intimating and requesting defendants through notices received in evidence, the defendants had not paid the said outstanding amount to the Plaintiff-Company. The defendants have also not raised any dispute as regards the notice, the averments made therein which are received in evidence. And the defendants have not challenged or rebutted the same.

19. Furthermore, the defendants has not challenged the averments of plaint and the genuineness of the documents and the signature therein on record and hence, the Plaintiff-Company is entitled and has got legal right to recover the outstanding amount. On going through the documentary evidence vide **Exh.12**, clearly shows that the defendants have a legal due of Rs.80,664/- and the defendants have not raised any dispute as regards to the statment of accounts of the Plaintiff-Company.

20. As discussed above, when there is no dispute raised by the defendants as regards to the averments made by the Plaintiff-Company and the legal debt and liability towards the Plaintiff-Company, in the said case, adverse presumption shifts towards the defendants and the defendants have not rebutted the same. **Hence, I answer the issue no. 1 in “the Affirmative”.**

21. From the evidence itself, it is prima-facie evident that the Plaintiff-Company had supplied goods of denim fabrics to the present defendants and out of the total amount advanced to the plaintiff, a total of Rs.80,664/- is yet to be recovered, and the defendants are liable to pay the said amount with interest to the Plaintiff-Company.

Hence, present suit amount alongwith interest is payable by the defendants to the Plaintiff-Company.

22. The Plaintiff - Company has further claimed an interest at the rate of 24% p.a. on the principal suit amount. Also, the court believes that in the absence of any written agreement as regards to the penal interest, a high interest can't be granted.

At this point, this Court refers to the relevant provisions under **Section 34, Civil Procedure Code, 1908** with respect to interest, which provides that:-

(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions. court may adjudge a reasonable interest for any period prior to the institution of the suit as well as form the date of institution of suit to the date of the decree.”

23. At this stage, it appears appropriate to take into account the principle established in the Judgment of **Central Bank of India v. Ravindra and others; Special Leave Petition (Civil) 2421 of 1993, Date :18/10/2001** given by the Constitutional Bench of the **Hon'ble Supreme Court:-**

"During the course of hearing it was brought to our notice that in view of several Usury Laws and Debt Relief Laws in force in several States private money lending has almost come to an end and needy borrowers by and large depend on banking institutions for financial facilities. However we propose to place on record a few incidental observations, without which, we feel, our answer will not be complete and that we do as under:-

(1) Though.....

(8) Award of interest pendente lite and post-decree is discretionary with the Court as it is essentially governed by Section 34 of the CPC de hors the contract between the parties. In a given case if the Court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner."

23.1. Thus, having a reference, to the provision of **Section 34 of "The Code of Civil Procedure 1908"**, and considering the ratio laid down by the Hon'ble Apex Court, in the case of ***CBI vs. Ravindra and others (Supra)***, the Plaintiff - Company is entitled for 6% interest per-annum and by doing so, the purpose of justice appears to be served. **Hence, I answer the Issue No.2 in "partly Affirmative"**.

23.2. Hence, considering all the documents presented before the Court, this Court is of the considered view that the Plaintiff-Company is entitled to recover the amount as prayed for. In view of the above discussion and thus, considering the entire oral as well as documentary evidence produced before this Court, it is proved that the Plaintiff-Company is entitled to get the relief as prayed for and therefore, **I answer the ISSUE NO 3 "In the Affirmative" and**

as regards to the ISSUE NO. 4, I pass the following final order in the interest of justice:-

-::FINAL ORDER:: -

- [1] The present suit of the plaintiff is hereby *Partly Allowed*.
- [2] The Plaintiff-Company is hereby entitled to recover Rs.80,664/- (Rupees Eighty Thousand Six Hundred and Sixty Four Only) from the defendants, along with the interest at the rate of 06% p.a. thereon from the date of the filing of the suit till its actual realization.
- [3] Both the parties to bear their own costs towards the suit.
- [4] Decree to be drawn accordingly.

Order signed & Pronounced in the open Court today on this 30th day of March, 2026 at Sanand, Ahmedabad (Rural).

Date: 30-03-2026
Place: Sanand,
Ahmedabad (Rural)

(Kanisha Vikul Pathak)
Additional Civil Judge,
Sanand, Ahmedabad (Rural).
[Judge Code No. GJ- 01643]