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**IN THE COURT OF PRINCIPAL DISTRICT &
SESSIONS JUDGE, ANAND.**

REGULAR CIVIL APPEAL No. 60/2020

Govindbhai Shivabhai Patel

Age. 49, Occ. Service/ Agril.
R/o Nr. Pranali Mandir
At and Post Sundalpura,
Tal. Umreth Dist. Anand.

**..... Appellant
(Original defendant)**

VERSUS

Varsaben Ashokbhai Patel

through POA Sanjaybhai Jashbhai Patel
Age. 49, Occ. Business
R/o Joshi Faliyu, Lal Darwaja
At Ode, Tal. Dist. Anand.

**..... Respondent
(Original plaintiff)**

**Appeal against Judgment & Decree dated
15/07/2019 in R.C.S. No. 26/2015 under Order
41 Rule 1 of the Code of Civil Procedure.**

Appearance:

Shri A.M. Chauhan, Ld. Advocate for the Appellant.
Shri P.P. Patel, Ld. Advocate for the Respondent.

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

1. The appellant herein is the original defendant and have preferred this appeal under provisions of Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree passed on dtd. 15/07/2019 in Regular Suit No. 26/2015 by 3rd Additional Sr. Civil Judge, Anand, whereby the suit of the plaintiff - the respondent herein came to be partly allowed. For the sake of convenience, parties shall be referred as plaintiff and defendant as they were in their original position before the trial court.
2. The appellant - original defendant has contended that Varshaben Ashokbhai Patel, through her Power of Attorney holder Sanjaybhai Jashbhai Patel, filed Special Civil Suit No. 26/2015 against appellant - the original defendant, before the Civil Judge, Anand, seeking recovery of an alleged outstanding amount of Rs. 10,00,000/-. In the said suit, defendant appellant submitted our written statement at Exh. 13, denying the facts stated in the suit and setting out the true facts. After considering the detailed evidence and submissions presented by both parties in the said suit, the Id. Court allowed the

plaintiff's suit with costs by its judgment and order dated 31-07-2019. Therefore, being aggrieved and dissatisfied with the aforesaid judgment and decree, the appellant has preferred the appeal on the following grounds that ;

1. The judgment and order passed by the Id. 3rd Senior Civil Judge, Anand, in Special Civil Suit No. 26/15 at Exh. 56 is contrary to the facts, equity, evidence and law. Therefore, the said judgment and order deserves to be quashed and set aside.
2. The findings recorded by the Id. 3rd Senior Civil Judge, Anand, in Special Civil Suit No. 26/15 at Exh. 56 and 57, in respect of all the facts relevant to the judgment and order, are based on complete misunderstanding and have been reached under a misconception of the facts and circumstances.
3. The Id. Trial Court passed the judgment and order without properly considering and appreciating the evidence produced by the defendants, before the lower Court and by completely ignoring the said evidence. The judgment and order is therefore erroneous, unjust and illegal and, on this ground also, deserves to be quashed and set aside.

4. The judgment and order passed by the Id. Trial Court is contrary to the principles of justice and is therefore liable to be quashed and set aside.
5. The Id. Trial Court failed to consider the fact that the original plaintiff, Varshaben Ashokbhai Patel, was in sound health and was physically and mentally capable of appearing before the Id. trial Court and giving evidence. Despite this, she did not personally remain present before the Court and the entire proceedings of the suit were conducted through her alleged Power of Attorney holder.
6. The alleged transaction of payment of money had taken place on 15-10-2012, whereas the Power of Attorney for conducting the Court proceedings was executed on 05-01-2015. Therefore, there was sufficient and strong reason to believe that the person who received the Power of Attorney had no personal knowledge whatsoever about the original transaction.
7. Despite this, the Id. Trial Court failed to appreciate this important circumstance. Although the original plaintiff herself did not appear before the Court to give evidence, the evidence given by her

alleged Power of Attorney holder was treated as truthful and the alleged transaction was held to be proved. In doing so, the Id. Trial Court committed a serious error.

8. Although the defendants, had raised legal objections regarding the Power of Attorney holder, the Id. Trial Court ignored those objections. Defendants had also relied upon judgments of the Higher Courts in support of contentions, but those judgments were also not properly considered. The Id. Trial Court therefore committed an error in rejecting submissions of defendants and allowing the suit.
9. The Id. Trial Court also failed to consider that the alleged financial transaction had taken place on 15-10-2012 and that no written document whatsoever had been executed between the original plaintiff, Varshaben Ashokbhai Patel, and the original defendant regarding the alleged transaction.
10. Considering the large amount of Rs. 10,00,000/- allegedly given as a hand loan, the surrounding circumstances and conditions of the alleged transaction were required to be examined carefully.

However, the Id. Trial Court failed to consider these circumstances and merely on the basis of a cheque, came to the conclusion that the plaintiff had a legally recoverable debt against the defendant. Such a finding is erroneous.

11. The defendants, specifically stated in written statement that the defendant did not know or even recognize a person named Varshaben Ashokbhai Patel and had never seen her. Defendant had also specifically stated that if Varshaben herself appeared personally before the Court, the true facts would come out. Despite these specific pleadings, the plaintiff did not produce Varshaben herself for giving evidence. Although Varshaben was capable of personally appearing before the Id. Civil Court and giving evidence, the suit was not prosecuted through her personal appearance and she was not produced as a witness. Despite this omission on the part of the plaintiff, the Id. Trial Court ignored these material facts and passed the impugned judgment and order. The said judgment and order is therefore erroneous.
12. The plaintiff produced a Power of Attorney

along with the plaint and another Power of Attorney at the time of recording evidence. The signatures of Varshaben Ashokbhai Patel appearing on the two Power of Attorney documents were different from each other, and the said Power of Attorney documents were suspicious.

13. The Id. Trial Court further erred in holding that since the cheque issued by the original plaintiff, Varshaben Ashokbhai Patel, was deposited into the account of the original defendant, the amount represented a legally recoverable debt payable by the defendant to Varshaben.
14. In fact, as specifically stated by defendant in written statement and evidence, the said cheque had been given to defendant by a person named Bhaveshbhai Patel, who was close person of the plaintiff's Power of Attorney holder, Sanjaybhai Jashbhai Patel, towards payment for tobacco. Despite our specific contention, the Id. Trial Court failed to examine the surrounding circumstances relating to the cheque. It was also necessary to examine the original plaintiff, Varshaben Ashokbhai Patel, regarding the cheque issued in her name and the amount

allegedly received by defendant. The judgment and order passed on such evidence is contrary to the provisions of law and the principles of natural justice and therefore deserves to be quashed and set aside.

3. The respondent - original plaintiff has appeared through his advocate and orally argued in the matter.
4. Heard Id. Advocate for the parties. Id. Advocate for the appellant - original defendant has submitted written arguments vide Exh. 25 which are according to their appeal memo and further orally argued that:
5. Originally the suit was for recovery of Rs. 10 lacs. The defendant is a teacher but shown as businessman. The defendant does not know Varshaben Ashokbhai Patel. Exh. 24 Cheque is a zerox copy in which there is no signature of Varshaben. The cheque was issued on 15/10/2012. The power of attorney executed in absence of plaintiff. The suit was instituted on 27/1/2015 whereas the power of attorney is of 4/7/2017. It is further argued that looking to the bank account of the plaintiff - respondent herein, it seems that the plaintiff is not economically sound. After payment to defendant, only Rs. 2040/- remained in the account of Varshaben. Exh. 26 is the Demand

notice and acknowledgment is also produced. The RPAD slip was not produced and in acknowledgment there is no signature of defendant. The address in acknowledge is true. According to para-4 of the suit application, the notice was issued on 5/1/2015 but when it was served is not mentioned therein. In fact the notice never issued or served to the defendant. The power of attorney holder of the plaintiff has filed affidavit in the form of examination in chief vide Exh. 19 and affidavit of Upendrakumar Bhrambhett is produced vide Exh. 31. There was no direct dealing or transaction with Varshaben. The plaintiff herself has not come in to the witness box. Furthermore, according to the deposition of witness Upendrabhai, he has no knowledge regarding transaction between plaintiff and Govindbhai.

6. Whereas, Id. Advocate for the respondent has orally argued that the original cheque was not produced but bank statement was produced. Amount of Rs. 10 lacs was deposited in to the account of plaintiff. The power which was given was misplaced and thereafter new power was produced. The signature on cheque and on power, both are same. Notice was issued, which was served and accepted but no reply was given to the notice. The cheque

credited in to the account of Varshaben itself proves that they knows Varshaben. The defendant has not examined Bhaveshbhai and in suit application there is nothing that the cheque was issued by Bhaveshbhai.

7. This court has considered the judgment and decree dated 15/07/2019 passed in RCS No. 26/2015. This court has also perused Record and Proceedings of the Trial court as well as the memo of appeal. Following points falls for determination before this court.

1. Whether the appellant can point out that the Trial court has committed any error on facts and law and as to whether trial court has not considered the overall oral as well as documentary evidence on record in its true perspective?

2. Whether interference is required at the hand of this court?

3. What order?

8. Answer to the above points are as follows :

1) In the negative.

2) Partly in the affirmative - Interest at the rate of 6% instead of 7% granted by trial court.

3) As per final order.

:: R E A S O N S ::

9. The main issues raised in the appeal are that the plaintiff herself did not come into the

witness box and the evidence was given by her power of attorney. Even though he was not aware of the true facts, the trial court has accepted his evidence. There is no written agreement between the plaintiff and the defendant regarding financial transactions. Further it is submitted that the appellant does not know the defendant Varshaben Ashokbhai or has never seen her. The respondent Varshaben has submitted a copy of power of attorney with the suit and she has also submitted the power of attorney at the time of deposition of power of attorney holder Mr sanjaybhai, thus she submitted two different power of attorney. However, her signatures on both the power of attorney are mismatched with each other. The plaintiff Varshaben herself has not given evidence in person despite being healthy. Further, the appellant submitted that he had sold tobacco to a person named Bhavesh Patel and he had given a cheque of Varshaben's account. Actually no financial transaction took place between appellant and Varshaben.

10. Considering the issues raised by the appellant, if we decide the present appeal, the respondent Varshaben Ashokbhai Patel has brought a suit against the appellant Govindbhai Patel through his power of

attorney holder Sanjaybhai Patel to recover the due amount of Rs. 10 lakhs.

11. To prove this suit, the power of attorney holder of respondent Varshaben, Sanjaybhai Patel, has submitted his examination in chief at the exhibit 19. In which he states that he has personal knowledge of this entire transaction. Furthermore, he has reiterated the facts of the plaint. He further submitted that his aunt Varshaben had given him a power of attorney on 5th January 2015, on the basis of which he filed the suit, the power of attorney on which he had filed the suit had been lost, so he had submitted a new power of attorney given by Varshaben on 6th July 2017.
12. The appellant has conducted a lengthy cross-examination of Sanjaybhai Patel. In which if we look at the details related to the issue of power of attorney, Sanjaybhai Patel has stated that he has been given power of attorney by his aunt Varshaben to file a suit. Varshaben lives in Odd village. Varshaben was with him while making the power of attorney. Sanjaybhai Patel states that he was not aware that Varshaben's signature in the power of attorney and in the cheque and PAN card are different. Sanjaybhai denies that he has created a false power of attorney by forging Varshaben's signature. Sanjay Patel admits

that the money transaction between Varshaben and appellant Govindbhai did not take place directly. He also admitted that there is no written deed between appellant and respondent so far the alleged transaction of Rs 10 lac with 18% interest is concerned. He denied that he has no personal knowledge of the alleged transaction.

13. Appellant Govindbhai Patel has given his deposition at Exh 45 in his defense, in which he has reiterated facts of his written statement. According to him, Bhaveshbhai Patel, who is an associate of the plaintiff's power of attorney holder, Sanjaybhai Patel, is engaged in the business of buying and selling tobacco. He stated that Bhaveshbhai had purchased tobacco grown on the appellant's agricultural land and had issued a cheque towards its sale price. However, the appellant stated that he did not know whose bank account the cheque belonged to. According to him, the sum of Rs 10,00,000 credited to his bank account was the sale consideration for the tobacco. He further stated that he is the Headmaster of a primary school and that he had never borrowed any money from anyone.
14. The appellant was thereafter cross-examined by the respondent's advocate. During cross-examination, he admitted that he himself had

deposited Cheque No. 115681 into his bank account and that the cheque amount was credited to his account. He also admitted that he had received the plaintiff's demand notice but had not sent any reply. He further admitted that even after receiving the demand notice, he did not meet Bhaveshbhai Patel regarding the transaction.

15. He also admitted that the amount of Rs. 10,00,000 credited to his account was never returned to Varshaben. Further, he admitted that he had neither issued any notice to Bhaveshbhai Patel demanding the alleged tobacco sale proceeds nor filed any legal proceedings to recover that amount. The appellant also admitted that he had used the Rs. 10,00,000 credited to his account for his personal purposes. Finally, he admitted that he had not produced any documentary evidence to prove the alleged tobacco sale transaction with Bhaveshbhai Patel.
16. Thus, the above evidence clearly proves that the cheque number 115681 of Varshaben's account for Rs. 10,00,000 was deposited in the appellant's account and thus Rs. 10,00,000 was received by the appellant. The appellant has not presented any evidence that this amount was received by him as a result of the tobacco sale transaction with Bhavesh Patel.

Moreover, when the demand notice was sent by the respondent-plaintiff, it was received by the appellant, but he did not give any reply. The appellant is not an uneducated person but he is head master of a primary school. Thus, he himself could understand the consequences of not responding to the demand notice. However, he has not given any reply to the demand notice. In these circumstances, the defence he has taken in his written statement seems to be an afterthought.

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28. The law as understood earlier was that a General Power of Attorney holder though can appear, plead and act on behalf of a party he represents but he cannot become a witness on behalf of the party represented by him as no one can delegate his power to appear in the witness box to another party. However, subsequently in Janki Vashdeo Bhojwani vs. IndusInd Bank Ltd., (2005) 2 SCC 217 this Court held that the Power of Attorney holder can maintain a plaint on behalf of the person he represents provided he has personal knowledge of the transaction in question. It was opined that the Power of Attorney holder or the legal representative should have knowledge about the transaction in question so as to bring on record the truth in relation to the grievance or the offence. However, to resolve the controversy with regard to the powers of the General Power of Attorney holder to depose on behalf of the person he represents, this Court upon consideration of all previous relevant decisions on the aspect including that of Janki Vashdeo Bhojwani (supra) in A.C Narayan vs. State of Maharashtra, (2014)

11 SCC 790 concluded by upholding the principle of law laid down in Janki Vashdeo Bhojwani (supra) and clarified that Power of Attorney holder can depose and verify on oath before the court but he must have witnessed the transaction as an agent and must have due knowledge about it. The Power of Attorney holder who has no knowledge regarding the transaction cannot be examined as a witness. The functions of the General Power of Attorney holder cannot be delegated to any other person without there being a specific clause permitting such delegation in the Power of Attorney; meaning thereby ordinarily there cannot be any sub-delegation.

29. It is, therefore, settled in law that Power of Attorney holder can only depose about the facts within his personal knowledge and not about those facts which are not within his knowledge or are within the personal knowledge of the person who he represents or about the facts that may have transpired much before he entered the scene...

17. Here in the case on hand, the original suit was filed by Mr. Sanjay Patel as the power of attorney holder of Varshaben Patel. At the time of filing that suit, he has produced the power of attorney. Later, during the deposition, he has clearly stated that he is Varshaben's nephew and he has personal knowledge of this financial transaction. Thus, when the power of attorney holder is personally aware of a transaction, he can also testify for the respondent/plaintiff. Moreover, here in the case, the amount of Rs. 10,00,000 given by Varshaben to the appellant through account payee cheque and it was deposited in the appellant's account, which the appellant

accepted. Therefore, the receipt of the said amount is not in dispute. Thus, no other evidence is required regarding the fact that Varshaben has given money to the appellant. If the appellant is saying that this amount was received by him for some other transaction, then the onus of proof lies on the appellant. But the appellant has not produced any evidence to prove the onus. Thus, in these circumstances, the defense raised by the defendant-appellant in his written statement is not proven.

18. If we further clarify the issue, in this suit, both the parties have not presented any documentary evidence except oral evidence. The primary burden of proving the suit lies upon the plaintiff. The plaintiff has given oral evidence for the same and the defendant has admitted the fact that he has received 10 lakh rupees. But when the defendant-appellant raised defence that he sold tobacco to Bhaveshbhai Patel, who gave him a cheque of Varshaben's account, then the onus of proving this fact lies upon the defendant-appellant. Therefore, the receipt of the said amount is not in dispute. The real dispute is regarding the nature of the transaction. The defendant-appellant has not any material on record to establish the alleged tobacco transaction or

the circumstances under which the cheque came to be issued. Consequently, the said defence remains unproved. In these circumstances, the plaintiff's suit is acceptable on the basis of preponderance of probability.

19. In this case, the learned trial court has awarded interest at the rate of 7% per annum. However, there is no written agreement or any other evidence establishing that the parties had agreed upon payment of interest at the said rate. Therefore, in exercise of the discretion under Section 34 of the Code of Civil Procedure, this Court is of the opinion that interest at the rate of **6% per annum** from the date of the suit until realization would be just and reasonable. To that extent, the judgment and decree passed by the learned trial court deserve modification. Therefore, I issue No. 1 to 3 are answered in negative and for point No. 4, I pass the following order.

:: O R D E R ::

1. The present Appeal stands **dismissed** on merits.
2. The judgement and decree passed in RCS No. 26/2015 dated 15/07/2019 by Id. 3rd Additional Sr. Civil Judge, Anand, is hereby **confirmed** and rate of interest awarded by the trial court is modified as **at the rate of 6% p.a. instead of 7% p.a.**

3. R & P to be sent to the Trial court along with a copy of this judgment.

4. Decree be drawn accordingly.

Pronounced in open court today on 14th August, 2026.

Anand.

Date:14.08.2026

(SANJAY LAVJIBHAI THAKKER)

Principal District & Sessions
Judge, Anand.

(Code : GJ-00588)

RR PATEL PS