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**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE  
& ADDL. CHIEF JUDICIAL MAGISTRATE  
AT JAMBUSAR, BHARUCH**

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REGULAR SUMMARY SUIT NO. 18 OF 2023

Exh. 21

PLAINTIFF :

Baroda Gujarat Gramin Bank, Jambusar Branch
Through Branch Manager - Mr. Harish Kumar

Versus

DEFENDANTS :

1. Mr. Shabbirbhai Mahammad Divan
 2. Mr. Mahammad Abdul Saiyad
 3. Mr. Ibrahimbhai Rahimbhai Malek
- All Residing at: Khanpur Bhagol, Navi Nagari
Taluka : Jambusar, District : Bharuch - 392150

SUBJECT : Summary Suit for recovery of Money under
Order XXXVII of Code of Civil Procedure
Code, 1908 for amount of Rs. 95,519.31/-
(Ninety Five Thousand Five Hundred
Nineteen & Thirty One Paisa Only).

SUIT VALUE : Rs. 95,519.31/-

APPEARANCE:-

Learned Adv. for the plaintiff Shri S. A. Teredesai

Learned Adv. for the defendant not appeared.

:: JUDGMENT ::

1. The present suit has been instituted by the plaintiff under Order - 37 of the Code of Civil Procedure for **Rs. 95,519.31/-** along with interest @ **11%** p.a. and **2%** overdue interest from the date of filing the suit to till the date of realization. On institution of the suit, summons have been issued under Order 37, Rule 2 of the C.P.C. to the defendant and the same has been duly served to the defendant through Public Notice. Thereafter, the defendant appeared in the court but failed to file any leave to defend. Therefore, the plaintiff has requested for getting ex-parte decree against the defendant as per Provisions contained under Order XXXVII Rule 2(3) of C.P.C.
2. I have perused the record. The plaintiff has filed an ex-parte affidavit and learned advocate for the plaintiff has argued that as per O.37 R.2 (3) of the C.P.Code, when a defendant does not appear within 10 days, the suit requires to be decreed. On Perusal of said provision, it reads as under.
- “3. **Procedure for the appearance of defendant—**
(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a

copy of the complaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just: Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious: Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment,—

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.]”.

3. Therefore, looking to the above provision, it is clear that, if defendant shall not appear before the court within 10 days from the date of service of summons under Rule 2(3) of Order 37 and not defend the suit, in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs, as may be determined.
4. The plaintiff has also produced a documentary List vide Exh.03 (Exh. 08 to Exh. 20) and I have considered the documentary evidences and provisions of law and I am of the view that in this summary suit, the defendant has not filed leave to defend within the statutory period of limitations. Therefore, the plaintiff would be entitled to judgment forthwith.
5. Moreover, looking at the plaint, the suit is not barred by law of limitation and this court has got the jurisdiction to

entertain this suit. The plaintiff has prayed for **Rs. 95,519.31/-** with interest at the rate of **11%** along with overdue interest at the rate of 2% p.a. However, by looking at the documents, there is nothing on record regarding overdue interest at the rate of **2%** p.a. Therefore, in the interest of justice, it deems fit to allow this prayer up to the extent of **11% p.a.** from the date of filing of the suit till realization. Hence, the plaintiff is entitled to get a decree against the defendant. Hence, in the interest of justice, I pass the following order:-

:: O R D E R ::

- 1) The plaintiff's suit is hereby allowed.
- 2) The defendants are hereby directed to pay a sum of **Rs. 95,519.31/-** and interest at the rate of **11%** p.a from the date of the suit till the realization of aforesaid amount.
- 3) The cost of this suit be borne by the defendants.
- 4) Decree be drawn accordingly.

Signed and pronounced in the open Court today on this 01st day of July, 2026 at Jambusar @ Bharuch.

Place: Jambusar @ Bharuch
Date: - 01.07.2026

Shrikant Sharma
Principal Senior Civil Judge
& A.C.J.M,
Jambusar
UIC: GJ01367