

GJKT020020732024



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Registered on 16.04.2024
Decided on 23.04.2026
Duration Ys. Ms. Ds.
02 00 07

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
BHUJ-KACHCHH**

COMM CS-19/2024

Exhibit No:-34/A

PLAINTIFF :

**South Indian Bank,
Bhuj Branch
Through : Branch Manager,
and the Authorized Officer,
Anant Dayabhai Chavda, Age:40
Having address at :
Bhuj Branch, Tal. Bhuj-Kachchh**

VERSUS

DEFENDANT :

- 1). **Pujaben Pankajkumar Thakkar**
C/245, Ravalwadi Relocation,
Raghuwanshi Nagar, A1 Zone,
Tal. Bhuj-Kachchh
- 2). **Pankaj Laxmidas Thakkar**
C/245, Ravalwadi Relocation,
Raghuwanshi Nagar, A1 Zone,

Tal.Bhuj-Kachchh

*Subject - Suit for recovery of Rs.11,49,422.14/- with interest,
penalty and expenses.*

Ld. Advocate for Plaintiff : Adv. P.M.Maheshwari
Ld. Advocate for Defendants :- Adv. M.H.Lodhia

-: JUDGMENT :-

- (1) Present suit has been instituted by Plaintiff for recovery of amount of **Rs.11,49,422.14/-** [**Rupees Eleven Lacs Forty Nine Thousand Four Hundred Twenty Two And Fourteen Paisa Only**] with interest. It is further submitted that, the Plaintiff is bank and person signed the plaint is the authorized person. It is further stated that, Defendant no.1 availed loan total worth **Rs.8,20,000/-** with the conditions to repay in specific installments with interest and Defendant executed various documents in favor of Plaintiff. The Plaintiff further submitted that, the failure of the Defendant to repay loan amount and alleged its due worth of **Rs.11,49,422.14/-**-resultant the filling of suit for the recovery of amount worth of **Rs.11,49,422.14/-** with interest.
- (2) Summon were duly served upon Defendant, and the Ld. Advocate for the Defendant had appeared, but after giving ample opportunities, he has not filed any Written Statement.

Therefore, this Court has ordered to close the right of the defendant to file the written statement. Thereafter, defendant has filed application to re-open the right of written statement at Exh.-13 wherein, this Court has allowed it on subject to deposit amount of Rs.100(One Hundred Rupees) in D.L.S.A. But, despite order of this Court, defendant has not obeyed / followed and deposit the amount. Hence, written statement has not been taken on record.

- (3) Thereafter the Defendants remained absent, Plaintiff has filed application for calling summary judgment *vide* Exh.-16 but defendant has avoided to remain present before this Court. Hence, heard Ld. Advocate for the Plaintiff.
- (4) As per the provision of Commercial Court Act and the new Order 15A added in the Code of Civil Procedure, Ld. Court may pass summary judgment in cases where the courts deem fit as there is no real prospect in the defence of Defendant. To proceed further in the suit, following legal provisions are necessary to deal.

A. "Order 8 Rule 3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court-

(1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.

(2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

(4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.

(5) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit."

B. Order 8 Rule 5 "Specific denial"

(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

"Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability."

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.

C. Order 11 Rule 4. Admission and denial of documents. - (1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court.

(2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:-

- (a) correctness of contents of a document;
- (b) existence of a document;
- (c) execution of a document;
- (d) issuance or receipt of a document;
- (e) custody of a document.

Explanation. - A statement of admission or denial of the existence of a document made in accordance with sub-rule (2)(b) shall include the admission or denial of the contents of a document.

(3) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.

(4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.

(5) An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.

(6) In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria, costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party.

(7) The Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

D. "Order XIII-A - Summary judgment"

1. Scope of and classes of suits to which this Order applies. - (1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

(2) For the purposes of this Order, the word "claim" shall include-

(a) part of a claim;

(b) any particular question on which the claim (whether in whole or in part) depends; or

(c) a counterclaim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. Stage for application for summary judgment. - An applicant may apply for summary judgment at any time after summons has been served on the defendant:

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

3. Grounds for summary judgment. - The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that-

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

4. Procedure. - (1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder:-

(a) the application must contain a statement that it is an application for summary judgment made under this Order;

(b) the application must precisely disclose all material facts and identify the point of law, if any

(c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,-

(i) include such documentary evidence in its application, and

(ii) identify the relevant content of such documentary evidence on which the applicant relies;

(d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;

(e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:-

(a) the date fixed for the hearing; and

(b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:-

- (a) the reply must precisely-
 - (i) disclose all material facts;
 - (ii) identify the point of law, if any; and
 - (iii) state the reasons why the relief sought by the applicant should not be granted;
- (b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must-
 - (i) include such documentary evidence in its reply; and
 - (ii) identify the relevant content of such documentary evidence on which the respondent relies;
- (c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;
- (d) the reply must concisely state the issues that should be framed for trial;
- (e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and
- (f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. Evidence for hearing of summary judgment. - (1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:-

- (a) file such documentary evidence; and
 - (b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.
- (2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:-
- (a) file such documentary evidence in reply; and
 - (b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:-

- (a) filed if such documentary evidence has already been filed; or
- (b) served on a party on whom it has already been served.

6. Orders that may be made by Court. - (1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:-

- (a) judgment on the claim;
 - (b) conditional order in accordance with Rule 7 mentioned hereunder;
 - (c) dismissing the application;
 - (d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;
 - (e) striking out the pleadings (whether in whole or in part); or
 - (f) further directions to proceed for case management under Order XV-A.
- (2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f), the Court shall record its reasons for making such order.

7. Conditional order. - (1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (1) (b).

(2) Where the Court makes a conditional order, it may:-

(a) make it subject to all or any of the following conditions:-

(i) require a party to deposit a sum of money in the Court;

(ii) require a party to take a specified step in relation to the claim or defence, as the case may be;

(iii) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;

(iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and

(b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

8. Power to impose costs. - The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code."

- (5) In the present suit, as Defendant failed to file written statement and there is no real contest in the suit, hence, it does not need to order to Plaintiff in entering into the evidence. The Plaintiff has filed following documents in support of his averments.

Documentary Evidences:-

Exhibit	Evidences
18	Sanction Letter
19	Housing Loan Agreement
20	Declaration from the Mortgage
21	Acknowledgment Form
22	Memorandum of Deposit of Title Deed
23	Attestation Memo
24	Document in Vernacular language
25	Acknowledgment of Debt and Security
26	Annexure
27	Bank Statement
28	Legal Notice sent by the Bank's Advocate

29	Order of SARFAESI Act
30	Application Form
31	I.N.V.
32	Authority Letter

5.1 I have heard the Ld. Advocate for the Plaintiff and gone through the record of the suit.

(6) By production of documentary evidences, the Plaintiff has established his version and his due worth of **Rs.11,49,422.14/-** from Defendant. The Plaintiff has also demanded interest with making specific demand.

(7) As per the definition of contract given under The Contract Act, section 2 (e) Every promise and every set of promises, forming the consideration for each other, is an agreement; and section 2 (h) An agreement enforceable by law is a contract. The agreement having contractual liability is defined under section 10 of the Act. Section 10 says that What agreements are contracts. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in [India] and not hereby expressly repealed by which any contract is required to be made in [writing] or in the presence of witnesses, or any law relating to the registration of documents.

- (8) In the present suit, Plaintiff has produced documents vide Ex.18 to 32 to show the fact that Defendant had entered into agreement to take loan from Plaintiff- Bank. Hence, as per the provision of section 10 of Contract Act, the Plaintiff has proved its entitlement for the rate of interest as demanded by him.
- (9) Considering the provision of Order 15 Rule 3, this court is of the opinion that, Plaintiff's suit is proper case for allowing summary judgment as even after service of summons, Defendant not appeared before the Court and not filed any written statement and on evaluation of the documentary evidences filed, it does not find needful to record any further oral evidence. The provision is clear and there is no other compelling reason for recording of oral evidence. Further, at this juncture it is required to consider the recent decision of Hon'ble Supreme Court in, **Case of Rahul S Shah vs. Jinendra Kumar Gandhi [CA 1659-1660 of 2021] reported in LL 2021 SC 230, wherein It is held in para-6 that, 'In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application'**. Thus, if plaintiff wishes for the immediate of execution of the decree, he may apply for the execution of decree as per the provisions of Order XXI Rule 11 of the Code of Civil Procedure and on his application the

court may issue warrant as per the provisions of Order XXI Rule 11 (1). The provision is run as " (1) Where a decree is for the payment of money the court may, on the oral application of the decree holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment debtor, prior to the preparation of a warrant if he is within the precincts of the court."

- (10) Thus, in the present suit, it is necessary to observe the direction given by the Hon'ble Supreme Court in aforementioned judicial pronouncement.
- (11) So far as the interest is concerned, the Plaintiff has claimed 10.50% interest from time to time on the due amount till realization of the same. But, as per Section 34 of Code of Civil Procedure, 1908, the Plaintiff is entitled to get interest at the rate of 9.00% from the date of filling of the suit till its realization of amount as there is no such contract specifically in respect of interest. Hence, considering the facts and circumstances of the suit, with the relevant provisions of law, following final order is required to pass.

- : Final Order :-

1. Plaintiff's suit is hereby allowed.
2. Plaintiff is entitled to recover due worth of **Rs.11,49,422.14/- [Rupees Eleven Lacs Forty Nine**

Thousand Four Hundred Twenty Two And Fourteen Paisa Only] from the Defendant from the person and property of the Defendant with interest @ 9.00% p.a. from the date of filling of the suit till the realization of amount.

3. Defendant is ordered to pay the costs of the suit to the Plaintiff and to bear his own costs.
4. Decree to be drawn accordingly.
5. If Plaintiff may apply for the immediate execution of decree as per the direction given by Hon'ble Supreme Court in **Case: Rahul S Shah vs. Jinendra Kumar Gandhi [CA 1659-1660 of 2021] Citation: LL 2021 SC 230.**

Pronounced in the open court on today on 23rd Day of April,2026

Date:-23/04/2026

(Kardam Chandravadan Joshi)
Principal Senior Civil Judge,
Bhuj-Kachchh
(UIC: GJ01132)

| Meet |