

27.10.2013 :Received on

Registered on:10.12.2013

Decided on:30.03.2026

YY- MM - DD :Duration

**BEFORE THE HON'BLE PRINCIPAL SENIOR CIVIL
JUDGE, AT: HALVAD**

Regular Civil Suit No.52 of 2013
Exh. No.

Plaintiff :-

Indrajit Sinh Pathubhai Kher
Agent/assistantof Shree Meruper Dudh
utpadak Sanstha
Age : Adult, Occu. Business, Resi.
of Meruper, Tal. Halvad.

Versus

Defendants :

- [1] Chairman Shree Mahi Milk produce Co. Ltd.
3-4 Floor, Sakar Building, In front of
Rajkumar Collage, Dr.Radhakrishnan Road,
Dist. Rajkot.
- [2] Managershree,
Mahi Milk produce Co. Ltd.
Milk Seal Centre, In front of Muslim
Kabrastan Maula Kaji Road,At.Ta.
Halvad, District Morbi.

Suit for Declaration and Perpetual Injunction

Ld.Adv. Mr. V.C.Jani for the plaintiff.

its services. It is further contended that A valid and subsisting agreement exists between the parties, and the plaintiff has not committed any breach thereof. Despite this, the defendants have raised disputes regarding alleged outstanding dues amounting to approximately ₹2,21,968/- and issued a legal notice threatening closure of the plaintiff's milk collection center. The plaintiff disputes the said liability and asserts that accounts are maintained and settled directly between the defendants and milk suppliers, leaving no direct financial liability upon the plaintiff. The plaintiff alleges that the defendants have acted arbitrarily and unlawfully by threatening to discontinue operations and terminate the arrangement without just cause. Such actions are likely to cause irreparable financial loss, affect the livelihood of farmers, and disrupt ongoing contractual obligations. The cause of action arose when the defendants issued notice and threatened closure of the milk collection center and interference with the plaintiff's lawful operations. The plaintiff prays for A declaration that the actions of the defendants in threatening closure and interference are illegal and unjustified. A permanent injunction restraining the defendants from closing the milk collection center or interfering with the plaintiff's operations. Any other relief deemed just and proper by the Hon'ble Court. Costs of the suit.

PLEADINGS OF THE DEFENDANTS NO.1 & 2:-

1. The defendant nos. 1 and 2 have filed their joint written statement vide Exh.19, wherein they have denied each fact stated by the plaintiff in the plaint. The defendant has controverted each pleading specifically. They have submitted that the facts stated in the plaint are not Bonafide, honestly maintainable and they are concocted and fabricated. They have submitted that the suit is barred by jurisdiction, provision of arbitration and conciliation act 1966 and, therefore, not maintainable. It is pleaded by the defts. no.1 and 2 that the suit is barred by misjoinder of parties. The defendants no.1 and 2 have further submitted that the suit is barred because of material suppression of facts and plaintiff has suppressed the true and real facts, The plaintiff has not provided sufficient documentary evidence to prove actual financial loss. No proper calculation or proof of damages has been submitted. There is no clear evidence of negligence directly linking the defendant to the alleged loss. The claim for compensation is therefore not substantiated. The plaintiff has not produced reliable records/accounts. Claims appear assumptive rather than proven. Without proof, compensation cannot be granted. The plaintiff has not complied with proper pleading and evidence requirements. therefore, the suit is not maintainable at law. Thus, on the above grounds,

defendants no.1 and 2 have prayed to dismiss the suit of the plaintiff with costs.

2. On filing of the suit, summons and notice was ordered to be served. The summons and Notice, Exh.8 and Exh.9 was issued upon the defendant no.1 and 2, duly served upon the defendant no.1 and 2.

EVIDENCE LEAD BY BOTH THE PARTIES-

3. To prove his case, the plaintiff has produced following oral as well as documentary evidence.

ORAL EVIDENCE

1. Indrajitsinh Pathubhai Kher, Exh.27.

DOCUMENTARY EVIDENCE

1. Notice Exh.31.

Plaintiff has closed his evidence vide purses, Exh. 33.

4. To prove their defence, the defendant has produced the following oral as well as documentary evidence.

ORAL EVIDENCE

1. Nitin Ramnikbhai Langhnoja Sr. Executive Leagal Mahi Mil, Exh.35.

2. Defendant Witness Uttambhai Ramnikbhai Patel incharge Junior Executive Mahi Milk producer co. Ltd. Exh.38.

3. Defendant Witness Jaysukhbhai Ramjibhai Solanki
Manager Account, Mahi Milk producer co. Ltd. Exh.39.

DOCUMENTARY EVIDENCE

1. Agreement Exh.30.
2. Statement Exh.43
3. Variance Report Exh.46
4. 18 November to 30 September Statement Exh.47
5. Adulteration Milk Statement 18March to 28 February 2014 Exh.48
6. Variance Report 18 March 2013 to 20 Feb 2014 Exh.49

The defendant nos.1 and 2 have closed his evidence vide purses, Exh.44.

3. Heard ld. adv. for the plaintiff as purses wide 61 dated 03.03.2026 and the ld. adv. for the defendants no.1 and 2 also taken into consider the written arguments submitted by the ld. adv. for the plaintiff at Exh.50 and the written arguments submitted by the ld. adv. for the defendant at Exh.51.

4. To decide the present suit on merits, the following issues are framed at Exh.22

6. मुद्दाओ

૧. શું વાદી પુરવાર કરે છે કે, વાદી સંસ્થા પ્રતિવાદી નં.૧ કંપની નીચે કરારનાં આધારે કામ કરતી સંસ્થા છે?

૨. શું વાદી પુરવાર કરે છે કે, વાદી સંસ્થાએ પ્રતિવાદી નં.૧ નામે મોકલેલ દૂધનો હિસાબ વાદી અને પ્રતિવાદી નં.૨ નામે દર મહિને કરે છે?

૩. શું વાદી પુરવાર કરે છે કે, દરરોજ દૂધ ભરનાર સભ્યોનો તથા વાદીનો હિસાબ પ્રતિવાદીઓ તરફથી સીધો તેમના ખાતામાં ટ્રાન્સફર થઈ ચૂકવાય છે?

૪. શું વાદી પુરવાર કરે છે કે, વાદી પ્રતિવાદીઓ વિરુદ્ધ માંગ્યા મુજબની કાયમી મનાઈ હુકમ મેળવવા હકદાર છે?

૫. શું વાદી પુરવાર કરે છે કે, અદાલતે કાયમી હુકમ દ્વારા દાવો ચલાવવાની સત્તા છે?

૬. શું પ્રતિવાદીઓ પુરવાર કરે છે કે, વાદીના દાવાને મિસ જોઈન્ડર ઓફ પાર્ટીસનો બાદ લાગે છે?

૭. શું પ્રતિવાદીઓ પુરવાર કરે છે કે, વાદીના દાવાને એડિશન એક્ટના કાયદાનો બાદ લાગે છે?

૮. શું હુકમ અને હુકમનામું?

My answers to the above issues are as under for the reasons that follow:

Issue No.1 : In the Negative.
Issue No.2 : In the Negative.

Issue No.3 : In the Negative.
Issue No.4 : In the negative.
Issue No.5 : In the affirmative.
Issue No.6 : In the affirmative.
Issue No.7 : In the negative.
Issue No.8 : As per final order.

::: R E A S O N S :::

Important Legal Provisions:

5. 1. Evidence Act. A. Section 18 Admission by party to proceeding or his agent – Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions. by suitor in representative character. -Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character. Statements made by- (1) party interested in subject-matter.-persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or (2) person from whom interest derived.-persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements.

B. 61. Proof of contents of documents. :- The contents of documents may be proved either by primary or by secondary evidence.

C. Section 64. Proof of documents by primary evidence. :- Documents must be proved by primary evidence except in the cases hereinafter mentioned.

D. Section 72. Proof of document not required by law to be attested. :- An attesting document not required by law to be attested may be proved as it was unattested.

E. Section 91. Evidence of terms of contracts, grants and other disposition of property reduced to form of document.

:- When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1. When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2. Wills [admitted to probate in [India]] may be proved by the probate. Explanation 1. This section applies equally to cases in which the contract grants or disposition of property referred to are contained in one document and to cases in which they are contained in more documents than one. Explanation 2. Where there are more originals than one, one original only need be proved. **Explanation 3.** The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

F. Section 92. Exclusion of evidence of oral agreement. :-

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representative in interest, for purpose of contradicting, varying, adding to, or subtracting from, its items.

Proviso (1) Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation. Illegality, want of due execution, want of capacity in any contracting party [want or failure] of consideration, or mistake in fact or law.

Proviso (2) The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document.

Proviso (3) The existence of any separate oral agreement, constituting condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4) The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5) Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contract of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with express terms of the contract. **Proviso (6)**

Any fact may be proved which shows in what manner the language of a document is related to existing facts.

General Principle of Evidence in Civil Cases :- As per the

S.102 of Indian Evidence Act, the burden of proof lies on

the plaintiff to produce the facts before the Court regarding his claim, up to satisfaction of the Court then after he will get decision in his favour. He has to lead such evidence as Court draws inference in his favour. He has to establish his case prima facie. Court relies on the principle of Preponderance of Probability at the time of arriving decision in civil matters.

Some Important Legal Decision :- Hon'ble Supreme Court held in Govindammal (Dead) By Lrs. And vs Vaidiyanathan And Ors. on 23 October, 2018 held that it is no doubt true that an admission is the best piece of evidence.

Issue No. 1 to 7 :-

6 Discussion on all the issues are same, hence, all will be decided together.

7 Both the parties have argued contrary to each other and in support of their claim.

As per the provision of section 58 of the Evidence Act, facts admitted need not be proved.

8. To prove, the issue no. 1 to 5, the plaintiff has examined himself on oath at Exh.27, wherein he has deposed that agreement produce exh 30 was entered upon in between Kher Indraajitsinh Pathubhai in his individual capacity, it is also admitted by the plaintiff that agreement properly read before entering in agreement and after acceptance of term and condition of agreement sign by the plaintiff, it is

further stated that rates /prices of the goods/product fixed in agreement produce exh 30 it is also admitted by the plaintiff that training was given by the defendant and guidance was provided regarding how to handle work as per agreement. It is also admitted by the plaintiff that machinery/equipment related work and its handling/training were also provided it is admitted by the plaintiff that after purchase of good/products issues related to their quality and functioning arose it is also admitted by the plaintiff that maintenance and checking of machinery/equipment were also properly done and entries and records and were not properly maintained and there were irregularities in documentation and due to this confusion and dispute arose regarding responsibility and implementation that entries related to transactions and records were not properly written and maintained and because of all these reasons defendant suffered loss it is also admitted by the plaintiff that machinery was handed over to us in running condition It is also admitted by the plaintiff that after taking possession of the machinery, production of milk and its processing was started. It is also admitted by the plaintiff that the terms and conditions of the agreement were accepted and accordingly payment was to be made. It is also admitted by the plaintiff that witnesses such as P.D. Rajput and others are mentioned in the

agreement. It is also admitted by the plaintiff that the roles of such witnesses are unclear. It is also admitted by the plaintiff that officials including Assistant General Manager Sanjay Patel had signed the agreement. It is also admitted by the plaintiff that the agreement was for a fixed period and after its expiry, no new agreement was executed. It is also admitted by the plaintiff that the plant/machinery was handed over to them as per the agreement. It is also admitted by the plaintiff that they signed the checklist without proper verification of the machinery. It is also admitted by the plaintiff that proper support was not received thereafter. It is also admitted by the plaintiff that they had no direct agreement with the milk-producing society. It is also admitted by the plaintiff that milk was procured from local producers. It is also admitted by the plaintiff that milk was collected in the morning and evening from different places. It is also admitted by the plaintiff that proper measurement and quality checks were not conducted. It is also admitted by the plaintiff that variations in quantity occurred. It is also admitted by the plaintiff that due to improper functioning of machinery, loss occurred. It is also admitted by the plaintiff that milk quality issues arose during processing. It is also admitted by the plaintiff that records were not properly maintained and discrepancies occurred in entries. It is also admitted by the plaintiff

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that pricing was dependent on fat percentage and incorrect measurement caused financial loss. It is also admitted by the plaintiff that accounts were not properly reconciled. It is also admitted by the plaintiff that financial loss was suffered. It is also admitted by the plaintiff that no compensation was given by the defendant co ltd. In his examination -in chief, submitted as per the provision of O.18, R.4 of CPC, this witness has specifically deposed on oath there is no dispute regarding agreement that the agreement was signed by Indraajitsinh Pathubhai Kher by individual capacity. The said agreement is produced at Exh.30, which goes to show that the agreement was signed by Indraajit Sinh Pathubhai Kher by individual capacity. Thus, in view of oral as well as documentary evidence produced on record, that Exh. No 30 agreement was entered upon in between the Mahi Milk Producers Co.Ltd.and Kher Indraajitsinh Pathubhai of village Merupar, Tal, Halvad, who is appointed as assistant of "Mahi" in his individual capacity. Whereas the present suit is field by shri Merupar Dudh Utpadak Sanstha through its assistant and manager Indraajitsinh Pathubhai of village Merupar, Tal, Halvad, the pleadings of the plaintiff are very clear Indraajitsinh Pathubhai Kher has not field the present suit in his personal capacity. The copy of aggrement produce vide Exh.30 which is also produced by the plaintiff along with the suit vide Exh.3 list vide

mark 3/1 and Exh.30 does not go to show that any agreement is entered upon in between the defendant no.1 and shri Merupar Dudh Utpadak Sanstha. The said agreement is entered by shri Indrajitsigh Pathubhai Kher in his personal capacity and not as sahayak and sanchalak of shri Merupar Dudh Utpadak Sanstha. No other agreement entered in between the defendant no.1 and Merupar Dudh Utpadak Sanstha is produced on record therefore there is no agreement in existence in between the defendant no.1 and shri Merupar Dudh Utpadak Sanstha which contained the arbitration clause. It is true that in the event of existence of arbitration clause in the agreement, the jurisdiction of the civil court would be subject to the provision of section 8 of the Arbitration Act, but as observed hereinabove, there is no agreement in existence in between the defendant no.1 and shri Merupar Dudh Utpadak Sanstha which contain the arbitration clause, and, hence, in the absence of any such agreement between the plaintiff institution and the defendant no.1 institution, which contains the arbitration clause, the parties may not be referred to the arbitration under section 8 of the arbitration and conciliation act 1996 for resolution of their dispute. Exh.30 agreement shows shri Indrajitsigh Pathubhai Kher is appointed as sahyak of defendant no.1, in his personal capacity, to carry out the activities at Merupar as stated in the agreement whereas the prayers together with the pleadings of the plaintiff along with cause title, the

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present suite is filed by shri Merupar Dudh Utpadak Sanstha through its shayak and sanchalak Indrajitsigh Pathubhai Kher. So it appears from the pleadings of the plaintiff is shri Merupar Dudh Utpadak Sanstha and not Indarjitsigh Pathubhai Kher in his personal capacity. Suite is not filed in the personal capacity. It is filed by an institution said to be named as shri Merupar Dudh Utpadak Sanstha there is no agreement in existence in between the defendant no.1 and shri Merupar Dudh Utpadak Sanstha which contain the arbitration clause, of and, hence, in absence of any such agreement between the the plaintiff institution and the defendant no.1, institution, which contains the arbitration clause, section 8 of the arbitration and conciliation act 1996 for resolution of their dispute. By filing the present suite, it is prayed by the plaintiff that the defendants, their agents, servants, persons officers etc. May be restrained from closing the milk centre of shri Merupar Dudh Utpadak Sanstha, considering the pleading of the plaintiff together with oral and documentary evidence produced by the plaintiff in support of its pleadings, there is nothing on records to show that there is an institution registered in the name and style of shri Merupar Dudh Utpadak Sanstha which has entered into an agreement with the defendant no. 1 to run any milk center, which has shareholders such as pleaded by plaintiff. No document of registration of

plaintiff institution is produced on record that suit is filed in an institutional capacity and not in a personal capacity. Thus, in view of the foregoing discussion plaintiff failed to prove issue no. 1 to 4 Hence, I answer issue no. 1 to 4 In the negative and Issue No.5 and 6 In the affirmative and Issue no. 7 In the negative accordingly, and pass following final order for issue no.8.

ORDER

The plaintiff suit is Rejected with Cost.

Decree be drawn up accordingly.

Pronounced in open court, today on this 30th day of
March, 2026.

Place:Halvad.
Date:30/03/2026

[Nimisha Gangarambhai Surati]
Principal Civil Judge, Halvad.

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