



IN THE COURT OF PRINCIPAL CIVIL JUDGE, ATAHWA, NAVSARI  
PRESIDED OVER BY :- MR Y P YADAV

RCS NO.12 OF 2024

**EXHIBIT-23**

Registered on :21/09/2024  
Decided on :25/03/2026  
Duration :01Y-06M-04D

**PLAINTIFF :** SURESHBHAI TULSYABHAI MALVISH,  
AGE -49, OCCUPATION-Farming,  
ADDRESS :AT. SAATBABLA,  
TA.SUBIR, DIST. DANG.

**Versus.**

**DEFENDANT :** KANUBHAI JANUBHAI MALVISH  
AGE- 40, OCCUPATION -Farming  
ADDRESS : AT. SAATBABLA,  
TA.SUBIR, DANG.

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**SUBJECT : SUIT FOR RECOVERY OF RS.1,40,000/- (RUPEES ONE LAKH FOURTY THOUSAND ONLY) ALONG WITH INTEREST.**

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**APPEARANCE : FOR PLAINTIFF : LD. ADV. MR.V.A.BHOYE**

**FOR DEFENDANT : Ex Parte**

**J U D G M E N T****:FACT OF THE SUIT:**

1 This suit vide Exhibit 01 has been filed by the plaintiff against the defendant for recovery of Rs.1,40,000/- (Rupees One Lakh Fourty Thousand only) along with interest at the statutory rate from the date of borrowing till realisation, and with all costs, charges and expenses that may be incurred from the date of filing of this suit till payment. The plaintiff and the defendant are both engaged in agricultural activities and reside in the village of Ahwa, District Dang, with the defendant additionally working as a Mukadam (supervisor) in a sugar factory. Due to their good acquaintance, on 27/09/2023, the defendant approached the plaintiff in Ahwa and informed him that he was in urgent need of money for engaging labourers in sugarcane cutting work at the sugar factory. The plaintiffs advanced to the defendant a hand loan of Rs.1,40,000/- (Rupees One Lakh Forty Thousand only). In acknowledgement thereof, the defendant executed a notarised promissory note in favour of the plaintiff on the same date, bearing Serial No. 5612/2023, duly signed by the defendant and witnesses.

2 The promissory note, written in Gujarati, confirms that the defendant, Kanubhai Janubhai Malvish, adult, occupation Mukadam, resident of Saatbabla, Ta. Ahwa, Dist. Dang, borrowed Rs. 1,40,000/- (Rupees One Lakh Forty Thousand only) as a hand loan from the plaintiff, Sureshbhai Tulsyabhai Malvish, an adult, occupation labourer, resident of Satbabla, Ahwa, Dist. Dang. The defendant undertook to repay the amount by carrying out labour work in the sugar factory and specifically promised to repay the full sum of Rs. 1,40,000/- by 30/05/2024. The promissory note further states that if the defendant fails to repay, the plaintiff may initiate civil or criminal proceedings to recover the amount, including through attachment and sale of the defendant's movable and immovable properties. The document was executed voluntarily, without duress, in the presence of witnesses, and signed/thumb-impressed by both parties and witnesses.

3 The defendant promised to repay the hand loan by 30/05/2024 but failed to do so. Despite repeated oral demands and telephonic communications by the plaintiff, the defendant attempted to evade his responsibility by making excuses, the defendant started making false excuses and attempted to

evade the liability, even after considerable time had passed, the defendant did not repay the loan. When the plaintiffs personally approached him several times for recovery of the said amount, the defendant became aggressive, used filthy and abusive language against the plaintiffs, and issued threats of violence. By doing so, the defendant had committed serious criminal offences and has committed serious criminal offences and has deliberately failed to repay the plaintiffs' legally recoverable money, thereby attempting to misappropriate the plaintiffs' had-earned funds.

4 Since the defendant failed to repay the legally recoverable dues of Rs.1,40,000/-, the plaintiff, through his advocate, issued a legal notice dated 31/05/2024 by Registered Post A.D. to the defendant. The notice was duly served upon the defendant, as evidenced by the acknowledgement, yet the defendant neither replied to the notice nor paid the amount. Hence, this suit has been filed for recovery of Rs.1,40,000/- along with interest as per statutory provisions till realisation.

5 Despite repeated demands, the defendant failed to do so. When the legal notice was served on the plaintiff, however,

no payment or reply was made by the defendant. The transaction was entered within the territorial jurisdiction of Ahwa, District Dang, conferring jurisdiction on this Court. The suit is filed within the prescribed period of limitation under the Limitation Act, 1963, and is not barred. The plaintiff, belonging to the schedule tribe, is exempted from court fees. Documents relied upon are filed separately with the list.

- 6 The plaintiff seeks: (1) A decree directing the defendant to pay Rs.1,40,000/- with interest at the statutory rate from the date of borrowing till realization; (2) In case of failure, recovery by attachment and sale of the defendant's movable and immovable properties; (3) Costs of the suit to be awarded to the plaintiff; (4) Such other reliefs as deemed just and equitable.

**:: COURT PROCEEDINGS ::**

- 7 After the institution of the suit, summons was duly served upon the defendant vide Exh.05. The defendant did not appear before the Court, nor did he file any written statement or reply within the prescribed time. Consequently, the Court proceeded ex parte against the

defendant as per Order IX Rule 6(1)(a) of the Code of Civil Procedure, 1908, and closed the defendant's right to file a reply or participate at every subsequent stage of the proceedings.

**::ISSUES FOR CONSIDERATION::**

8 On the basis of the pleadings of the plaintiff and documents on record, this Court framed the following issues vide Exh.07 for adjudication of this suit as under:

(1) Whether the plaintiff proves that the defendant has taken Rs.1,40,000/- from him as a hand loan on 27/09/2023 and has executed a notarised promissory note on 27/09/2023 thereof, in favour of the plaintiff?

(2) Whether the plaintiff proves that he is entitled to recover Rs.1,40,000/-?

(3) Whether the plaintiff proves that the defendant has acknowledged the debt and the suit is within the time prescribed by law of limitation?

(4) Whether the plaintiff is entitled to get interest? If yes, at what rate?

(5) What is due to the plaintiff?

(6) What order and decree?

9 My findings on the above referred issues are as under:

- 1 In the Affirmative.
- 2 In the Affirmative.
- 3 In the Affirmative.
- 4 In the Partly Affirmative.
- 5 As per the final order.
- 6 As per the final order.

10 Here, in this case, the plaintiff in order to prove his case has produced following oral and documentary evidences which are as follows:

::ORAL EVIDENCE::

Sr. No.	Particulars	Exhibits
1.	PW-1 Testimony of Sureshbhai Tudshayabhai Madvish, by way of the affidavit under Order 18 Rule 4 of C.P.C.	11

:: DOCUMENTARY EVIDENCE::

Sr. No.	Particulars	Exhibits
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1.	The promissory note executed by the defendant in favour of the plaintiff.	13
2.	Original copy of Postal Receipt.	14
3.	Copy of the legal notice dated 31/05/2024 given by the plaintiff through his advocate to the defendant.	15
4.	Copy of the Ration Card.	16
5.	Copy of Caste Certificate of Plaintiff.	17
6.	Copy of the Aadhar card of the plaintiff.	18
7.	Copy of the acknowledgment of the legal notice.	19

11 The plaintiff has submitted the purshis and closed the evidence. As the defendant did not appear or file any reply, the Court proceeded ex parte under Order IX Rule 6(1)(a) of the C.P.C., 1908, and closed the defendant's right at every stage of proceeding.

**::ARGUMENTS ON BEHALF OF THE PLAINTIFF::**

12 The Ld. Advocate on behalf of the plaintiff has argued in consonance with the averments of the plaint and submitted that it is on record that the defendant borrowed Rs.1,40,000/- as a hand loan from the plaintiff on 27/09/2023 due to their acquaintance and for the purpose of engaging labourers in sugarcane cutting work, as per the terms of the notarized Promissory Note. It is further argued that all the documents produced by the plaintiff before the Hon'ble Court are genuine and duly executed. The narration of the transaction and documents are duly proved by the deposition of the plaintiff in his evidence at Exh.11. No rebuttal evidence has been led by the defendant to challenge the case of the plaintiff. Also, there is no reason for the plaintiff to create such false evidence against the defendant. Hence, urged before the Court to allow the suit amount of Rs.1,40,000/- (Rupees One Lakh Fourty Thousand only) along with future interest at a reasonable rate in respect of the outstanding hand loan and with all costs, charges and expenses that may be incurred from the date of filing of this suit till payment to the

plaintiff, and passing the decree against the defendant as prayed for in the suit.

**::REASONS AND FINDINGS::**

**ANSWER TO ISSUE NO.1 TO 4:**

13 As the defendant did not appear before the Court despite service of summons, nor filed any written statement or reply, the Court proceeded ex parte under Order IX Rule 6(1)(a) of the Code of Civil Procedure, 1908. Hence, as per Sections 101 to 102 of the Indian Evidence Act, 1872, the initial burden is on the plaintiff to prove the "existence of the facts," and it is a well-settled principle of law that the party has to prove his case on his own strength and cannot take advantage of the weakness of the opposite party. So, recognizing the above-referred principle, let us examine the material placed before this Court by the plaintiff in order to succeed in his suit.

14 In this case, Issue Nos. 1 to 4 are related to the suit amount, the execution of the Promissory Note, entitlement to recovery, acknowledgement of debt, limitation, and interest. The plaintiff has to prove that Rs.1,40,000/- is due from the defendant and that the defendant is liable to

pay it. For proving these issues, the plaintiff has produced an affidavit for examination-in-chief of PW-1 Sureshbhai Tulsyabhai Malvish under the provisions of Order 18 Rule 4 of the Code of Civil Procedure, 1908. The plaintiff and his witness in its evidence at Exhibit 11 reiterates the facts of the plaint and fully supports its case, and during his evidence, documents which are exhibited at 13 to 19 were produced on record.

15 Now, before appreciating the documentary evidence produced by the plaintiff, we have looked at Section 61 of the Indian Evidence Act, 1872. As per the section, the contents of the document may be proved either by primary evidence or secondary evidence. In this case, the plaintiff has produced copies of documents to prove his case. Looking at the documents at Exhibit 13 to 19, those documents are referred to and their contents are proved in the testimony of PW-1 Sureshbhai Tulsyabhai Malvish who is examined by the plaintiff on their behalf at Exhibit 11. Further, their veracity is not challenged; moreover, it transpires that the Promissory Note was duly notarised and executed voluntarily in the presence of witnesses, hence, presumption by virtue of Evidence Act Section 114 would

definitely squarely apply to the suit. Hence, those documents are believed to be true and genuine and are admissible in evidence and can be considered for appreciation.

16 Now, considering the facts that the version made on oath by the plaintiff at Exhibit 11 has not been challenged by the defendant. Hence, there is no reason to disbelieve the evidence of the plaintiff. At this stage, when the defendant has not appeared and challenged the plaint as well as the documents produced by the plaintiff, in that circumstance, the recent judgment of the Hon'ble Gujarat High Court in Jay Ambe Industries Proprietor Shri Dineshkumar Bajranglal Somani Versus Garnet Specialty Paper Ltd. (2000) AIJEL-HC 243577 decided on 07.01.2022 is required to be considered. In the judgment, the Hon'ble High Court of Gujarat has discussed the Evidence Act Sections 34, 59, 61 & 62 and at Para 11, Para 14, and Para 28 has held as under:

11. "The short question that falls for our consideration is, whether the trial court was justified in dismissing the suit instituted by the plaintiff, despite there being no

denial and/or no rebuttal evidence led by the respondent-original defendant."

14. "At the outset we may take notice of the fact that the respondent-original defendant had not appeared before the trial court as well as before this Court so as to put forth his defense. In other words, the pleadings of the plaintiff and evidence so adduced remained un-controverted all throughout. Thus, the suit for recovery of dues based on documentary evidence such as invoices, duly signed and acknowledged delivery challan and ledger account has not been disputed by the respondent-defendant".

28. "To hold that a particular document is not admissible for proof of its contents unless the writer is called, is to denude the documentary evidence of all its value and is clearly contrary to certain express statutory provisions to be found in the Evidence Act, more particularly, Section 59 of the Evidence Act. In our opinion, the documentary evidence becomes meaningless if to prove it in every case by way of oral evidence of its contents. If that is the position, it would mean that, in the ultimate, the analysis of the evidence must be oral and that the oral evidence would virtually be the only kind of evidence recognised by

law, however, that is not the position under the Evidence Act. The definition of the term evidence in Section 3 of the Evidence Act lays down that evidence means and includes statements made by the witnesses, which are called oral evidence, and documents produced before the court, which are called documentary evidence. A bare perusal of Section 59 of the Evidence Act states that all facts, except the contents of documents, may be proved by oral evidence. Needless to say, that once the document is proved in the manner provided under the provisions of the Evidence Act, the contents of that document are also proved. It is for that reason that the Evidence Act advisedly lays down that the contents of a document can be proved by proving the document in the usual manner, a proposition that emerges unequivocally from a combined reading of Sections 59, 61 and 62 of that Act. Thus, according to us, the trial court should have believed the documents of invoices, such as invoices of the delivery challan and ledger account, in the absence of any dispute or rebuttal evidence submitted by the respondent-original defendant. Once the document has been exhibited, the initial burden of proof could be said to have been discharged by the original plaintiff. The original defendant was expected to deny the same with

cogent rebuttal evidence, but having failed in submitting the rebuttal evidence, the trial court could not have ignored the exhibited evidence/undisputed evidence merely because there was no oral evidence in the form of examination of any evidence by the witness in support of the documentary evidence."

17 It is also very well settled by the Hon'ble Supreme Court in the case of Vidhyadhar V. Manikrao reported in AIR 1999 S.C. 1441, that where the party has not come into the witness box and not denied the averments of the plaint, the court can draw an adverse inference against him under S.114(g) of the Indian Evidence Act. Also in the case of Adivekka & ors. V/s. Hanamavva Kom Venkatesh and ors., reported in AIR 2007 SC 2025, The Hon'ble Apex court in head note-A held that, S.114 of Evidence Act. Adverse inference. Non-examination of the party to the suit. Adverse inference can be drawn against that party.

18 So, as per the above-referred judgments of Hon'ble Supreme Court, an adverse inference can also be drawn against the present defendant. Hence, in the absence of cogent evidence challenging the claim of the plaintiff, this Court firmly believes that the defendant borrowed Rs.1,40,000/- as a

hand loan and executed the Promissory Note, acknowledging the debt, and has failed to repay it despite demands and legal notice. The suit is within limitation as it is the suit for the recovery of money and it is filed within three years from the date when such debt was supposed to be repaid. Thus, on the basis of oral evidence and the documentary evidence, the plaintiff has succeeded to prove that Rs.1,40,000/- remains outstanding from the defendant.

19 Apart from that, considering the documentary evidence produced by the plaintiff at Exhibit 13 to 19, it appears that the defendant is the borrower who took the hand loan of Rs.1,40,000/- for engaging labourers in sugarcane cutting work from the plaintiff and is liable to the plaintiff for the dues.

**::DISCUSSION ON THE POINT OF INTEREST::**

20 The plaintiff has claimed interest at the statutory rate on the outstanding due amount from the date of borrowing till realisation. As per Section 34 of the Code of Civil Procedure, 1908, the Court can order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged from the date of suit till the date of

payment. Considering the overall facts and circumstances of the case, nature of the private transaction between parties engaged in agricultural labour, and the purport of Section 34 of C.P.C., if reasonable interest at the rate of 6% p.a. on the principal amount from the date of the institution of the suit till the date of payment to the plaintiff, it will serve the interest of justice. Further, I could not find that this suit is barred by law. Hence, I answer Issue No.1, 2, and 3 in the Affirmative and Issue No.4 as Partly Affirmative.

**::ISSUE NO.5 AND 6::**

21 As discussed above, the plaintiff has proved Issue Nos.1, 2, and 3 as Affirmative and Issue No.4 as Partly Affirmative in the plaintiff's favour. The defendant has not even remained present to answer the claim of the plaintiff in this suit. Looking at all these aspects, and the plaintiff being from a Tribal community relying on agricultural labour with hard-earned money at stake, if the cost is not allowed to the plaintiff for this suit, it would cause injustice. So, it is proper and desirable to award the cost of the suit to the plaintiff. Therefore, considering the aforesaid discussion and reasons, I pass

the following final order on Issue Nos.5 and 6 in the interest of justice;

**:: F I N A L O R D E R ::**

- 1 The suit of the plaintiff is HEREBY ALLOWED EX PARTE.
- 2 The defendant is directed to pay the principal amount, i.e. Rs.1,40,000 (Rupees One Lakh Forty Thousand only), with interest @ 6% per annum from the date of the institution of suit till the date of payment to the plaintiff.
- 3 It is further ordered that the defendant shall pay the costs of the suit to the plaintiff.
- 4 Decree be drawn accordingly.

The order is signed and pronounced in the open Court today.

**Date :- 25/03/2026**  
**Place :- Ahwa.**

**[Y.P.Yadav]**  
**Principal Civil Judge, Ahwa, Navsari**  
**UID Code :- GJ01729.**