



Registered on : 12/11/2025

Decided on : 01/05/2026

Duration :

Years Months Days

IN THE COURT OF ADDITIONAL CIVIL JUDGE, PANCHMAHALS AT GODHRA

SMST R 32/2025**EXH -****MOHSIN M. YUSUF DANT****- PLAINTIFF**Address :7-203-2, Juhapura Tekra,
Rakshan road area, Godhra, Panchmahal**Versus****PARMAR RASHMIKABEN VIRALKUMAR****- DEFENDANT**Address : House no. 78, Vrajdhaam Society,
Ankur School, Bhuravav, Godhra, Panchmahal

**SUMMARY SUIT UNDER ORDER XXXVII OF CODE OF CIVIL
PROCEDURE, 1908 FOR RECOVERY OF RS. 2,50,000/-**

APPEARANCE : Ld. Advocate Mr. J. A. SHAIKH for Plaintiff
Ld. Advocate Mr. H. K. SONI for Defendant**:: JUDGMENT ::**

1. The present summary suit has been filed by the plaintiff for the recovery of Rs. 2,50,000/- from the defendants.
2. Brief facts of the case is as under : Plaintiff has contended in the present suit that upon demand raised by defendant's husband and considering friendly relation, plaintiff gave Rs. 2,50,000/- to the defendant on 11/10/2024 for the purpose of business as hand loan on the assurance that the defendant and her husband would repay the amount within 6 months.

When the defendant didn't repay the said amount, the same was requested by the plaintiff from the defendant and accordingly, the

defendant issued a cheque of Axis bank worth Rs. 2,50,000/- bearing cheque No. 011753 dated 20/08/2025. On clearing the said cheque, it got returned with an endorsement of "Funds insufficient. On intimating the same to the defendant, defendant and her husband requested to present the said cheque in October month with the assurance that this time the cheque will get cleared. Accordingly, again the plaintiff presented the aforesaid cheque for clearance on 04/10/2025 but it again returned unpaid with the same endorsement of funds insufficient on 06/10/2025. This time upon intimating, the defendant instead of making payment gave threats that they won't make any payment. Hence the plaintiff filed the present summary suit under Order XXXVII of Code of Civil Procedure for the recovery of Rs. 2,50,000/-.

3. Upon issuing summons to the defendants, summons was duly served upon defendant, and accordingly he entered an appearance before the Court through his advocate on 17/01/2026. Plaintiff has filed the summons for Judgment vide Exh-7. Thereafter defendant filed leave to defence vide Exh-10 on 30/01/2026. Thereafter, matter proceeded to the argument stage and it remained stagnant at the stage of argument since then for many hearings. So the matter has been taken up for decision.
4. Now, in order to decide the present summary suit of plaintiff under Order XXXVII of Code of Civil Procedure, 1908, the leave to defence filed by the defendant vide Exh-10 needs to be decided, which can be determined upon below question :

Whether defendant has any substantial defence and/or whether defendant raises any triable issue ?

5. Now, before we get into the merits of the case, it is inevitable to go through the dispute taken by the plaintiff pertaining to delay caused by the defendant in filing leave to defend application. It is seen from the record that although the defendant has been served with the summons of the suit on 27/11/2025 vide Exh-5 but the defendant has not

appeared before this Court within 10 days of the service of summons and has rather appeared on 17/01/2026 and sought time vide Exh-9 but has filed the leave to defend application on 30/01/2026 showing no cause of delay. Hence, from the record it is apparent that there has been delay and the same has not been explained, although opportunity given to explain the same. In order to decide the said dispute, it is inevitable to go through the provision contained under

Order 37 rule 3. Procedure for the appearance of defendant

(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.

Upon perusal of the aforesaid provision it is apparent that discretion is given to the Court whereby delay occasioned by the defendant in entering appearance or in applying for leave to defend may be condoned, if sufficient cause is shown for the same by the defendant. However, in the leave to defend application vide Exh-10, no any cause has been shown by the defendant. Keeping the said technical defect aside and prior to moving ahead of the merits of the case, let's go through the legal principle pertaining to same.

6. At this juncture, it is required to be noted that it is well settled principle laid down by the Hon'ble High Court of Gujarat in the case of **Anand Sons Overseas Trading Pvt. Ltd. v. Trivedi Industries, 2019 (2) GLR 1034** (para 18) that :

The position of law so far as the summary suit and grant of leave to defend is concerned, has been very succinctly explained by the Supreme Court in one of its recent pronouncements in the case of State of Bank of Hyderabad v. Rabo Bank, (2015)10 SCC 521. I may quote the relevant observations thus :

“15. As regards the entitlement of a defendant to the grant of leave to defend, the law is well settled long back in the year 1949 in Sm. Kiranmoyee Dassi v. Dr. J. Chatterjee, AIR 1949 Cal 479, in the form of the following propositions:

(1) If the defendant satisfies the Court that he has a good defence to the claim on its merits, the plaintiff is not entitled to leave to sign the judgment and the defendant is entitled to unconditional leave to defend.

(2) If the defendant raised a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(3) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately made it clear that he has a defence, yet, shows such a stage of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim, the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

(4) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(5) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence."

7. Now keeping in mind the said principle, if leave to defend application filed by the defendant vide Exh-10 is seen, then it appears that, defendant has denied the contention of plaintiff in toto.

It is the say of the defendant that she has not received any money from the plaintiff rather she is not knowing plaintiff. That false criminal complaint under section 138 of NI Act has been instituted by some Siddique Mohammad Dant against her on similar matter through same advocate. That the plaintiff of the present case and complainant of the said criminal case are relatives. That the plaintiff has wrongfully filed the present case against defendant under collusion with Siddique Mohammad Dant. That defendant is not earning and poor person. That the plaintiff doesn't possess any license to do money lending. That plaintiff is from Muslim community and defendant is from Hindu community, so there exist no reason to believe that they have friendly relation. Then it is contended that the defendant is working in private

school for Rs. 6000/-. That the plaintiff came to defendant's husband showroom to show old vehicle and the defendant husband gave 2 blank signed cheque to the plaintiff for the purpose of vehicle dealings without the knowledge of the defendant. And plaintiff has misused the said cheque. That the said cheque was not given for any security purpose. That the intent for which the cheque was given to the plaintiff by defendant's husband has not been accomplished yet. So, the transaction is disputed. Based on all this contentions, defendant prayed to dismiss the plaintiff's suit.

8. Having gone through record of the case, plaintiff has produced below documentary evidence in support of his case :

| Sr. No. | Particulars | Mark |
|----------------|--------------------------------------|-------------|
| 1 | Original cheque worth Rs. 2,50,000/- | 12 |
| 2 | Return memo | 13 |

It appears to this Court that, though the defendant took the dispute regarding cheque, but the signature on the cheque is not disputed. As per the say of the defendant, the plaintiff misused the disputed cheque. Now, as per the version of defendant, the plaintiff received the said disputed cheque from her husband in some vehicle dealings without defendant's knowledge. Now, from the defendant's contention, she has contended that the disputed cheque was not given for any security purpose and that intent for which the cheque was given to the plaintiff by her husband has not fulfilled yet. From the said contention, it seems defendant is completely aware of the intent for which the said cheque has been given to the plaintiff but has not disclosed the said intent in the present leave to defend application. Now, on one hand, the defendant has contended that she doesn't know plaintiff and have had no transaction with him and at the same time, she also contends that the plaintiff is relative of some Siddique Mohammad Dant, who has filed criminal complaint under section 138 of NI Act against her and that this plaintiff possess no license of money lending. Moving ahead, the defendant has contended in para no. 10 that she is not earning and poor person

whereas moving ahead in the very same para, she has contended that she earns Rs. 6,000/- working in private school, which again shows contradiction in the version of the defendant. Now, if the version of the defendant as to effect that the said disputed cheque was given by her husband to the plaintiff for some vehicle dealings and that the intent with which cheque is given is not fulfilled is having any substance, then the defendant must had disclosed the entire story as to for what dealings and with what intent the disputed cheque was given to plaintiff. But from the bare perusal of the leave to defend application there seems to be no explanation from the side of defendant as to above questions and neither there is any explanation as why she has not retrieved back the signed cheque from the plaintiff, if intention for which the cheque given was not fulfilled. And in case plaintiff was not giving back then why no any complaint pertaining to same has been filed anywhere.

9. So, keeping in mind the aforementioned well settled principles laid down by the Hon'ble Supreme Court and Hon'ble High Court of Gujarat, if the facts and circumstance of the present case is considered along with the express provision of Order XXXVII of Code of Civil Procedure, 1908, then it appears that defendant has no substantial defence or triable issue but rather has just raised vague and illusionary defence.
10. As per the landmark judgment passed by the Hon'ble Supreme Court in the case of **Santosh Kumar v. Bhai Mool Singh, AIR 1958 SC 321**, which held that,

“it is necessary to understand the reason for a special procedure of this kind in order that discretion may be properly exercised. Taken by and large the object is to see that the defendant does not unnecessarily prolong the litigation and prevent the plaintiff from obtaining an early decree by raising untenable and frivolous defences in a class of cases where speedy decisions are desirable in the interests of trade and commerce.”

Considering the above judgment in line with the facts and circumstance of the present case, this Court is of the view that, in the aforesaid matter,

the discretion of the court allowing the defence to proceed upon condition to pay the whole amount into Court or otherwise secure the said amount, and thereby try to protect the plaintiff with the amount and show mercy to the defendant, will further lead to lingering of the case and ultimately harass the plaintiff. Moreover, if such frivolous defences is entertained and leave to defend is allowed conditionally or unconditionally, it would not only prolong the litigation and thereby harass the plaintiff and in a way, also frustrate the very object of Order XXXVII of Code of Civil Procedure, 1908.

- 11.** Hence, as the defendant has no substantial defence and the defence so set up is illusory/sham/practically moonshine together with the fact that the leave to defend application doesn't show any sufficient cause for the delay occasioned in filing the leave to defend application, this Court is of the opinion that, defendant is not entitled for leave to defend and plaintiff is entitled for the judgment. Accordingly following order is hereby passed in the interest of justice :

:: ORDER ::

- 1) Leave to defend application vide Exh -10 hereby stands disposed as rejected.
- 2) Accordingly, the summary suit of plaintiff is hereby partly allowed.
- 3) The defendant is hereby ordered to pay Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand only) to the plaintiff, and failing which the plaintiff will be entitled to recover the decretal amount from the movable and immovable properties of the defendants, according to law.
- 4) Parties to bear their own cost.
- 5) Decree to be drawn accordingly.

Signed and pronounced in the open Court today.

Date : 01/05/2026

**(JINSY JOSEPH THARAYIL)
ADDITIONAL CIVIL JUDGE
PANCHMAHAL AT GODHRA
GJ 01652**