

GJSR010101932025



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Duration : YY. MM. DD.

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE &  
THE COMMERCIAL APPELLATE COURT, SURAT.**

**COMMERCIAL APPEAL No. 12/2025**

Exh. \_\_\_\_\_

**Appellant(Original Defendant):**

**Minakshiben Subhashbhai Agarwal Owner of  
Maa Kali Synthetic,  
Aged about : 45 years, Occ.: Business,  
Add.: Flat No. 804, Santvan Ekleza, Opp.  
Pramukh Aranya Residency, Midas Square  
Road, Godadara, Surat.**

**VERSUS**

**Respondent(Original Plaintiff):**

- 1. Jamnadas Vallabhbai Gadhesariya Prop. of  
Jamnadas Vallabhbai Gadhesariya,  
Aged about : 50 years, Occ.: Business,  
Res. of: 150, Netlade Society, Sita Nagar,  
Puna Gam, Surat.  
Currently At. 52, Radhepark Society, Nr.  
Saviya Circle, Yogichowk, Surat.**
- 2. The State.**

**APPEARANCE:**

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Ld. Advocate Shri **L. C. Tiwari** for the Appellant.

Ld. Advocate Shri **M. C. Mehta** for the Respondent No. 1.  
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**:: J U D G M E N T ::**

[1] The present Commercial Appeal is preferred by the appellant - original defendant under Section 13 of the Commercial Courts Act 2015 read-with Section 96 and Order 41 of the Code of the Civil Procedure (for short "C.P.C.") challenging the Judgment and Decree passed by the Ld. Principal Sr. Civil Judge, Surat, dated 07.11.2024 in Commercial CS No. 37/2023, whereby, the Ld. trial Court was pleased to partly allow the suit of the respondent - plaintiff.

[2] The notice of the present appeal is duly served upon the respondent - original plaintiff. Ld. Advocate Shri M.C. Mehta has appeared for the respondent - plaintiff. Ld. Advocate Shri L. C. Tiwari has appeared for the appellant - original defendant. Record and Proceedings of Comm. C.S. No. 37/2023 has been brought on record. Heard Ld.

Advocates appearing for the parties and perused the records.

[3] Filtering the prolix details, the facts as are necessary for effective adjudication of present appeal, are summarized as under: (For the sake of brevity and convenience, while discussing factual aspects, the appellant and respondent are referred as defendant and plaintiff, respectively.)

**:: FACTUAL MATRIX ::**

**(A) INSTITUTION OF SUIT:**

[4] It is the case of the plaintiff that the plaintiff Jamnadas Vallabhbhai Gadhesariya Prop. of Jamnadas Vallabhbhai Gadhesariya, is engaged in the business of job work on sarees and the defendant is the proprietor of Maa Kali Synthetic, engaged in the same business. It is the case of the plaintiff that defendant had given orders for job work to the plaintiff from 08/10/2018 to 28/02/2020 amounting in total of Rs. 23,10,582/-, which work was duly carried out by the plaintiff and the same was handed over to the defendant.

[4.1] It is the case of the plaintiff that the defendant

made part payment of Rs. 10,80,410/- in installments. However, despite repeated requests and reminders, the defendant has failed and neglected to pay the outstanding amount of Rs. 12,30,172/- till date. Thus, the plaintiff was constrained to file the suit for recovery of amount of Rs. 12,30,172/- with interest @ 24% per annum from the defendant.

**(B) APPEARANCE OF DEFENDANT:**

[5] The summons of the suit was duly served upon the defendant on 12.01.2023. However, defendant failed to file written statement. Therefore, on the application of the plaintiff at Exh. 9, the Ld. trial Court had closed the right of the defendant to file the written statement on 15.05.2023.

**(C) ISSUES AND FINDINGS OF LD. TRIAL COURT:**

[6] Ld. trial Court has framed following Issues at **Exh. 10** as under :

1. *Whether the plaintiff proves that the plaintiff is proprietor of Jamnadas Vallabhbai Gadhesariya doing the business at Surat ?*
2. *Whether the plaintiff proves that defendant had done job work*

*for which defendant has not paid the debt as prayed in the suit?*

3. *Whether the plaintiff is entitled to get interest ? If yes, at what rate ?*
4. *Whether the plaintiff is entitled to get relief as prayed in the suit?*
5. *What order and decree?*

**[7]** The above issues have been answered by the Ld.

trial court as under :

1. In the Affirmative.
2. In the Affirmative.
3. In the Affirmative @ 6% p.a.
4. In the partly affirmative.
5. As per final order.

**(D) EVIDENCE:**

**[8] ORAL EVIDENCE OF THE PLAINTIFF :**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Exh.</b>
1	Affidavit of the plaintiff	11

**[8.1] DOCUMENTARY EVIDENCE OF THE PLAINTIFF :**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Exh.</b>
1	GST Certificate of plaintiff's firm	14
2	GST Certificate of defendant's firm	15
3	Office copy of ledger account of defendant in the books of plaintiff	16

4	Original Carbon copy of bills of Job work done by the plaintiff.	17 to 118
5	Office copy of ledger showing goods purchased by defendant on GST portal	119
6	Account statement of plaintiff showing defendant has done part payment towards goods purchased by him.	120
7	Office copy of demand notice.	121
8	RPAD receipt of notice sent on first address	122
9	RPAD receipt of notice sent on second address	123
10	Returned cover of notice from 1 <sup>st</sup> address of defendant with the acknowledgment of 'Insufficient address'	124
11	Returned cover of notice from 2 <sup>nd</sup> address of defendant with the acknowledgment of 'Left'.	125
12	Copy of income tax return for the F.Y. 2019-20	126
13	Copy of income tax return for the F.Y. 2020-21.	127
14	Copy of income tax return for the F.Y. 2021-22	128
15	Certificate u/s 65B of Evidence Act.	129

**(E) IMPUGNED ORDER :**

**[9]** Ld. trial Court, after considering the pleadings of the plaintiff and the evidence adduced by the plaintiff, was pleased to pass the following order :

**ORDER**

- “1. The suit of the plaintiff is hereby partly allowed.*
- 2. The plaintiff is entitled to recover Rs. 12,30,172/- (Twelve Lacs Thirty Thousand One Hundred and Seventy Two Only) from the defendant with interest @ 6% p.a. from the date of demand i.e. 18/01/2022 till realization.*

*3. The plaintiff is entitled for cost of the suit including mediation fees.*

*4. Decree be drawn accordingly.”*

[10] Being aggrieved with the above Judgment, the appellant - defendant has preferred the present appeal. Heard the Ld. Advocates appearing for the parties and perused the record.

**SUBMISSIONS OF THE APPELLANT:**

[11] Ld. Advocate appearing for the appellant - defendant has submitted that Ld. trial Court has erred in passing the impugned Judgment *inasmuch* as the appellant - defendant has not been provided the opportunity to defend the suit of plaintiff. It is contended by Ld. Advocate for the appellant - defendant that due to serious illness of her husband, the defendant had to remain outside Surat for treatment purposes and therefore could not remain present before the trial Court. It is further contended that no direct business transaction ever took place between the appellant and the plaintiff and the alleged transactions were occurred between appellant's husband and the plaintiff. It is also pointed that in a police complaint filed by the plaintiff, the

alleged dealings were stated to be with the appellant's husband.

**[11.1]** It is further contended that the bills, ledger accounts and other documents produced by the plaintiff do not bear the signature or acknowledgment of the defendant, and therefore, the alleged supply of goods are not proved. It is further stated that suit itself is barred by limitation, as the alleged transactions relate to the period 2018 to 2020, whereas the suit was filed in 2023.

**[11.2]** It is further contended that the respondent - plaintiff has misled the Ld. trial Court by not making full disclosure of material facts. It is further contended that the respondent - plaintiff had preferred an application / complaint before Salabatpura Police Station against the husband of appellant - defendant, contending *inter alia* that the husband of the appellant - defendant had executed the transaction and that the present appellant - defendant was not involved in the transaction. The said application of the respondent - plaintiff was also ordered to be filed by the Salabatpura Police Station. In the said set of circumstances, *ex facie*, the transaction alleged by the respondent - plaintiff comes under scrutiny and therefore, the impugned Judgment

and Decree needs to be quashed and set aside.

On all above contentions, it is submitted by the appellant that the present appeal needs to be allowed and the impugned Judgment and Decree passed by Ld. trial Court needs to be quashed and set aside.

**SUBMISSIONS OF THE RESPONDENT:**

[12] Per contra, Ld. advocate appearing for respondent - plaintiff has submitted that Judgment and Decree passed by Ld. trial Court is just, proper and same does not warrant any modification, intervention or reversal and present appeal being devoid of any merit, needs to be dismissed in limine.

[12.1] It is further contended by the Ld. Advocate for the respondent - plaintiff that the contention of the appellant - defendant that no complaint was preferred against the present appellant - defendant before Salabatpura Police Station and that the complaint was filed only against her husband is not correct, inasmuch as the statement relied upon by the appellant - defendant and produced at Mark 3/3, para -3 of the same reads as under:-

*"आज रोज आप साहेबे मने सलाबतपुरा पो.स्टे.अेल.अे. अरज न*

૨૩૬૨/૨૦૨૧ તા.૧૫/૦૯/૨૦૨૧ વાંચી સંભળાવી જે અમોએ સામાવાળા સુભાષભાઈ અગ્રવાલ \*માંકાલી સંથેટીક ના વહીવટ કરતા તથા મીનાક્ષીબેન અગ્રવાલ 'માંકાલી સંથેટીકના પ્રોપાઈટર' તથા બિમલ ધાનુકા (દલાલ) નાઓના વિરુદ્ધ સદર અરજી કરેલ છે જે અરજી સંબંધે પુછતા લખાવુ છુ કે"

Considering above, it is submitted that the case put up by the appellant - defendant is moonshine and bogus and the same needs to be discarded.

**POINTS OF DETERMINATION/ ISSUES:**

**[13]** Considering the above discussion and submission made by the Ld. Advocate for the parties, following issues/ points of determinations arise for adjudication of this appeal

(1) Whether it is proved that Ld. trial Court erred in passing the Judgment and Decree against the defendant?

(2) Whether the Judgment and decree passed in Commercial Suit No. 37/2023 needs any modification, intervention or reversal?

(3) What order ?

**FINDINGS:**

**[14]** My Findings for the aforesaid issues are as under :

- (1) In Negative.
- (2) In Negative.
- (3) As per Final Order.

## REASONS

### ISSUE NOS. 1 TO 3 :

[15] Since all the above points of determination and issues are interconnected and co-related, the discussion for the reasons for its findings, is done simultaneously.

[16] Before delving the contention raised by the appellant, it would be worth to refer the object for which Commercial Courts have been established. It is held by the Hon'ble Apex Court in the case of *Ambalal Sarabhai Enterprises Ltd. Versus K.S.Infraspac Llp* reported in **2019**

**(0) ALJEL-SC 64989**, as under:-

*"18. We may refer to the Law Commission's 253rd Report, which inter alia made various recommendations. Para (4.2) of Chapter IV-"Conclusions and Summary of Recommendations" of Law Commission's 253rd Report reads as under:-*

*"4.2 The Commercial Courts, the Commercial Divisions and the Commercial Appellate Divisions of High Courts that have been recommended are intended to serve as a pilot project in the larger goal of reforming the civil justice system in India. The goal is to ensure that cases are disposed of expeditiously, fairly and at reasonable cost to the litigant. Not only does this benefit the litigant, other potential litigants (especially those engaged in trade and commerce) are also advantaged by the*

*reduction in backlog caused by the quick resolution of commercial disputes. In turn, this will further economic growth, increase foreign investment, and make India an attractive place to do business. Further, it also benefits the economy as a whole given that a robust dispute resolution mechanism is a sine qua non for the all-round development of an economy".*

**36.** *A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the Objects and Reasons and various amendments to Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts, viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as 'early' and 'speedy' have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system."*

[17] In the present case, it is an admitted position on record that the appellant - defendant failed to file the written statement within the statutory period prescribed under **Order V Rule 1 and Order VIII Rule 1 CPC** (as applicable to commercial disputes), and consequently, the right to file the written statement was closed by the Ld. trial Court. The relevant provisions reads as under:-

**“Order V Rule 1-Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement**

*on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.”*

*“Order VIII Rule 1-Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”*

[18] At this juncture, it will be profitable to refer the Judgment of Hon’ble Apex Court in the case of ***SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. and Ors. (2019) reported in 12 SCC 2010***, wherein, it is held that:

*“.....A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days”*

**[19]** Cumulative reading of above clearly transpires that once the statutory period of 120 days from the date of service of summons expired. In the present case, the appellant - defendant failed to file any reply within statutory time period, hence her right was rightly closed by the Ld. trial Court.

**[20]** Further, in the present case, the respondent - plaintiff has based his claim for liquidate amount of bills and challans produced at Exh. 17 to 118 and the effect of same have been reflected in the ledger account produced at Exh. 119. On the contrary, the appellants - defendants have failed to produce any documentary evidence to rebut the claim of the respondent - plaintiff. Even before this Appellate Court as well, the appellant, except making bald allegations, has not placed any material on record to substantiate as to how the impugned Judgment and Decree passed by the Ld. Trial Court suffers from any vice. It is pertinent to note that mere oral denial, in the absence of supporting documentary evidence, is insufficient to dislodge the consistent and corroborative documentary evidences produced by the respondent - plaintiff. Therefore, the Ld.

trial Court has rightly passed the decree in favour of the respondent - plaintiff after duly appreciating the valuable peace of evidence.

[21] In the present appeal, the appellant - defendant has raised a ground in the appeal memo that invoices / challans and bills referred to by the respondent - plaintiff, are not genuine. However, no evidence has been brought to the notice of this Court to substantiate the said claim. The said aspect is significant inasmuch as the entries of invoices have duly been made out in the ledger account produced by the respondent - plaintiff at Exh. 16. At this juncture, it will be profitable to refer the Judgment of the Hon'ble High Court of Rajasthan in the case of ***Balmukand & Anr. Versus Jagan Nath*** reported in ***1963 (0) AIR(Raj) 212***, wherein, it is held as under:-

*“8. The principal point made by the learned District Judge in connection with the various entries from the plaintiffs' account-books was that these books were not at all reliable. The first reason which persuaded the learned Judge to come to this conclusion was that the plaintiffs' case, as disclosed in their plaint as well as from their books, was that they had purchased Sarson for the defendant from the 25th April, 1951, onwards, and in that connection the evidence of P. W. 8 Shriram was -- he was one of the persons from whom the*

*plaintiffs purchased a few bags of Sarson on behalf of the defendant -- that the plaintiffs had purchased Sarson weighing 17 maunds and 24 seers at the rate of Rs. 25/15/3 per maund at a total cost of Rs. 465/5/3 on the 24th April, 1951 vide entries in their Bahis Exs. 1 and 2 P. W. 8. Another point made by the learned Judge was that while according to the case of the plaintiffs, Sarson had been purchased by them for the defendant in sec. 2008, the books of Taliram Badrinarain of which P. W. Shriram was the proprietor, recorded that these purchases were made in the month of Chait of sec. 2007, and the learned Judge observed that*

*"It is really suspicious how the Sarson which is alleged to have been purchased in Sambat 2008 was mentioned in the ledger of Sriram on Chait Sudi 9 Sambat 2007."*

*and thus concluded the learned Judge that the entry of Rs. 465/5/3 in the ledger of P. W. Sriram was nothing but fictitious. Much of the difficulty with which the learned Judge seems to have been faced arose from the fact that the points of criticism on which he based his judgment were never made the subjectmatter of any attack on behalf of the defendant when either the plaintiffs' Munim Surajbhan or the plaintiff Dharamchand or P. W. Shriram happened to be in the witness-box. It has been strenuously argued by learned counsel for the plaintiffs, therefore, that it was entirely wrong on the part of the learned Judge to have based his judgment on criticism of that character, and it was further argued that if the learned Judge had cared to go a little more deeply into the matter, he would have found that the discrepancies which he thought were unanswerable were capable of being very easily and satisfactorily answered.*

**9.** *Reverting to the first point of criticism set out above, learned counsel pointed out that the mention of the particular deal by P. W. Shriram as having been made on the 24th April, 1951, is nothing but an unfortunate slip of pen on the part of*

*the learned Judge who recorded the statement, and it was further submitted in this connection that that would be obvious because that witness had referred to the entries from his books Exs. 1 and 2/ P.W. 8, and even a casual perusal of those entries would show that the entries were referable to the date 26th April, 1951, and consequently the learned Judge was hardly justified in making capital out of this trifling error.*

*It was again pointed out that so far as the plaintiffs' books were concerned, they showed that the transaction in question had been made on the 25th April, 1951, and the same was then entered in the books of Shriram on the 26th April, 1951, which was perfectly explicable on the hypothesis that the books of Shriram might have been closed earlier for the 25th April, 1951, and, therefore, the transaction was entered therein on the next day, and that if the books of the plaintiffs had not by that time been closed on that date, it could appear in their books on the 25th April, 1951, and that there was nothing at all strange in that kind of happening. There is force in this criticism, and it clearly seems to me that if this inconsistency were put to Shriram or to Surajbhan, they would have satisfactorily explained that. But whether they could or could not, learned counsel for the plaintiffs is perfectly justified in my opinion, when he says that the District Judge was wrong when he was prepared to discard the books of the plaintiffs or those of Shriram on such a trifling inconsistency upon which no cross-examination had at all been directed on behalf of the defendant against any one of the plaintiffs' witnesses.*

**10.** *So far as the second point of criticism relied on in this connection by the learned Judges goes, that again depends upon when the Samwal year changed in the books of Shriram as contrasted with that in the plaintiffs' books. If the Samwat year in the case of Shriram changed after Chait Sudi 9 in any particular year and it changed in the case of the plaintiffs before that date (say, on Chait Sudi 1st), this seeming*

*discrepancy would be obviously explained to complete satisfaction. It is obvious that the learned District Judge should not have made capital out of points of this description upon which the parties themselves had not focussed their attention at the time of the trial and the party relying on such seeming though insignificant discrepancies had not cared to cross-examine the witnesses concerned on that aspect of the case.”*

[22] Considering the ratio laid down above and considering the pleadings of the respondent - plaintiff and the evidence adduced by the respondent - plaintiff, both in form of documentary and oral, are worthy enough to primarily discharge the burden cast upon the respondent - plaintiff to prove that goods were sold to the appellants for which part payment was made by the appellants, and that the balance amount of Rs. 12,30,172/- remains outstanding. It will be profitable at this juncture to refer the Judgment of Hon'ble High Court of Gujarat in the case of ***Shree Lalji Impex Versus Kp Sanghvi Middle East Dmcc*** reported in **2022 (0) AJEL-HC 244973**, wherein, it is held as under:-

*“17. In case on hand, it is cleared that defendants have no real prospect of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. In view of the above facts and circumstances, we find that the Commercial Court has given proper reason in passing the impugned summary judgment. We also find that the Commercial Court has given sufficient opportunity to the appellants to defend their case, but they failed to do so. We are in complete*

*agreement with conclusion arrived at by the Court and hence, we find no reasons to interfere with the same.*

*20. In the instant case, we could notice tendering of an application, the time of not only 30 days had been given, it is close to 72 days which had been availed to the other side. The defendants have chosen not to state anything except the bear denial. The documents particularly both the invoices which have been relied upon by the plaintiff for its claim and notably reflected in the account of the defendants, have also not been denied. There is no manner in which it is pointed out as to how any further evidence is going to be an impediment in the plaintiff succeeding in the claim. In fact, further evidence before this Court also was permitted to be brought on record and the defendant has chosen not to avail that opportunity as well. With a specific mention of the amount of both the invoices in the account of the defendant and when these two invoices formulate the sole claim of plaintiff " respondent herein, allowing of the same, by way of judgment, on the Trial Court following due procedure as also grant of interest as per the provisions of Rule 34 of the Civil Procedure Code would warrant no interference."*

**[23]** In the present case, before this Appellate Court no real proposed defence has been highlighted by the appellant - defendant. It has not been brought to the notice of this Court as to whether the amount of decree has been deposited with protest by the appellant - defendant. Upon a query by this Court, the appellant defendant expressed disability to deposit the payment of decree which is a money decree. The only issue raised by the appellant is that the impugned transaction relied upon by the respondent - plaintiff does not directly involve the appellant but her

husband. However, as rightly pointed out by the Ld. Advocate for the respondent - plaintiff that in the statement before the Police all the firms have been narrated including the appellant - defendant. Moreover, not even the slightest doubt regarding the transaction involved in the litigation has been raised by the appellant. Considering this, the respondent - plaintiff has successfully proved that the job work was executed by the respondent - plaintiff on behalf of the appellant - defendant and the outstanding amount for the invoices have not been paid, therefore, the Ld. trial Court was justified in passing the decree in favour of the respondent - plaintiff.

**[24]** It is a settled principle of law that a civil dispute is to be adjudicated on the touchstone of preponderance of probabilities and the parties, particularly the plaintiff, who makes an assertion regarding a claim is supposed to prove the same. If the defendant disputes such claim, worthy evidence must be adduced to impeach the same. At this juncture, it will be profitable to refer the Judgment of the Hon'ble Apex Court in the case of *N.G.Dastane Versus S.Dastane* reported in **1975 (0) AIR(SC)**

**1534**, wherein, it is held as under:-

*“24. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Sec. 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this of process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue" Per Dixon, J. in Wright V/s. Wright, (1948) 77 CLR 191; or as said by Lord Denning, "the degree of probability depends on the subjectmatter. In proportion as the offence is grave, so ought the proof to be clear. Blyth V/s. Blyth, 1966-1 All ER 524." But whether the issue is one of cruelty or of a loan on a pro-note, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the*

*standard of proof to apply for finding whether the burden of proof is discharged.*

*25. Proof beyond reasonable doubt is proof by a higher standard which generally governs criminal trials or trials involving inquiry into issues of a quasi-criminal nature. A criminal trial involves the liberty of the subject which may not be taken away on a mere preponderance of probabilities. If the probabilities are so nicely balanced that a reasonable, not a vacillating, mind cannot find where the preponderance lies, a doubt arises regarding the existence of the fact to be proved and the benefit of such reasonable doubt goes to the accused. It is wrong to import such considerations in trials of a purely civil nature.”*

**[25]** Considering the ratio laid down in the above Judgment, in the present case, the evidence adduced by the respondent - plaintiff, both documentary and oral, is consistent with the pleadings. Therefore, the Ld. Commercial Court was justified in holding that amount of Rs. 12,30,172/- is due and payable by the appellant to the respondent.

**[26]** Considering above, the impugned Judgment and Decree passed by Ld. trial Court is just, proper and judicious which do not warrant any modification, intervention or reversal. Hence, accordingly the issues are decided and the following final order is passed:

**:: ORDER ::**

1. The present Commercial Appeal is hereby **Dismissed**.
2. The Judgment and Decree dated 07.11.2024 passed by the Ld. Principal Sr. Civil Judge, Surat, in Commercial Civil Suit No. 37/2023, is hereby **confirmed**.
3. Interim relief, if any, stands vacated forthwith.
4. Decree to be drawn accordingly.
5. Record and Proceedings be sent to the concerned Court.

Pronounced in open court today on this 09<sup>th</sup> of March,  
2026.

Date : 09.03.2026  
Place : Surat.

**(Rahul Arunkumar Trivedi)**  
Sessions Judge, Surat.  
Code No. **GJ01495**.

//kapil//