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IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE MANGROL DIST SURAT,

Regular Civil Suit No. 101 of 2019

Ex-84

Plaintiff: **Shabbir Kutubuddin Dhuliyawala, partner of Burhani General Stores and Parichay Electronics,**

Age 56, Occupation Business

Resident of Sainam Society Mandvi,

Tal. Mangrol, Dist. Surat.

v/s.

Defendant: **Narendra Sakarchand Shah**
Age: 63, Occupation Business
Resident of Behind Railway Station Ruhi
Apartment, Nehru Street, Vapi, Tal. Dist. Vapi

Subject: **Suit for Recovery of money with interest**

Appearances
Ld. Advocate Y.A.LUNAT for the Plaintiff
Ld. Advocate A. P. Shah for the defendant.

JUDGMENT

1. The plaintiff has filed a present suit for Recovery of money with interest from the defendant. The short facts of the plaintiff case is that the plaintiff and his family members run a partnership firm registered under the name Burhani General Stores and Parichay Electronics. As an authorized partner empowered by other partners, the plaintiff has filed the present suit. The said partnership firm is operating at village Zankhvav, Taluka Mangrol, District Surat. The defendant, who is a known person and also the Sarpanch of plaintiff's village, used to visit the plaintiff’s shop and purchase goods such as cement, sheets, mobile phones, and other general and electronic items. Since 2008, the defendant has been regularly purchasing goods on the basis of business relations and mutual trust. The plaintiff maintained an account of the defendant in his books as per such transactions. The plaintiff used to deliver goods either at the defendant’s place or at the required site. All transactions were recorded in the account books—goods supplied were entered on the debit side and payments made by the defendant were entered on the credit side. After adjusting all payments made, a sum of ₹98,149/- remains outstanding against the defendant. The defendant had visited the shop, verified the accounts, and acknowledged the outstanding amount. The plaintiff has send notice through RPAD to the defendant for demanding due amount but the defendant has not replied to the notice and the defendant has not paid due amount to the plaintiff. Hence, the plaintiff has filed this suit to recover amount of the Rs. 98,149 with interest at

the rate of 18% from the defendant.

2. After contesting the suit, the defendant hereby filed his written statement vide Ex- 8 wherein he denied the facts of plaintiff's case in toto. In his written statement , the defendant has stated that the facts stated in the plaint are false and fabricated and are denied. In fact, the present plaintiff has not stated in the plaint the exact date on which goods were last supplied to the defendant, nor from which date the bill amounts became due from the defendant, nor which specific bills remain unpaid. Thus, the present plaintiff has not presented the true facts before the Hon'ble Court. Further, the plaintiff has also not mentioned from which year the alleged outstanding amount of ₹98,149/- has been due. The statement of ledger account produced by the present plaintiff is completely false, and the plaintiff has entered entirely incorrect bills in the said ledger statement. As per the ledger statement given by the plaintiff in this matter, an amount of ₹51,749/- was shown as outstanding on 16/01/2009. Out of this, the defendant paid ₹25,000/- in cash on 31/01/2009 when the plaintiff's representative came for collection. Although a receipt was to be issued by the plaintiff's collection clerk, it was not given, and it was stated that the receipt signed by the proprietor would be sent later. Thereafter, the remaining amount of ₹26,749/- was also paid by the defendant on 15/02/2009 when the plaintiff's representative came and collected it. No receipt was issued for this amount either, and both these payments were not credited in the plaintiff's ledger account. Therefore, no amount remains due from the defendant, and the defendant is not liable to pay any amount to the plaintiff. The present plaintiff has filed a completely false and baseless claim. Even thereafter, the plaintiff continued to wrongfully demand payment from the defendant. At that time, when the defendant asked for the ledger account statement, the plaintiff provided computer-generated statements showing an outstanding amount of

₹51,749/- for the periods from 01/04/2009 to 31/03/2010, from 01/04/2010 to 31/03/2011, and from 01/04/2014 to 18/04/2014. At that time also, the defendant reminded the plaintiff that ₹25,000/- and ₹26,749/- had already been paid in cash. In the year 2014, the plaintiff admitted the mistake and stated that due to accounting errors, and upon mutual understanding and oral request, all dues had been settled and no amount remained outstanding in the defendant's account. Thus, the present plaintiff has produced false and fabricated bills and entered them in the ledger account. Therefore, the claim filed by the present plaintiff before the Hon'ble Court is completely false, fabricated, and barred by limitation. Hence, pray to reject plaintiff's suit with cost.

3. For determination of this suit, my ld. predecessor has framed the following issued vide ex- 9

(1) Whether the plaintiff proves that an amount of ₹98,149/- (Rupees Ninety-Eight Thousand One Hundred Forty-Nine) is due and payable by the defendant towards business transactions between the parties?

(2) Whether the plaintiff proves that he is entitled to recover ₹98,149/- (Rupees Ninety-Eight Thousand One Hundred Forty-Nine) from the defendant?

(3) Whether the plaintiff is entitled to interest at the rate of 18% per annum on the outstanding amount from the date of the suit till realization?

(4) Whether the defendant proves that the present suit has been wrongly filed

by the plaintiff based on false bills and incorrect ledger statements?

(5) Whether the plaintiff's suit is legally maintainable?

(6) Whether the plaintiff is entitled to get the relief as prayed for?

(7) What order and Decree?

4. Reply to the Issues

1. In Affirmative

2. In Affirmative

3. Partly Affirmative

4. In Negative

5. In Affirmative

6. In Affirmative

7. As per final order

5. The plaintiff has produced the following oral as well as documentary evidence.

<u>Oral Evidence</u>

Sr, No	Exhibit	Particulars
1	22	Affidavit of Examination-in-Chief of plaintiff Shabbir

		Kutubuddin Dhuliyawala

Documentory Evidence

Sr. No.	Exhibit	Particulars
1	42	Copy of postal receipt
2	43	Copy of notice through RPAD
3	44	Copy of defendant Ledger account maintain by Bhurani General Store
4	45	Copy of General Power of Attorney
5	46	Copy of Partnership Deed
6	47	Bill Book Number 35(Cover Page)
7	48 to 69	Bills
8	75	Original Partnership Deed
9	76	Original Power of Attorney

Thereafter, the plaintiff_ has filed closing pursis Vide Ex-78. So, No further evidence is produced by the plaintiff.

6. The defendant has given sufficient opportunity to produce evidence. But the defendant has failed to produce evidence. The defendant has given application vide ex-81 to grant him time to produce evidence but the application of defendant vide ex-81 is rejected and the right of defendant to produce his evidence is hereby closed. So no evidence is produced on the defendant's side.

7. Thereafter arguments heard on both sides.

Reasons

8. The phrase " burden of proof" has not been defined in the Indian Evidence Act. This phrase has two distinct meanings. In the first sense, it means the burden of establishing a case and in the second sense, the burden of introducing evidence. The Essential distance between these two is that the former never shifts and remains throughout the entire case, while the latter shifts from time to time as the case proceeds. The initial burden of proof would be on the plaintiff in view of section 101 of Evidence Act. The elementary rule is Section 101 is inflexible. In terms of section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

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, section 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 a 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, the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second two weigh them, though the two may often intermingle. The impossible is weed 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. Keeping in consideration the above discussed principles let me discuss the issues framed in the present suit chronologically.

Issues no. 1 to 3

9. The issues no 1 to 3 are connect with each other hence, issue no. 1 to 3 are discussed jointly.

The plaintiff Shabbir Kutubuddin Dhuliyawala filed an affidavit of examination in chief vide exhibit 22. The plaintiff has also file his additional affidavit of examination in chief which is kept with Ex- 22. In his deposition, the plaintiff has discussed all the facts as per his pleadings. So, in order to avoid repetition , it is not required to discuss here in brief. The plaintiff has referred all the documents produced along with his examination in chief in his deposition. The plaintiff has produced documents vide ex- 42 to 69 & ex- 75 ,76 in support of his suit. The defendant has not produced any evidence in support of his defense and his right to produce evidence is closed. I have considered the evidence produced by the plaintiff. Looking to the documents produced vide ex-75, it is a original partnership deed. Looking to the said documents, it appears that Burhani General Stores is a partnership firm and Kutbuddin Husenbhai Dhuliyawala is one of the partner of Burhani General Stores. Said partnership deed was registered with serial no 2609 dated 6th Aprial 2018 through Notary advocate. Looking to the document produced vide ex-76, said document is original power of attorney and as per the documents the other pratners of Burhani General Stores has given power of attorney to the plaintiff for filing judicial proceeding before the court. The plaintiff is cross-examined by the defendant but the defendant has not succeed to bring any material facts for his defense. In cross-examination, the plaintiff stated that " he runs a business at Zankhvav under the name Burhani General Stores. They are three partners – he, his wife, and his brother Burhanibhai. The plaintifff admitted that in the title of his plaint, he has not mentioned the fact that his wife and his brother are partners in Burhani General Stores. He admitted that he has not stated in the plaint whether this partnership firm is registered or not. The plaintiff admitted that he has not mentioned in the plaint that his wife and brother had authorized him to file this suit. The Plaintiff voluntarily states that the original Power of Attorney has been produced. He admitted that he has not stated in the plaint that he has filed this suit on behalf of his wife and brother. The plaintiff admitted that in Exhibit-1 plaint, he has not signed on behalf of his wife and brother. he does not remember the date on which his brother and wife gave him the Power of Attorney. The Power of Attorney was executed before Advocate Dharmeshbhai, Notary, at Mandvi. He does not remember its registration number. He does not exactly remember the year of the Power of Attorney produced by him ". So, looking to the cross examination, the defendant has not bring any material facts which rebut the evidence of the plaintiff. The plaintiff has already produced original partnership deed at ex-75 and also produced original power of attorney at ex-76. So it is not required to mention in the pleading that the plaintiff's wife and his brother are partners in Burhani General Stores. Further the partners of Burhani General Stores has given power of attorney to the plaintiff. So the plaintiff is not required to mention in the plaint that his wife and brother had authorized him to file present suit. Further there is not need to obtain signatures of other partners in the plaint. The other partners have already given power of attorney to the plaintiff and during the trial, the plaintiff has produced said power of attorney in original.

Further Looking to the documents filed by the plaintiff vide ex-47, it is a cover page of Burhani Bill Book no. 35 period from 5/8/2008 to 5/12/2008. Looking to the ex-51 it is a copy of bill no. 3438 in which defendant's name is shown in bill. Looking to the ex-52, it is a bill no. 3442 in the name of Vinay Traders. Looking to the ex-53, said document is a bill no. 3445 in the name of Vinay Traders(Narendrabhai Shah). Looking to the ex-54, said document is a bill no. 3452 in the name of Narendrabhai Shah. Looking to documents produced at ex-55 to 68, said documents are bill purchased by Vinay Traders in the name of Narendrabhai S Shah. So Looking to the said documents, it appeared that the defendants purchased goods from the plaintiff's partnerships firm. So, it established business transaction between the parties.

The plaintiff has been cross-examined by the defendant but no any material facts brought on the record to rebut this facts. The Plaintiff in his cross examination admitted that " in his plaint, he has not provided a detailed table showing on which dates and what quantity of goods were supplied to the defendant. The plaintiff voluntarily states that such details were submitted later. The plaintiff in his cross examination states that he does not remember on which date that table was submitted. The plaintiff admitted that in the plaint, he has not mentioned the details of the bills sent to the defendant, including dates and amounts. The plaintiff voluntarily states that a statement has been produced. The plaintiff in his cross examination states that he does not remember the date of the last bill issued to the defendant. The plaintiff admitted that he has not mentioned in the plaint when the last transaction took place after 2008 ". But the plaintiff has produced bill vide ex- 47 to 69. Said bills established that the defendant had purchased good from the plaintiff on the date mentioned in the bill. Further, the plaintiff in his cross examination stated that " he had issued a notice to the defendant for recovery of money, but he does not remember the date of the notice. The plaintiff in his cross examination states that whenever he supply goods to any customer, he first prepare a delivery challan. He is admitted that he has not produced copies of such challans in this case. He has produced only the bills. The plaintiff admitted in cross examination that the bills produced by him do not match with the statement. However, the plaintiff voluntarily states that voucher numbers are written, and otherwise everything matches. The plaintiff admitted that he has not produced copies of the vouchers before this Court. Bill No. 3407 appears as the first entry in the statement produced by him. It is admitted that in Bill No. 3407, there is no mention that Vinay Traders accepted the goods. It is admitted that the bill does not mention the vehicle number (tempo) used for delivery of the goods. The witness voluntarily states that it was direct delivery. It is admitted that in the bills produced from Exhibit-48 to Exhibit-69, there are no signatures of the person who received the goods".

So plaintiff admitted in cross-examination that he has not produced copy of vouchers. The plaintiff also admitted that he has not produced copy of challan. The plaintiff also admitted that the documents produced vide ex-48 to 69, no signature of the receiver of the goods are mentioned. However, looking to the document vide ex-48 to 69, said documents are bill purchased by Vinay Traders and name of the defendant shown in the said bills. Further the defendant has not brought any material facts such as the defendant had not received good from the plaintiff. Further the plaintiff has not produced vouchers and challan but the plaintiff has produced all bills which established that the defendant had purchased goods from the plaintiff. Further the amount of bill and date are match with the entry of ledger. The documents produced vide ex-44 is a copy of ledger account of the defendant maintained by Burhani General Stores. As per the document vide ex-44 total outstanding amount of Rs. 98,149/- is receivable period from 8/8/2008 to 22/6/2019. As per the ledger statements, the entries mentioned in the ledger are match with the bills and the amount and date of the bills are same as per statement of ledger. The said statement is period from 8/8/2008 to 16/1/2009. So it established that total amount of Rs. 98,149/- is due and receivable amount. So, mere non production of vouchers not weaken the case of the plaintiff. The defendant has cross-examined the plaintiff but the defendant has failed to rebut the content of the documents produced vide ex-44 and ex-48 to 69. Further, the bills established that the defendant had purchased goods from the plaintiff it means the defendant had received said goods.

Further the plaintiff in his cross-examination stated that on behalf of the firm, he pay income tax. In 2008, he paid income tax on behalf of the firm, and since 2008 he has continuously paid income tax on behalf of the firm. He does not remember whether any amount related to this income tax is outstanding against Narendra Sankalchand. It is admitted by the plaintiff that that Narendra Sakalchand was doing business in the name of Vinay Trading. It is admitted that this suit could not have been filed in the name of Vinay Traders. It is admitted that he does not know whether Vinay Traders is a proprietorship firm or a partnership firm. It is admitted that the date from which the amount due from the defendant has remained outstanding is not mentioned in his plaint. It is admitted that the date on which the last bill was given to the defendant is not mentioned in his plaint. It is admitted that the dates on which the defendant made payments are not mentioned in the plaint. It is admitted that Parichay Electronics and Burhani General Stores both operate from the same shop. It is admitted that he has not mentioned the details of the partners of Parichay Electronics in his plaint. It is admitted that the Power of Attorney of Parichay Electronics has not been produced in this case. It is admitted that the notice at Exhibit 43 was issued in the name of Vinay Traders. It is admitted that he has produced a statement in the name of Vinay Traders. It is admitted that the notice does not mention from which date the amount of Rs. 98,149/- became due. It is admitted that the notice does not mention on which dates and how much goods were supplied. The plaintiff voluntarily states that he has produced the statement. It is admitted that the notice does not mention that the statement was sent along with it. He does not exactly remember whether this notice was sent in 2018 or 2019. He does not recall whether the postal acknowledgment of service of notice to the defendant has been produced. He does not remember who prepared the partnership deed produced by him. The partnership deed was prepared by his Chartered Accountant in Surat. It is admitted that this partnership deed may not have been registered or recorded in any government office. It is admitted that this partnership deed is in the name of Burhani General Stores.

However, the defendants has not brought any material facts in plaintiff's cross-examination to support his defense. Looking to the document produced vide ex-44, the said document is ledger statement of Vinay Traders maintained by Burhani General Stores. The name of defendant Narendra Sankarchnd Shah appeared in said documents. Further the bill also in the name of Vinay Traders but the name of the defendant are shown in the bills. Further the demand notice issue by the plaintiff vide ex-43 is in the name of Narendra Shankarchand Shah. The notice has issued on 2.11.2018. In said notice the plaintiff demanded Rs. 98,149/- from the defendant. Looking to the document produced vide ex-42 is a postal receipt to send notice. So the notice is send to the defendant on 2.11.2018. So the notice is issued in the name of the defendant. Further the ledger also shown the name of the defendant. So the burden to prove that defendant is not a proprietor of Vinay Traders shifted to the defendant. The defendant is not denied in his written statement that he is not proprietor of

Vinay Traders. The plaintiff in his cross examination also admitted that the defendant is a proprietor of Vinay Traders. Further the defendant in his written statement stated that as per the ledger statement, 51749 due on 16/01/2009 and the defendant has paid Rs. 25,000 on 31/01/2009 and the remaining amount of Rs. 26,749 was paid on 15/02/2009. So the defendant already admitted that the ledger statement produced by the plaintiff is his own ledger statement and a business tranctions took place between the parties and the defendant also admitted that he had purchased goods from the plaintiff. However, the defendant has not produced any evidence which establish that the defendant had paid amount of Rs. 25,000 and 26,749 to the plaintiff. Hence, the defendant has failed to prove that he had paid amount to the plaintiff. So looking to the evidence on record, the plaintiff established that the amount of Rs. 98,149 is due from the defendant and the plaintiff is entitle to recover said amount from the defendant. Hence, the plaintiff is proved the facts of issues no. 1 and 2. Hence, my answer of issues no. 1 and 2 are in affirmative.

10. The plaintiff is entitled to recover amount of Rs. 98,149 from the defendant. The plaintiff is succeed to prove the fact of issue no. 1 and 2. But the plaintiff has not produced contract between the parties, to prove the rate of interest. Looking to the documents produced vide ex-44, the total amount receivable is 98,149. The statement is period from 8/8/2008 to 31/03/2009 and thereafter 1/4/2009 to 22/06/2019. As per the statement the amount of Rs. 98,149 became due on 16/01/2009 and as per the statement said amount is receivable on 31/03/2016. So the ledger account has not reflected any interest on due amount. The plaintiff has not counted and not credited any interest in ledger account. Further the plaintiff has send notice for demanding Rs. 98,149/- but in notice, the plaintiff has not demanded any interest on such amount. However, the plaintiff is successfully established that the amount of Rs. 98,149

became due from the defendant and he is entitled to recover said amount from the defendant. In this circumstances, in the interest of the justice some interest is granted to the plaintiff on due amount. The Plaintiff has claimed interest @ 18 % which is very high. On considering the prevailing bank rate on moneys lent and provision of Section 34 of C.P.C., it would be legal and proper, if interest is granted at the rate of 4.5 % on due amount of Rs.98,149/- Hence, my answers for issue nos. 3 are partly in affirmative.

Issue no. 4

11. The defendant has not produced any evidence to prove fact of issue no. 4 the right of defendant to produce evidence is closed. Even in the cross-examination of the plaintiff, the defendant has not brought any material fact which establish that false bills are false and ledger statements are incorrect. Hence, the defendant has failed to prove issue no. 4 so my answer of issue no. 4 is in negative.

Issue no. 5

12 The plaintiff has filed this suit for recovery of money from the defendant. The parties had given opportunity to produce their evidence. The plaintiff has produced his evidence. The defendant has produced his written statement. The defendant has cross-examined the plaintiff. So the entire suit is decided on merits. Even the plaintiff has proved issue no. 1 and 2. Hence, this suit is legally tenable so my answer of this issue is in affirmative.

Issue no. 6

13 As discussed above, the plaintiff has succeed to prove the facts of issues no. 1 and 2 and the plaintiff is entitle to recover amount of Rs. 98,149/- from the defendant. Even the plaintiff is entitled to get interest at the rate 4.5% from the defendant on due amounts. So the plaintiff is entitled to get relief as prayed for. So my answer of issue no. 6 is in affirmative and as per issue no. 7, I pass following final order.

ORDER

1. Suit of the plaintiff is hereby allowed.
2. It is hereby ordered that the defendant shall pay amount of Rs. 98,149/- (Rupees Ninety Eight Thousand One Hundred Forty Nine only) to the plaintiff along with simple interest @ 4.5% per annum from the date of filing of the suit till its realization.
3. Defendant shall bear the cost of the plaintiff.
4. Decree shall be drawn accordingly.

Pronounced in the open court, as on today.

Place: Mangrol
Date: 12.05.2026

(K. R. Trivedi)
Additional Senior Civil Judge
Civil Court, Mangrol, Di. Surat
Code : GJ01275