



Received on : 26/09/2024

Registered on : 26/09/2024

Decided on : 08/05/2026

Duration :01Y- 07M-12D

IN THE COURT OF 2nd ADDITIONAL SENIOR CIVIL JUDGE ,
AT RAJKOT.

Commercial Civil Suit No. 37/2024.

Exhibit-36

Plaintiff:

BALAJI TRADING COMPANY,

(Through it's Proprietor JITENDRA NATAVARLAL CHANDARANA),

Address: 1,Navratna Apartment,
Opposite Nilkanth Cinema,
Kothariya Main Road,Rajkot

Versus

Defendants:

**(1)Shree Satpuda Tapi Parisar Sahakari Sakar Karakhana
Limited(Registered society with Reg. No. DHL/PRG/(A)/(2) on
dated 05/09/1969)**

**Address:Purusottamnagar,Sub-dist.Shahada,
Dist. Nandurbar, State-Maharashtra.**

(2)Dipak Purushottam Patil, (Chairman of the aforementioned co-operative society)

Address:Village- Po. Vidyalay (Mohide Tah),
Sub-dist. Shahada,
Dist. Nandurbar, State-Maharashtra.

(3)Premsing Himmatsing Aher,(Vice-Chairman of the aforementioned co-operative society)

Address :Village- Po. Mubarakpur,
Sub-dist. Shahada,
Dist. Nandurbar, State-Maharashtra.

(4)Ashok Supdu Patil,(Managing Director of the aforementioned co-operative society)

Address :Village- Po. Purusottamnagar, Sub-dist. Shahada,
Dist. Nandurbar, State-Maharashtra.

(5)Chhotulal Giridhar Patil alias C. G. Patil, (Secretary of the aforementioned co-operative society)

Address:Village- Po. Mubarakpur, Sub-dist. Shahada,
Dist. Nandurbar, State-Maharashtra.

.....
Subject :-Suit for recovery of Rs.13,68,196/- with interest and charges
.....

.....
Ld. Advocate for the Petitioner :- D. S. TRIVEDI

Ld. Advocate for the Defendants :- -----
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-: J U D G M E N T :-

1. The plaintiff has filed this commercial civil Suit against the defendants to recover due amount of **Rs.13,68,196/- (Rupees Thirteen Lac Sixty Eight Thousand One Hundred Ninety Six Only)** with interest.

(1.1) That the plaintiff is doing business with name as Balaji Trading Company at Rajkot and defendant no. 1 is registered co- operative society and defendant no. 2 to defendant no. 5 are office bearer of the defendant no. 1 co- operative society and they are involving in day to day business of defendant no. 1 co- operative society.

(1.2) That Mr. Yashvantraai Durlabhji Gotecha @ Kanubhai is an owner of Kathiyawad Treding company and doing business as a well known reputed commission agent of sugar and agriculture commodities. Mr. Mr. Yashvantraai Durlabhji Gotecha @ Kanubhai has a business relationship with defendant no. 2 to defendant no. 5. Mr. Yashvantraai Durlabhji Gotecha @ Kanubhai has contected defendant

no. 2 to defendant no. 5 with plaintiff thus plaintiff has trusted with defendants for business transaction and investment in the defendant no. 1 society.

(1.3) That plaintiff has a invested Rs. 17,32,500/-and transferred amount on dtd. 06.08.2021 through his bank Citizen Co- operative Bank Ltd, Sorathiya Wadi Branch, Rajkot and defendant no. 2 to defendant no. 5 agreed to send sugar as per direction of plaintiff or send deposit back when demanded.

(1.4) That the defendant had supplied sugar of Rs. 3,64,304.44 paisa vide invoice no. 1019, dtd. 25.02.2022 thereafter defendant had not supplied as demanded by plaintiff or not returned the deposited amount. Subsequently, Plaintiff has repeatedly contacted for due amount Thus, the defendants are liable to pay the amount **Rs.13,68,196/-** with 18 % interest to the plaintiff. Hence, plaintiff has filed present suit to grant relief(s) of para 13 of the plaint.

2. The summons for appearance was issued against the defendants. The summons was duly served upon the defendant no.3 and summons of defendant no. 1,2,4,5 were sent through R.PAD. But defendant no. 1,2,4,5 have

refused to same thus defendants or Advocate of the defendants did not appear in this suit.. Hence suit has been proceeded ex-parte against the defendants.

3. Thereafter Issues were framed vide Exh.19 On dtd. 27.01.2026.

4. The plaintiff has adduced the following oral and documentary evidence in support of his case:

ORAL EVIDENCE

Sr. No	Details	Exh.
1	Deposition of Plaintiff JITENDRA NATAVARLAL CHANDARANA	23

DOCUMENTARY EVIDENCE

Sr.No	Details	Exh.
1	Copy of GST registration certificate	27
2	Ledger of defendants in book of account of plaintiff	28
3	DLSA mediation center Report	29
4	DLSA mediation center Receipt	30

5	Tax invoice no. 1019, dtd. 25.02.2022	31
6	E-way bill of Tax invoice no. 1019, dtd. 25.02.2022	32
7	Debit RTGS Advice of Citizen Co- operative Bank Ltd, Sorathiya Wadi Branch, Rajkot, dtd. 18.04.2026	33
8	Statement of Citizen Co- operative Bank Ltd, Sorathiya Wadi Branch, Rajkot account no. 471004310000065	34

5. Thereafter, the learned Advocate for the **plaintiff has given closing purshis at Exh.35** whereby he has declared that the plaintiff do not want to lead further evidence in support of the case. The defendants have neither submitted any documentary evidence nor led any oral evidence.
6. Heard the learned Advocate for the plaintiff. The advocate of the plaintiff had argued at length where as there was no submission from the side of the defendants.
7. Court has framed Issues vide **Exh. 19** as under :-
1. Whether the Plaintiff proves that the plaintiff is a proprietor of Balaji Trading Company firm ?

2. Whether the Plaintiff proves that the defendant no.1 is a registered co operative society and defendant no. 2 to 5 are the authorized persons of the registered co operative society ?
3. Whether the Plaintiff proves that plaintiff has given order to defendants for purchased sugar and sent total Rs. 17,32,500/- through his bank as advance to the defendants ?
4. Whether the plaintiff proves that the defendants have supplied sugar of Rs. 3,64,304.44 paisa vide invoice no. 1019, dtd. 25.02.2022 thereafter defendants have not supplied sugar ?
5. Whether the plaintiff proves that he is entitled to recover **Rs.13,68,196/-** from the defendants ?
6. Whether the plaintiff is entitled to get interest of 18 % from defendants ?
7. What Order and decree ?
8. The answers to the above issues are as under:

- 1 : Affirmative.
- 2 : Affirmative.
- 3 : Affirmative.
- 4 : Affirmative.
- 5 : Affirmative.
6. : partly Affirmative.
- 7 : As per final order.

REASONS FOR THE DECISION

9. In order to avoid repetition of the discussed fact, the Issues no- **1,2,3,4,5** have been discussed conjointly. To prove the said issues; the Plaintiff **JITENDRA NATAVARLAL CHANDARANA** has filed an affidavit of examination -in-chief vide **exhibit-23** under Order 18, R. 4 of CPC. He has reproduced the averments of the plaint stated on oath in his affidavit. The plaintiff has produced supporting documents vide **exhibit -27 to exhibit-34** with his affidavit for examination in chief, Which remained unchallenged and hence are Exhibited.

(9.1) Plaintiff **JITENDRA NATAVARLAL CHANDARANA** has mentioned in his examination-in-chief that plaintiff is

doing business with name as Balaji Trading Company at Rajkot and defendant no. 1 is registered co-operative society and defendant no. 2 to defendant no. 5 are office bearer of the defendant no. 1 co-operative society and they are involving in day to day business of defendant no. 1 co-operative society. Mr. Yashvantraai Durlabhji Gotecha @ Kanubhai is an owner of Kathiyawad Trading company and doing business as a well known reputed commission agent of sugar and agriculture commodities. Mr. Mr. Yashvantraai Durlabhji Gotecha @ Kanubhai has a business relationship with defendant no. 2 to defendant no. 5. Mr. Yashvantraai Durlabhji Gotecha @ Kanubhai has contacted defendant no. 2 to defendant no. 5 with plaintiff thus plaintiff has trusted with defendants for business transaction and investment in the defendant no. 1 society. Plaintiff has invested Rs. 17,32,500/-and transferred amount on dtd. 06.08.2021 through his bank Citizen Co-operative Bank Ltd, Sorathiya Wadi Branch, Rajkot and defendant no. 2 to defendant no. 5 agreed to send sugar as per direction of plaintiff or send deposit back when demanded. Defendant had supplied sugar of Rs. 3,64,304.44 paisa vide invoice no. 1019, dtd. 25.02.2022 thereafter defendant had not supplied as demanded by plaintiff or not returned the deposited amount.

Subsequently, Plaintiff has repeatedly contacted for due amount Thus, the defendants are liable to pay the amount **Rs.13,68,196/-** with 18 % interest to the plaintiff. Advocate of defendants have not cross-examine the plaintiff thereafter plaintiff's evidence is being unchallenged.

(9.2) It is a very well settled principle of law that where the party has not stepped into the witness box and did not come to deny the averment of the plaint of the plaintiff, the Court can draw an adverse inference against him under Section-114 of Indian Evidence Act 1872. It is also well settled by Hon'ble Supreme Court in the case of **Vidhyadahar v/s. Manikrao reported in AIR 1999 SC 1441**. The Hon'ble Apex Court in the Case of **"Adivekka & Ors v/s Hanamavva Korm Venkatesh and ors reported in AIR 2007 SC 2025** Note - Section 114 of Evidence Act. *"Non Examination of party to suit, adverse Inference can be drawn against the party."* So as per the above referred judgments of the Hon'ble Supreme Court, an adverse inference can be drawn against the present defendant.

10. This court gone through the entire oral and documentary evidence and have given thoughtful consideration to the

version made on oath by the witness. The averment of the plaintiff has not been challenged by the defendant and the court has no reason to disbelieve what had been stated in the plaint or by the witness on oath. Hence, in absence of cogent evidence challenging the averment of the plaintiff, this Court firmly believes that plaintiff is entitled to recover the amount of **Rs.13,68,196/-** from the defendants. Hence the **issue No: 1,2,3,4 & 5 are** answered in **affirmative**.

11. For Issues No. 6, 7 :

Plaintiff has prayed for decree of **Rs.13,68,196/-** with 18 % interest per annum. As I have discussed above in issue no 1,2,3,4,5 that Plaintiff has a invested Rs. 17,32,500/- and transferred amount on dtd. 06.08.2021 through his bank Citizen Co- operative Bank Ltd, Sorathiya Wadi Branch, Rajkot and defendant no. 2 to defendant no. 5 agreed to send sugar as per direction of plaintiff or send deposit back when demanded. Defendant had supplied sugar of Rs. 3,64,304.44 paisa vide invoice no. 1019, dtd. 25.02.2022 thereafter defendant had not supplied as demanded by plaintiff or not returned the deposited amount. Subsequently, Plaintiff has repeatedly contacted for due amount Thus, the defendants are liable to pay the

amount **Rs.13,68,196/-** with 18 % interest to the plaintiff. Considering the statement of bank account, it has been clearly mentioned that plaintiff has transferred amount Rs. 17,32,500/- to account of defendant no. 1. Defendants were failed to fulfill their legal obligation of repaying the amount on time to the plaintiff and also failed to defense in the court. Moreover, **DLSA has issued notice for mediation but defendants were not presented for the same** and they have not paid the due amount. It is clear from the above discussion that the defendants had not paid the amount of **Rs.13,68,196/-** thus the amount is due to the plaintiff. As the defendants have failed to pay the due amount, the plaintiff becomes entitled to recover the amount of **Rs.13,68,196/-** . Plaintiff is also entitled to get simple interest @ 7% per annum on due amount from the date of institution of the suit. As discussed above, on considering the documents produced by the plaintiff, it is proved that defendants are liable to pay the said amount **Rs.13,68,196/-** Jointly and severally. Therefore, plaintiff is entitled to receive the same amount from defendants. Hence answering the **issue No: 6 in partly affirmative**, thus this court pass the following final order :

:- FINAL ORDER :-

1. The suit of the plaintiff is hereby **Partly allowed**.
2. It is ordered that the defendants shall pay **Rs.13,68,196/- (Rupees Thirteen Lac Sixty Eight Thousand One Hundred Ninety Six Only)** Jointly and severally to plaintiff with simple interest @ of 7 % p.a. from the date of filing of the suit till the realization of the same amount.
3. The defendants are ordered to pay the said amount to the plaintiff within three month from the date of this order.
4. The defendants are directed to bear the costs of the plaintiff's suit.
5. Decree to be drawn accordingly.

Given under my hand and the seal of this Court on this the 08th day of May, 2026.

Date: 08/05/2026

Place : Rajkot.

(**Vinaykumar Dasarathlal Modh**)

(GJ01033)

2nd Additional Senior Civil Judge &
Commercial Court Judge,
Rajkot