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Registered On : 16/06/2000
Decided on : 18/06/2019
Duration : Y. Ms. Ds.

**IN THE COURT OF 4TH ADDITIONAL SENIOR CIVIL
JUDGE, SURAT**

SPECIAL CIVIL SUIT NO. 276 of 2000

EXH._____

Plaintiffs:

**1. BHAGWATI CORPORATION OF PROPRIETARY
CONCERN**

Occupation- Business,

Address- zapabjar main road, Surat proprietor Smt. Bhagwatiben
Manojbhai Udanawala Age about- 32 years, Occupation- business
and housewife, address- 160, Sai Ashish Society, Parvat patiya,
Surat.

2. SHRI MANOJ RATILAL UDANAWALA

Age about: 40 years,

Occupation- Business,

Address- 160, Sai Ashish Society, Parvat patiya, Surat.

VERSUS

Defendants:

1. BALAJI INDUSTRIES AND PROPRIETARY CONCERN

Occupation- Business,

Address- Salabatpura, Malini Vadi, Surat.

2. BHUPENDRA NATVARLAL KAPADIYA

Age- Adult,

Occupation- Business,
Address- Salabatpura, Malini Vadi, Surat.

3. ANILKUMAR SHANTILAL KAPADIYA

4. NATWARLAL BRIJLAL KAPADIYA

5. GANGABEN WIFE OF NATWARLAL BRIJLAL KAPADIYA

6. RAMESHCHANDRA NATWARLAL KAPADIYA

7. HANSABEN RAMESHCHANDRA KAPADIYA

8. SHANTILAL NATWARLAL KAPADIYA

9. PUSHPABEN NATWARLAL KAPADIYA

10. RANJANABEN BHUPENDRABHAI KAPADIYA

11. MANSUBLAL NATWARLAL KAPADIYA

12. CHANDRIKABEN MANSUBLAL KAPADIYA

13. DHEERAJBHAI NATWARLAL KAPADIYA

14. CHANDRIKABEN DHEERAJLAL KAPADIYA

All Aged- Adult,
Occupation-Business,
Address-Ustampura, Malleshwar, Surat.

15. B.N. SILK MILLS EK PROPRIETARY PEDHI

Occupation- Business,
Address- 13/14, Satyanarayan Estate, Udhana Magdalla Road, Surat.

16. UMESH ARVINDLAL CHAPATWALA

Age- Adult,
Occupation- Business,
Address- 12, Rangeela Park, Opposite of Sagar Complex,
Adajan, Surat.

Appearance:

For plaintiff: Ld. Advocate Mr. J.J.Gandhi

For defendant no. 1 to 15: Ld. Advocate Mr. H.R.Modi

For defendant no. 3, 8, 13 &14 Mr. V.B.Kansadwala

For defendant no. 16 Mr. D.A.Chapatwala

Subject :- FOR RECOVERY OF DUES OF RS. ALONG WITH INTEREST AT THE RATE OF 18% P.A. AND COSTS OF THE SUIT ETC.

//J U D G M E N T

1. The brief facts of plaintiffs' suit is as under :-

Plaintiff no. 1 is proprietary concern and its proprietor is Smt. Bhagwatiben Manojbhai Udhanawala, plaintiff no. 2 is the husband of Bhagwatiben Manojbhai Udhanawala and plaintiff no. 2 is doing the business as well as all transactions of plaintiff no. 1's firm so he has all the knowledge about the fact. Plaintiff no. 1's firm is running at above address in Surat and doing business of yarn. Defendant no. 1 is the proprietor concern and defendant no. 2 is the proprietor of defendant no. 1's proprietary firm. Defendant nos. 2 to 14 are the members of one family and they are living together and doing their business commonly but for their convenience they have shown their names as a proprietors of different proprietary firm. Defendant no. 15 is the main firm of defendant nos. 2 to 14 and it is known in market as B.N. Silk Mills Group. Deceased defendant no. 4 is the proprietor of defendant no. 15's firm.

It is further stated that defendant nos. 1 to 15 were frequently purchasing the yarn from the plaintiff and by this way defendant nos. 1 to 15 have purchased in all the following materials from the plaintiffs.

GOODS PARTICULARS

Sr. No.	Date	Bill No.	Rupees
1	15-09-1998	62	23,864/-
2	15-09-1998	63	23,864/-

3	15-09-1998	64	23,864/-
4	15-09-1998	65	23,864/-
5	15-09-1998	66	23,864/-
6	15-09-1998	67	21,420/-
7	15-09-1998	68	21,420/-
8	15-09-1998	69	21,420/-
9	15-09-1998	70	21,420/-
10	15-09-1998	71	21,420/-
11	23-09-1998	72	21,420/-
12	23-09-1998	73	21,420/-
13	23-09-1998	74	21,420/-
14	23-09-1998	75	21,420/-
15	23-09-1998	76	21,420/-
Total			Rs. 3,33,520/-

From the above mentioned table transaction was done by defendant no. 16. Defendant no. 16 is working as an agent and he has taken responsibility on behalf of defendant nos 1 to 15 for the payment of above purchased material. They have further stated that according to the instructions of the defendants plaintiffs have send the delivery of material on factory of the defendant no. 15 which is their main firm i.e B.N. Silk Mills Group. Thus, delivery challan and bill was prepared in the name of defendant no. 15 and said bills were given to defendant nos. 1 to 15. Thereafter, defendants said that above stated material is to be taken in the name of defendant no. 1's firm thus to avoid the technicalities plaintiffs have added defendant no. 15 as the party to the suit. It is further stated that said material was sold to the defendant nos. 1 to 15 with a condition that payment should be made in 30 days and if in case of default interest @2.5 per cent per second/ per month is

to be charged, but defendants have not paid the said amount so, on demand by plaintiffs they are avoiding to pay the payments thereafter, it came to the knowledge of the plaintiffs that defendant nos. 1 to 15 have also taken materials from another business men and they have not paid the amount of said material. It is further stated that defendants have many properties but they may sold those properties and if defendants does so then decree of the plaintiff will be paper decrees. Thus, plaintiffs have filed this suit for recovery of their dues and thus it is necessary to pass injunction order against defendant nos. 1 to 15 that they does not sell, mortgage, gift or transfer their properties to anybody. They further stated that defendant nos. 1 to 15 are the owners of the property bearing ward no. 2 nondh no. 4490, 4474 and 4511 at Rustam pura in Surat city. It is further stated that all the defendants are living together and doing common business so they all are severally and jointly responsible for the payment of plaintiffs due thus, plaintiff have filed the suit against them all. It is further stated that defendant have purchased the materials of Rs. 3,33,520/- from the plaintiffs and had not paid the said amount in the prescribed time limit. So they are responsible to pay amount of Rs. 1,70,780/- as a loss of interest. Hence, they become responsible to pay Rs. 5,04,300/- as a sum of principal and interest from the date of the filing of the suit thus, this suit has been filed to recover the said amount. It is further stated that plaintiffs have Prima facie case and if defendants succeed to sell or assign their properties then if thereafter any decree will happen it will only remain as a paper decree. It will take longer to recover debt and they have to enter in other legal proceedings and if that happens then they have to face loss which should not be paid by money and

if injunction application will be allowed the defendants does not face any loss because they are responsible to pay all the money. Similarly balance of convenience is also in our favour. plaintiff. thus they have filed this suit and prayed that decree be drawn in favour of the plaintiffs that defendants are jointly and severally liable to pay Rs. 5,04,300/- from the date of the filing of the suit @ 2.5 % interest per annum till realization of the said amount. They further prayed that defendant nos. 1 to 15 having the property in Surat City at Rustumpura Vistar bearing ward no 2 nondh no. 4490, 4474 and 4511 which they should not sell or transfer in any other way till the realization of the due amounts of the plaintiffs. Further they also prayed for the attachment of above property. The plaintiff have also prayed alternative relief that permanent injunction against the sell or transfer of above property may be given against defendant nos. 1 to 15.

2. On filing of this suit summons were issued to the defendants which was duly served to the defendants. Defendants appeared through their Ld. Advocate and defendant no. 16 has filed their written statement vide Exh. 13 and defendant no. 1 to 15 filed their written statement vide Exh. 53.
3. Defendant no. 16 in their reply vide Exh. 13 denied the facts of the plaintiff and stated that there was no cause of action arise. Further he stated that he is the agent of selling yarn so, he is not responsible to pay any amount thereafter, he further stated that the transaction mentioned in plaint is done by him but, in that transaction he is not responsible for any payment as he is an agent so he is only taking the brokerage from the party and it is given by

the seller but in this case nobody has given any brokerage. He further stated that the plaintiff firm is also pressurizing him for bringing the payment from defendant nos. 1 to 15 so he has also intimated the defendants. But they were passing the time and not given payment. He further stated that being an agent they also collect the cheque from the buyers.

4. Defendant nos 1 to 15 have produced their written statement vide Exh. 53 in which they denied the facts of the plaintiffs and stated that plaintiffs are not liable to get any injunction and they have further stated that there is mis joinder of non joinder of parties in the suit of plaintiff and there was no cause of action. Thus the suit of plaintiff is without any cause of action. Thus by this way also it is liable to be rejected. Further they admitted that defendant no. 4 is the proprietor of defendant no. 15 and defendant no. 2 is proprietor of defendant no. 1's firm as well as it is admitted that defendant nos. 2 to 14 are family members but, it is denied that they are living jointly and having common kitchen further it is stated that looking to the evidence produced by the plaintiff i.e. bills in which address of buyer is kept blank and there is no signature of buyer further they stated that they have not produced any books of account thus, looking to those evidence it is not reliable to believe the facts of the plaintiffs. They further stated that business of defendant nos. 2 to 14 are different and they also are staying separately along with their family in different properties thus, defendant no. 2 is the owner of defendant no. 1's firm and other defendants does not have any concern with that firm. They further stated that defendant nos. 1 to 14 have never purchased any yarn from the plaintiff nor they have engaged,

defendant no. 16 has a agent to purchase the yarn thus they have not send the delivery of any material on their factory further they stated that they are not responsible for any payment. They further stated that the defendant no. 15 is doing business since a long time and having good will. They further stated that plaintiffs in their plaint have shown specific amount of money as it is a commercial transaction so if injunction is not given to the plaintiffs they will not suffer any monetary loss. They further stated that defendants are not transferring them any property but plaintiffs have made false allegations and for that they have even not produced any evidence or any affidavit for showing their allegations.

5. The plaintiff have produced following Oral as well as documentary evidence.

ORAL EVIDENCE

Exh. 106 Deposition of Manoj Ratilal Udhawala (plaintiff no. 2)

Exh. 110 Deposition of Pareshbhai Dineshchandra Jariwala (witness)

Exh. 145 Deposition of Nimeshchandra Mohanlal (witness)

Exh. 152 Deposition of Ranjeetlal Harkishandas (witness)

DOCUMENTARY EVIDENCE

Exh. 146 True copy of property card of property ward no. 2 nondh no. 4490.

Exh. 147 True copy of property card of property ward no. 2 nondh no. 4474.

Exh. 148 True copy of property card of property ward no. 2 nondh no. 4511.

Exh. 149 Copy of city survey rule card.

Exh. 153 Application for membership of shed no. 13

No other evidences are filled by the plaintiff company and they have given closing pursis vide Exh. 154.

6. Thereafter defendants were given reasonable time but they have not produced any evidence.
7. On pleading and documents produced my predecessor framed the following issues vide Exh. 73.

//I S S U E S\\

૧. શું વાદી સાબિત કરે છે કે દાવાવા પેરા નં-૩ ની વિગત મુજબ નો માલ પ્રતિવાદી એ વાદી પાસે થી ખરીદ કરેલ છે.
૨. શું વાદી સાબિત કરે છે કે વાદીના પ્રતિવાદી પાસે માલના રુપિયા ૩,૩૩,૫૨૦/- બાકી રોકાય છે.
૩. વાદી વ્યાજ મેળવવા હકદાર છે? જો હા તો કેટલું?
૪. વાદીનું કેટલું લેણું પુરવાર થાય છે.
૫. વાદીનો દાવો સમય મર્યાદામાં છે?
૬. શું હુકમ તથા હુકમનામું ?

8. My findings on the above issues are as under :-

- 1) In the Negative.
- 2) In the Negative.
- 3) In the Negative.
- 4) In the Negative.
- 5) In the Negative.
- 6) As per final order.

9. The reasons of above findings are as under:-

//R E A S O N S

Issue No. 1 to 5

10. As issue Nos. 1 to 5 are inter-connected with each other therefore, issue nos. 1 to 5 are discussed together and findings of these issues are as under:-

11. For proving their case the plaintiff company have produced vide Exh. 106, Deposition of Manoj Ratilal Udhawala (plaintiff no. 2). In his deposition he narrated the facts as per their plaint, thus stated that, the plaintiff no. 1 Bhagwati corporation is the proprietary concern and Smt. Bhagwatiben Manojbhai Udhawala is proprietor and plaintiff no. 2 is doing the management and business of said proprietary concern so as he has having all knowledge about the transaction of plaintiff no. 1's firm he is giving this deposition. Plaintiff no. 2 in his cross-examination by defendant's Advocate admitted that he has not produced any documents for showing that he is this proprietor of Bhagwati Corporation further he also admitted that he has not produced any document for showing that B.N. Silk Mills is main firm. and it is proprietary concern. Further he has not produced any evidence showing that Natwarlal Brijlal Kapadiya is the proprietary of B .N. Silk Mills further he has also admitted that he has not produced any evidence for showing that defendant no. 2 to 14 are responsible for the dues of B .N. Silk Mills or Paswanath Fabrics. Further they stated that the material was delivered to defendant is

also not shown in the plaint. Further he also admitted that the delivery challan is made in name of the party who has given the order but he denied that bill is prepared in the name of the person whose name was mentioned in the challan. Further he also admitted that when bill is prepared on that day the amount of the bill is also debited in books of account and it is also noted in ledger book. Further he also admitted that in his deposition he has mentioned that payment is to be made in 30 days of the date of bill but for that he has not produced any documentary evidence. Further he also admitted that he is maintaining the books of account but in this case he has not produced said books of account and for this he has mentioned that those books of accounts are lost. Further on asking he replied that he has not produced any documentary evidence nor he had filed any complaint for his missing book account. Further he also admitted that rate of interest is admitted by the defendant but for that he has not produced any evidence. Further he also admitted that in this case Hon'ble Court has dismissed the injunction application but thereafter also the defendants have not transferred the property shown in the plaint.

12. Thereafter plaintiff has examined one witness named Pareshbhai Dineshchandra Jariwala vide Exh. 110 he is the business man he stated that he is doing the business of cloth since 20 to 22 years. This witness stated about the practice of the market and stated that in business of the yarn. First of all the agent takes the purchaser to seller and thereafter they place the order. In some cases afterwards two business men may deal their business without agents. Thereafter the ordered material is delivered by Tempo or lorry and the delivery challan was sent to the

purchaser along with the Tempo and the tempo driver brings the copy of delivery challan along with the signature of purchaser or his employee and thereafter after confirming the delivery bill is prepared in name of that business man and below that bill the conditions are mentioned and if payment is not made 2 to 2.5 % interest is to be recover i.e. as per market conditions. This witness in his cross-examination admitted that the responsibility of the agent is only to contact buyer and seller he has no responsibility for payment. Further he admitted that in these transaction he has not purchased any material nor they have seen the bill and challan so he does not have any information about delivery of said goods. Further he also admitted that parties are deciding their own terms and conditions so he does not have any knowledge about any terms and conditions of these transactions. Further he also admitted that in market 2 to 2.5 % interest in there but for that he has not produced any evidence.

13. Further plaintiffs have produced deposition of witness Ranjitlal Harkishandas vide Exh. 152. He is the President of Satyanarayan Industrial Cooperative Service Society Limited he is stated that he is President since 1977-78 so he is having all record. He is stated that according to the records of society shed no. 13 is in the names of m/s Balaji Industries. Bhupendrabhai Natwarlal have given an application for membership in their society as a proprietor of m/s Balaji Industries and said application was accepted by the committee of their society on 02/04/1992. He has also produced Ekrarnama alongwith said application. Further he has stated that in general budget of that society shed no. 13 and shed no. 30 was interchanged by an application in which

Shantilal Natwarlal Kapadiya and Bhupendra Natwarlal Kapadiya have signed. Similarly he has brought record of application given for membership of shed no. 14 along with Ekrarnama, concerned letter and ledger said application was given by Dhirajlal Natwarlal as a proprietor of B.N. Textile. In general budget shed no. 14 of Shantilal Natwarlal Kapadiya proprietor of Sai Textile was interchanged with Shed no. 3. Similarly he has brought record of application given for membership of shed no. 30 along with Ekrarnama, concerned letter and ledger said application was given by partner Natwarlal Brijlal as a partner of B.N. Silk Mill partnership firm. In general budget shed no. 30 is in the name of Bhupendra Natwarlal Kapadiya was interchanged with Shed no. 13. He further stated that in their society shed no. 3 is in the name of Dhirajlal Natwarlal proprietor of B. N. Textile. Shed no. 4 is in the name of Mansukhlal Natwarlal proprietor of Shree Ganesh Textile. Shed no. 25 is in the name of Smt. Chandrikaben Dhirajlal. Shed no. 26 is in the name of Chandaben Mansukhlal Kapadiya. The defendants have not cross-examined these witnesses.

14. Now looking to the facts of the plaintiffs an evidence produced by the plaintiffs. According to plaintiffs, defendant no. 2 to 14 are family members and their business are common whereas defendant nos. 1 is the proprietary concern of which defendant no. 2 Bhupendra Natwarlal Kapadiya is the proprietor and defendant no. 15 is also proprietary concern of which defendant no. 4 Natwarlal Brijlal Kapadiya is the proprietor. As per say of the plaintiff defendant nos. 1 to 15 have taken frequently the material of yarn from the plaintiffs and they have

also produced the details about the transaction in para 3 of plaint with date, bill no. and amount according to plaintiffs from 15/09/1998 to 23/09/1998 vide different bills plaintiff have delivered goods of Rs.3,33,520/- and according to the instruction of defendants plaintiff have send said goods to the defendants. As defendant no. 15 is the main firm of defendants. So, bill and delivery challan was prepared in the name of defendant no.15 and said bills were also given to the defendants. Thereafter defendants instructed that said goods were taken in defendant no. 1's firm. Now looking to the evidence produced by the plaintiff on record the plaintiffs have not produced any bills or delivery challans by which they have delivered the said goods. Plaintiff no. 2 in his examination-in-chief vide Exh. 106 stated that they have given original bills to the defendants but they have kept the xerox copy of the said original bills in the office thus, they were having duplicate bill book but in shifting their office said duplicate bill book was miss placed. So they are not able to produce said duplicate copies of that bill. Further looking to the cross-examination of plaintiff no. 2 he has admitted that they are also maintaining the books of account but in this case they are not produced any such books of account. He has stated that said books of accounts are lost. The plaintiff says that their duplicate bills are misplaced and books of account are lost but they have not produced any evidence about it. Thus looking to the deposition and cross-examination of plaintiff no. 2 as well as the documents produced by the plaintiffs. The plaintiffs have stated that they have delivered goods by different bills to the defendants but they have not produced for said bills. Further the plaintiff have examined one witness Pareshbhai Dineshchandra Jariwala

vide Exh 110 but looking to the deposition of this witness he stated about market strategy & business pattern and accordingly the material is sent by lorry or tempo and even the plaintiffs have send material same way but they have not examined any such driver of said lorry or tempo and cross-examination of said witness no fruitful facts was came in favour of plaintiff. Further plaintiff have examined resident of Satnarayan Industrial Cooperatives Service Society limited for showing that defendants are doing business at that property and they are member of that society. No further evidence is produced by the plaintiff.

15. Looking to the plaint and prayer of the plaintiffs, plaintiffs said that they have delivered the goods as mentioned in para 3 of the plaint to the defendants. But, plaintiffs have not mentioned any facts about how said goods were sent to the defendants even plaintiffs have not mentioned the place where they have sent the goods looking to the plaint and deposition of plaintiff no. 2. It is stated that goods were delivered to the address of factory of the defendants but which factory is not mentioned nor they have mentioned any address of that said factory. Plaintiffs have examined one witness Pareshbhai Dineshchandra Jariwala vide Exh. 110 this witness described the market pattern of purchasing and delivering the goods. He is stated that once order is placed delivery challan is to be prepared and goods were sent through Tempo and lorry to the purchasing party and delivery challan is also sent with that tempo or lorry man. Out of which one copy of that challan is brought back by that person along with the signature of receiving party. Now looking to the evidence

produced by the plaintiff the plaintiffs have not produced any such delivery challan signed by defendant or any person of defendant. Further looking to the deposition and facts of the plaint even plaintiff have not mentioned how they have send the goods stated in the plaint nor they have mentioned any name of tempo man or any lorry wala. In this case, defendant nos. 1 to 15 has in their written statement vide Exh. 53 have denied the goods purchased from the plaintiffs as well as they also denied that business of all the defendants are joint thus it is the duty of the plaintiffs to prove said facts to be false by leading sufficient evidence. But in this case plaintiffs are not able to produce any such evidence. Thus, looking to the facts an evidence produce by the plaintiffs and above discussion plaintiffs are not able to prove the facts of his plaint.

As per the Section 102 of the Indian Evidence Act the burden of proof lies on the plaintiffs to produce the facts before the court regarding his claim upon satisfaction of the court. Then after he will get decision in his favour he has to lead such evidence as court gross inference in his favour he has to establish his case *prima facie*. In civil cases court relies on the principles of preponderance of probability at the time of arriving decision.

Thus looking to the legal provisions and evidence produced by the plaintiffs the plaintiffs are not able to prove that he has delivered the goods mentioned in para 3 of the plaint to the defendants. Thus I decide issue no. 1 and 2 in Negative. When plaintiff is not able to prove the purchase of materials by the defendant and as per above discussion when there is no due from the defendants then it is no question of interest thus I decide

issue nos. 3 to 5 in Negative and hence I pass the final order for issue no.6 as under.

//O R D E R

1. The suit of the plaintiff is hereby rejected.
2. No order has to cost.
3. Decree to be drawn accordingly.

The judgment is pronounced & signed in the open Court on 18th Day of June, 2019.

Place: Surat
Date: 18/06/2019

(F. S. PARIKH)
4th Additional Senior Civil
Judge, Surat
UID-GJ00721