

RECEIVED ON	:	16.09.2016
REGISTERED ON	:	16.09.2016
DECIDED ON	:	31.12.2021
DURATION	:	
		YY MM DD

**IN THE COURT OF ADDITIONAL JUDGE, SMALL CAUSES COURT
AT VADODARA**

SMST-R No. 195 OF 2016.

Exhibit : _____

PLAINTIFF:

Mukeshbhai Laxmanbhai Panchal
Resi at:– F–303, Shriji Villa,
B/s. D–mart, Wahodia Road,
Vadodara

Versus

DEFENDANT :

Hiraben Jayantibhai Panchal,
Resi at:– 102, Santsang Complex,
B/s. S.R. Petrolpump,
B/s. Naranwadi , Padra Road,
Atladra, Vadodara

APPEARANCE OF ADVOCATE :

Mr. **C.B. Raval**, Ld. Advocate for Plaintiff.

Mr. **P.C. Chauhan**, Ld. Advocate for Defendant.

**SUIT FOR RECOVERY OF Rs.50,000/ –UNDER ORDER–37 OF THE
CIVIL PROCEDURE CODE**

:: J U D G M E N T ::

(1) The plaintiff has filed this suit under the Provision of **Order-37 of the Civil Procedure Code** for recovery of **Rs.50,000/-** till realization of the amount by the plaintiff.

(2) The short facts narrated in the present suit are as under :

The plaintiff is doing business of fabrication and defendant is a friend of plaintiff. Defendant was in need a money and requested plaintiff for financial help in a tough situation. Plaintiff had given the amount of Rs. 50,000/- upon the trust of defendant and defendant had assured and agreed to repay the said amount. It is further submitted that, the defendant given a cheque for clearing his legitimate debts of remaining amount of Rs. 50,000/- through cheque. The plaintiff deposited the said cheque with his bank and the great surprise of the plaintiff that, cheque was returned by banker with a reason of "Funds Insufficient". Plaintiff sent various reminders to the Defendant to clear the outstanding dues and hence to clear such legal outstanding dues, Defendant had failed and neglected to repay the outstanding, amount of the Plaintiff. Thereafter, the plaintiff had sent legal notice though his advocate to the defendant on dt. 09.08.2016, and neither defendant has paid the amount nor complied with the notice. Therefore, plaintiff has filed the present suit to recover Rs. 50,000/- along with interest at the rate of 24% thereon.

(3) On filing of the suit the summons for appearance under Order XXXVII, Rule, *Rule-2* has been issued upon the defendant, which was duly served and had also filed for appearance vide Exh.06 for the same. Thereafter the plaintiff had filed summons for judgment, under Order XXXVII, Rule 3(4), vide Exh:8 and the same has been duly served to

the defendant. Furthermore the defendant had filed for leave to defense, under Order XXXVII, Rule 3(5), vide Exh:14, which has been refused.

(4) The Plaintiff has produced documentary evidence to prove its case. On perusal of the evidence placed on record, Copy of cheque is produced at Exh. 24, Copy of cheque return memo is produced at Exh. 25, Office copy of Notice of Demand is produced at Exh. 26, Copy of Postal Window Slip is produced at Exh. 27, as well as Copy of Postal Acknowledgement Receipt is produced at Exh. 28.

(5) I have read the contents of the plaint at Exh.1 as well as contents of summons for judgment filed by the plaintiff Vide exh.8. I have also gone through the all documentary evidence produced on record by the plaintiff Vide Exh. 24 to 28. The learned advocate of plaintiff has also taken me through all the relevant documentary evidence and requested to allow summons for judgment of plaintiff. The suit is filed under Provision of Order 37 of C.P.C. It is clear mandate of Order XXXVII, Rule 3(6)a of C.P.C., that if the defendant do not file leave to defend or if such application has been made and is refused, then the plaintiff is entitled to a decree forthwith. Here, in the case on hand, as the leave to defend application of defendant has been refused, the summons for judgment is required to be allowed and as such, the suit of plaintiff is required to be decreed against defendant. Under the circumstances, the Plaintiff is entitled to a decree for the sum as prayed for. On perusal of the documents produced with the affidavit it appears that no contractual rate of interest is in existence between the parties on the amount remaining unpaid. It is settled principle of law

that in case of decree for payment of money, where there is no contractual rate of interest agreed upon, the rate of interest shall not exceed 6 %. Therefore, I think it to be just and proper in the interest of justice to award interest at the rate of 6% on the outstanding amount from the date of suit till date of decree. Hence, I pass the following final order.

:: ORDER ::

- The plaintiff's suit bearing Summary Suit No. 195/2016 is hereby decreed under the Provision of Order XXXVII, Rule 3(6)a of the Civil Procedure Code.
- The plaintiff do recover an amount of Rs. 50,000/-, from the defendant with interest @6% per annum from date of the suit till realization of the decretal amount.
- The defendant have to pay the costs of the plaintiff and also bear their own costs.
- Decree to be drawn up accordingly.

Signed and pronounced in the open Court on this *31st day of **December, 2021.***

Date: 31.12.2021
Vadodara.

(Baldev Shaktidan Gadhvi)
Additional Judge, Small Cause Court,
Vadodara.
UIC GJ 00850