

Registration No. : SMST-R/584/2019
Filing No. : SMST-R/584/2019
Filed On : 25/04/2019
Registered On : 25/04/2019
Decided On : 06/02/2023
Duration : Y. M. D.

**IN THE SMALL CAUSE COURT NO. 5,
AT AHMEDABAD
SUMMARY SUIT NO. 584 OF 2019.**

EXH.....

Plaintiff:-

1. Shri Navin V. Patel Family Trust Through, its trustee
Shri Navin V. Patel,
Aged about: 50 yrs. Occupation: Business.
Address: 3, Vinayak House, Mangalam Cinema,
Odhav Road,
Ahmedabad.

VERSUS

Defendants:

1. OMRO Constructibn A Partnership Firm,
Address: Anmol Avenew, B/h Aadarsh Flora,
Nr Sankalp International School, Nikol,
Ahmedabad.
- 2 Rakesh Shantilal Patel,
Aged about; Adult. Occupation: Business.
Address: A/303, Krish Residency,
Opp. Dena Bank, Nr DipaK School,
Gangotri Circle Road,
Ahmedabad.
- 3 Pravinbhai Ladhambhai Patel,
Age: Adult. Occupation: Business.
Address : 10, Jaldarshan Park Society,
Nr K.P. Heights, Nr Navrang School,
Ambicanagar, Odhav,
Ahmedabad.

Suit valued at : Rs.8,00,000/-

Mr. K. R. Dwivedi, learned advocate for the plaintiff.

Mr. B.B.Patel, learned advocate for the defendants.

CORAM : Hiren. J. Thaker , JUDGE :

: JUDGMENT :

Brief facts of the suit are as under;

1. As per say of the plaintiff, plaintiff has filed this suit as trustee of Family trust and defendant no.1 is partnership firm and defendants no.2 and 3 are partners of the firm.
- 1.1 plaintiff know defendant since last 10 years and have family relations with defendants and defendants have started one scheme "Anmol Avenew" in the name of defendant no.1 firm, for construction of flats in the Nikol Village and for that defendant was in need of money and defendant no.2 with defendant no.3 requested for hand loan to plaintiff and plaintiff has given hand loan amount from his bank account of the Karnavati Co-Operative Bank Ltd. Odhav Branch of Rs.8,00,000/- on 25.4.2016 for 12 months only in the name of defendant no.1 firm by R.T.G.S. to the bank account of defendant no.1 and defendants have given undertaking and assurance to return the hand loan amount within 12 months, but defendant failed to repay the amount within 12 months and not paid the amount till today and defendant no.1 has completed its scheme namely Anmol Avenew in Nikol Gam and sold the flats.
- 1.2 The defendant no.1 firm has taken step to close its business in short time and after being informed about it, the plaintiff met personally to defendants no.2 and 3 and demanded hand loan amount from defendants but defendants denied the same and hence, filed this suit for recovery of Rs.8,00,000/- with interest at the rate of 18% p.a. jointly and severally from defendants.
2. The present suit is filed in summary way under Order 37 of the Code of Civil Procedure Code, 1908 (For brevity "C.P.C."). The summons/notice of the suit under O.37, R. 2 (2) of the C.P.C. has been duly served to the defendant by registered A.D. the defendant appeared before the Court and

filed his appearance and thereafter defendant no.2 has filed the leave to defend application against the summons for judgment of the plaintiff and the Court has granted the leave to defend application of the defendant conditionally by directing the defendant to deposit an amount of 50% of the principal amount in the Court within a period of three weeks from the date of that order but inspite of several opportunities given by the Court the defendant has not deposited the conditional amount in the Court.

3. As per Order 37, R.3 (6) (b) of C.P.C., if the defendants are permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that on failure to give such security withing the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith" the defendant herein shall not fulfill condition of the leave to defend application and in default of this, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, upto the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith). Therefore, considering the above provision the court has power to grant relief for the sum mentioned in the summons, together with interest at the specified rate and it is only upto the date of the decree. Therefore, considering the above and looking to the relief prayed for in para 9 (A) it seems that reliefs as sought for by the plaintiff which cover under the provision of O.37, R.(2) (3) of the C.P.C.
4. Thereafter Learned Advocate for the plaintiff argued his case at length and prayed to grant the relief as sought by the plaintiff in his application.
5. Order 37 of C.P.C. deals with suit for summary procedure. The object of

suit by summary procedure is to save time and for that procedure has been enacted. In the present suit, the summons / notice of the suit was served to the defendants. Therefore, though summons for appearance was duly served to the defendants, defendant no.2 appeared before the Court and filed leave to defend application but defendant failed to fulfill the conditional amount in the leave to defend application against summons for judgment of the plaintiff and hence as per Order 37 Rule.3(6)(b) of C.P.C., the plaintiff is entitled to judgment forthwith. Therefore, the plaintiff is entitled for judgment under O.37 R.3(6)(b) of C.P.C. as prayed for, with the rate of interest contracted between the parties.

6. The plaintiff has asked a decree of Rs. 8,00,000/- with interest at the rate of 18% p.a. . While considering the documentary evidence, plaintiff has not produced any agreement or contract for rate of interest, the plaintiff has not produced any documentary evidence to prove the rate of interest no contract, no agreement for rate of interest. Hence, as provided in Sec. 34 of the C. P. C. plaintiff is entitled to get interest at the rate of 6% p.a. on the principal amount and as per discussion made hereinabove, I pass the following order in the interest of justice.

ORDER

1. The suit of the plaintiff is hereby partly allowed with cost under Order 37 Rule (3)(6)(b) of the Code of Civil Procedure, 1908.
2. The defendants are hereby ordered to pay Rs.8,00,000/-to the plaintiff with an interest at a rate of 6% p.a. from the date of suit till actual realization of decretal amount.
3. The defendants have to bear the costs of the suit.
4. Decree be drawn accordingly.

Signed and pronounced in the open court today on 6th, **Day of February, 2023.**

Date : 06.02.2023
Place : Ahmedabad

(Hiren Jasvantray Thaker)
Code No. GJ-00940
Judge, Small Cause Court no.5
Ahmedabad.