FILED ON:- 25/02/2015

REGISTERED ON:- 25/02/2015

DECIDED ON: - 21/01/2019

DURATION:- 03 Y, 10 M, 26 DAYS

IN THE COURT OF 5TH ADDITIONAL CIVIL JUDGE, AHMEDABAD (RURAL).

REGULAR CIVIL SUIT NO. 47 OF 2015

EXH:- 20

Plaintiff:

Fulabhai Ismailbhai Modan

residing at: A/50, Hajrat Bilal Society,

Near Ketki Society, Vejalpur,

Near Vejalpur Telephone Exchange, Vejalpur Road,

Juhapura, Ahmedabad.

: V/S :

Defendant:

1. Gulammohammad alias Gullubhai Salmanbhai Sandhi

2. Taufik Gullubhai Sandhi (Das)

Both residing at: 20, Sukun Flat,

Near Sonal Cinema,

Vejalpur Road, Juhapura,

Ahmedabad.

SUIT FOR RECOVERY OF RS. 1,56,000/-

Appearance: -

Ld. Advocate for the Plaintiff: Mr. Y. M. Kotharia.

Ld. Advocate for the Defendants Mr. M. M. Shaikh.

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

(1) The brief facts of the plaintiff's suit is as under :

That the defendant no. 1 and 2 share the relation of father and son and the defendant no. 1 is the friend and are in close acquittance wiht the plaintiff. That the defendant no. 1 have availed loan of Rs. 55,000/- from the plaintiff to commence his business and in tune of the same the defendant no. 1 had executed a Declaration dated 15.05.2013 before the Notary Mr. P.K. Solanki. According to the Declaration the defendant had to remit back the amount of the loan within a period of 1 month. Thereafter the defendant no. 1 had further availed a loan of Rs. 1,00,000/- from the plaintiff on 09.01.2014 and in tune of the same the defendant no. 1 had executed a promissory note in favour of the plaintiff. Further it is the say of the plaintiff that in discharge of the legal liability/ debt and to make the payment of the total amount of liability of Rs. 1,55,000/- the defendant no. 1 had issued a cheque bearing no.000002 dated 26.04.2014 of Rs. 80,000/- of the Bank of India, Vatva Branch from the joint account of the defendants. That upon receipt of the above referred cheque, the plaintiff had presented the same with their bank and the same had returned as dishonoured for the reasons stated as "Insufficient Funds". That upon such dishonour the plaintiff had issued notice dated 13.01.2015 upon the defendants but the defendants though being served with the notice have neither complied with nor have replied to the notice. Therefore the plaintiff have filed the present suit to recover the amount as under:

₹.1,55,000/- @ 18%	As per the loan
₹.1,000/-	Cost of notice

(2) The present suit is filed under Order 37 of the Code of Civil Procedure, 1908 (for brevity "C.P.C"). The summons of the suit under Order 37 Rule 2 (3) of the C.P.C as prescribed in Schedule 1 Appendix- B, Form NO. 4 has been issued to the defendants and the same has been served upon the defendants. That the defendants upon service of the Summons for Appearance have entered their appearance. Thereafter, the Summons for Judgement as prescribed in Form No. 4-A in Appendix B had been served upon the defendants as submitted by the plaintiff vide Exh.9. That upon service of the Summons for Judgement the defendants on such summons had applied leave to defend the suit vide Exh.12. That upon such application for leave to defend my predecessor Judge vide order dated 11.01.2018 have granted the leave to defend the suit conditionally upon payment of Rs. 75,000/- within the period of 30 days from the date of the order and in default of the same the plaintiff would be entitled for the decree. However, the defendants, though having being given ample opportunities, have chosen not to comply with the orders.

(3) Thereafter, the plaintiff vide Exh.16 has submitted his affidavit and prayed to pass the decree accordingly to which the defendants, though having appeared have prayed to file reply, however later on have chosen not to appear, hence their right to file reply was closed. The plaintiff in support of his deposition have relied on the following documentary evidences vide list Exh.3:

1. Copy of Declaration as executed by the defendant.
2. Copy of Promissory Note as executed by the plaintiff.
3. Copy of Cheque bearing No. 000002.
4. Copy of notice as issued upon the defendants.
5. Copy of acknowledgement.

(4) That considering the documents produced by the plaintiff it is evident that the defendant have borrowed the amount of Rs. 1,55,000/- and the same has remain unpaid. That out of which the amount of Rs. 75,000/- is being admitted by the defendants and have not complied as per the order below Exh. 9 therefore, it is important to consider the provisions of Order 37 Rule 3(5) which reads as under:

"Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in court."

Hence, considering the facts of the present case the defendants have failed to comply the order to deposit the amount of Rs. 75,000/-.

(5) Having gone through the arguments advances by the Ld. Advocate for the plaintiff and the documents submitted on record. As per Order 37 of C.P.C it deals with the suit for summary procedure. The object of the suit by summary procedure is to save time and for that purpose Order 37 has been enacted. In the present suit, the summons of the suit has been duly served upon the defendants. The defendants having entered their appearance and were served with the summons for judgement by the plaintiff. Thereupon the defendants have filed an application for leave to defend and the same was granted conditionally vide order dated 11.01.2018 and thereby the defendants were required to deposit an amount of Rs. 75,000/- within a period of 30 days from the date of the order. However the defendant have failed to deposit the amount as ordered and thereby as per the language of Order 37 Rule 3 (6) (b), the plaintiff shall be entitled to judgement forthwith. The provisions of Order 37 Rule 3 (6) (b) reads as under:

Order 37 Rule 3(6)(b): *"If the defendant is 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 within the time specified by the Court or Judge or to carry out such other directions as mat have been given by the Court or Judge, the plaintiff shall be entitled to judgement forthwith."*

However in the interest of justice it is necessary to examine the documents as produced by the plaintiff. That it is the say of the plaintiff that the defendant have borrowed a loan of Rs. 1,55,000/- and to fortify the said fact the plaintiff have produced the copy of the Declaration dated 15.05.2013 vide Exh. 3/1 as executed by the defendant no. 1 in respect of the loan borrowed, a copy of the promissory Note vide Exh. 3/2 in respect of the loan borrowed form the plaintiff. That perusing the aforesaid documentary evidences it is evident that the loan of Rs. 1,55,000/- has been borrowed by the defendant no. 1. That in remittance of the part liability of the defendant no. 1, the defendant no. 2 had issued a cheque of Rs. 80,000/- bearing cheque no. 000002 dated 23.04.2014 of Bank of India, Vatva Branch. That the plaintiff have produced the copy of the said cheque vide Exh. 3/3. That it is the say of the plaintiff that upon presentment of the said cheque with their banker the said cheque was dishonoured on account of "Funds Insufficient". That the said cheque was issued by the defendant no. 1 from the joint account with the defendant no. 2 in the name of the plaintiff bearing the signature of the defendant no. 2. However the defendant in his application for leave to defend have admitted an amount of Rs. 75,000/- as borrowed as loan amount from the plaintiff.

(6) Further the plaintiff has asked a decree for an amount of Rs. 1,55,000/- along with the amount of interest @ 18% on the aforesaid amount from the date of filing of the present suit till the date of realisation thereof.

(7) Looking to the case papers and the present market rate and bank rate, plaintiff is entitles to get interest @ 8% p.a. Therefore considering the above facts and circumstances and the evidence produced on record, plaintiff is entitled for relief's according to Order 37 Rule 3(6)(b) of C.P.C. Hence I pass the following order in the interest of justice.

: O R D E R :

1. The plaintiff's suit is hereby partly allowed.
2. The defendants are hereby ordered to pay Rs. 1,55,000/- to the plaintiff with an interest at the rate of 8% p.a. from the date of the suit till realization of the decree amount.
3. Defendants to pay the costs of the suit to the plaintiff and bear their own.
4. Decree be drawn accordingly.

Pronounced and signed in the open Court, today on this 21st day of January, 2019.

21-01-2019
Ahmedabad(Rural)

Rakesh Lalit Gupta
5th Additional Civil Judge,
Ahmedabad(Rural)
GJ01371