



Received on : 30/01/2025

Registered on : 30/01/2025

Decided on : 25/07/2025

Duration : 00-05-25

00 -YY 05 -MM 25 -DD

Exhibit :

**BEFORE THE PRINCIPAL SENIOR CIVIL JUDGE COURT
AT UNJHA, DIST. MAHESANA.
Special Summary Suit No. 02 of 2025.**

Plaintiff: Patel Anilkumar Vikrambhai HUF/Karta
Patel Anilkumar Vikrambhai
Age :59
Occupation :Business/Agriculture
R/o H. 201, Kushan Residency, Behind Shukan
Mall, Science City Road, Sola, Ahmedabad
380060

Appearance : Ld. Adv. Mr. J.J. Solanki.

VERSUS

Defendant:

1. Patel Kanjibhai Tulsidas And Co. and partner
of the firm with same name
B. 67, Golai Ganj Bazar, Unjha 384170
2. Patel Kanjibhai Tulsidas and Co. and
partnership firm through partner Patel
Visubhai Chunilal founder of H.U.F.
Age : 70 years
Occupation : Business/Agriculture
8, Ram Krishna Society, Kanya Chatralaya

Road, Unjha

3. Patel Kanjibhai Tulsidas & Co. Through partner of the firm of same name

Age : 70 years

Occupation : Business/Agriculture

Sundaram Bungalows, Kamraj Colony, Behind Kanya Chatralaya, Unjha

4. Patel Kanjibhai Tulsidas & Co. through deceased partner Patel Keshavlal Kanjibhai through H.U.F. Heirs

4/1 Patel Harshadray Keshavlal

Age : 71 years

7/A, Rabiyaat Nagar, In front of Kohinoor Cinema, Station Road, Patan

4/2 Patel Mahendrabhai Keshavlal

Age : 69 years

50, Sarvodayanagar Society, Near Bhuyangdev Crossroad, Sola, Ahmedabad

4/3 Patel Vijaybhai Keshavlal

Age : 63 years

Gulabpark Society, Opp. Gokultham Society No. 1, Near Visnagar Road, Ta. Unjha

4/4 Patel Manubhai Keshavlal

Age : 66 years

88, Gharti Residency, Visnagar Road, Unjha

4/5 Patel Kirtikumar Keshavlal

Age : 60 years

88, Gharti Residency, Visnagar Road, Unjha

5. Patel Kanjibhai Tulsidas & Co. Through partner of the firm with same name

Age : 60 years

Occupation: Business/Agriculture

88, Gharti Residency, Visnagar Road, Unjha

Appearance : Ex parte against the defendant No.1,2,4.1,4.2 and For defendant No.3 , 4.3,4.5 and 5 Adv M.H.Fakir

Sub.: Suit for recovery of Rs. 32,13,770/-.

-:: JUDGMENT ::-

[1]. The present suit is instituted by the plaintiff against the defendants for the recovery of Rs.32,13,770/- with further interest, the facts in brief of this case is that, the plaintiff is doing business and agriculture. Plaintiff is nephew of the defendants and the defendants are the uncle of plaintiff. They are well known to each other. The defendant No. 1 is the partnership firm and defendant No. 2 to 5 formed the partnership firm on 01-04-1992. The defendant No. 2 to 5 are partners of that firm and defendant No. 2 to 5 are in need of loan, so, they approached plaintiff. The plaintiff gave loan to defendant firm and defendant No. 2 to 5 in defendant No. 1 firm, have interest of that account deposited by the defendant in defendant firm's books of accounts after deducting TDS. So, plaintiff's due amount to defendant No. 1 firm on 31-03-2022 was Rs. 24,96,699/- with interest. So, for payment of that amount, defendant firm gave cheque No. 000028 dated 30-05-2022 of the said amount of Rs. 24,96,699/- of the Mahesana Urban Co-operative Bank Limited, Unjha Branch, which was signed by defendant No. 2 and defendant No. 2 gave assurance to plaintiff that "by that cheque, you receive you money". So, plaintiff deposited that cheque in plaintiff's bank in Mahesana Urban Co-operative Bank Limited's account on 30-05-2022 and that cheque was returned with endorsement of plaintiff bank that 'Account is debt freeze' and by that way, the cheque was dishonoured. So, plaintiff informed defendant partner but they did not respond properly. So, plaintiff once again deposited that cheque on 02-06-2022 and this time also, the cheque was returned with same endorsement by plaintiff bank. So, plaintiff issued notice to defendant about cheque return on 03-06-2022. That notice was served to defendant No. 1 firm but partners of defendant firm

refused to accept that notice. So, that notice was returned to plaintiff. Defendant firm was served with notice but no action and no reply was made but defendant make telephonic talk (conversation) with plaintiff and said that 'wait some time, your money is lying in bank account and that account is stopped at present' but they have enough money in current account and also in fixed deposit and after opening account will pay your amount with interest. So, plaintiff not initiated any criminal proceeding against defendants but after that defendant not paid due amount of plaintiff and the plaintiff not filed any criminal complaint in Court under Section 138 of Negotiable Instrument Act due to the assurance given by defendant firm/defendants.

So, as mentioned in Paragraph-3 of the plaint, plaintiff categorically stated about amount of interest which he wants to claim and plaintiff firm was served with legal notice on 24-04-2024 by plaintiff's advocate by registered post AD to recover plaintiff's legally due amount of Rs. 24,96,699/- with interest @12% and that notice was served to defendant No. 1 to 4.1, 4.1 to 5 and 5 and defendant No. 1 only replied after 15 days on 20-08-2024 and that reply was vague and false. , So plaintiff filed the present summary suit under Code of Civil Procedure Order 37 and claim his legal due of Rs. 24,96,699/- with interest @12%.

[2]. Since this suit was summary suit under O. 37 of Civil Procedure Code summons as per the provisions of O. 37 was issued to the defendants, it has been duly served upon the defendant which is on record of the court. Thereafter, on behalf of the defendant No. 3 , 4.3,4.5 and 5 Ld. adv. Mr. M.H. Fakir has filed his vakalatnama vide Exh. 5. Thereafter, the defendants have filed their leave to defend at

Exh. 12 wherein the defendants have submitted that plaintiff has books of accounts in defendant firm on date 01-04-2022. Plaintiff's pending balance is Rs. 24,96,699/- till 01-04-2022 and the amount with interest from 01-04-2022 to 31-03-2023 is 26,31,520/- and the amount from 01-04-2023 to 31-03-2024 is 26,31,520/- and rest amount is extended from 2024-2025 and in Paragraph-3, defendant submitted that defendant No. 2 has raised objection regarding account of firm with other defendants and for that reason, defendant No. 2 make stop payment before clearing the cheque and for that reason, plaintiff's cheque could not be cleared. They also submitted that they have not any objection regarding plaintiff's legally due amount. They have not any objection if order passed in favour of plaintiff. and the suit has been ordered to be proceeded further against the defendants. Since, it is summary suit, the defendants, Who served with notice but remain not present, have to appear before the Court within ten days from the receipt of the service of summons and has to submit his purshis of Memorandum of Address and as per Sub-Rule (3) of Rule 2 of Order 37 of CPC; "the defendants shall not defend the suit referred to in sub-rule (1) unless they enter an appearance and in default of their entering an appearance the claim 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 up to the date of the decree and such sum of costs as may be determined by the High Court from time to time by rule made in that behalf and such decree may be executed forthwith".

[3]. The plaintiff has filed his affidavit at Exh. 10 and also produced documentary evidences vide Mark 4/1 to 4/26 which are as under :-

Sr. No.	Description of Documents	Exh.
1	Copy of Pan Card AADHP9695K	4/1
2	Original Cheque No. 000028	4/2
3	Original Counterfoil received from the Bank	4/3
4	Copy of return Memo	4/4
5	Original Counterfoil received from the Bank	4/5
6	Copy of return Memo	4/6
7	Notice given to defendants	4/7
8	R.P.A.D. Receipts	4/8
9	Sealed envelop of notice which is not accepted by defendant No. 2	4/9
10	Sealed envelop of notice which is not accepted by defendant No. 3	4/10
11	Sealed envelop of notice which is not accepted by defendant No. 4	4/11
12	Sealed envelop of notice which is not accepted by defendant No. 5	4/12
13	Copy of demand notice	4/13
14	R.P.A.D. Receipts	4/14
15	Acknowledgment receipt	4/15
16	Acknowledgment receipt	4/16
17	Original cover.	4/17
18	Acknowledgment receipt	4/18
19	Acknowledgment receipt	4/19
20	Acknowledgment receipt	4/20
21	Acknowledgment receipt	4/21
22	Acknowledgment receipt	4/22
23	Written notice by the advocate of defendants	4/23
24	Annual Tax Statement for the year 2021-22	4/24
25	Annual Tax Statement for the year 2022-23	4/25
26	Annual Tax Statement for the year 2023-24	4/26

[4]. As per this suit, cheque issued by defendant firm is of Rs. 24,96,699/- which was dishonoured and for that legal due amount of plaintiff, plaintiff filed this suit to recover that amount. In his plaint, plaintiff showed table of interest due amount in which plaintiff

counted 12% interest from the period of 01-04-2023 to 31-12-2024. By that way, with interest, plaintiff claim Rs. 32,13,770/- and plaintiff also claim 12% interest on above said amount of Rs. 32,13,770/- but looking to the plaint and documents produced with plaint, there are no any evidence submitted by plaintiff to show that there are any contract between plaintiff and defendant about interest. So, in that circumstances, when there are no any specific contract between the parties about interest, then Court has to consider the same as per Section 34 of Civil Procedure Code, 1908.

Here in claiming of interest by the plaintiff on the unpaid amount, further that considering the above rate of interest U/s. 34 of CPC, 2005. The Court holds that herein this case the plaintiff fails to prove the legal, valid and just cause about the interest and in these circumstances, the Court has power to fix rate of interest in a judicious manner, so here in this case, looking to the averments of the plaint as transactions between the parties are of commercial nature. Therefore, the defendants are liable to pay interest @ 9% p. a. from the date of filing of the suit, till realization of the amount as per final order.

[5]. Herein, the defendants have appeared through the advocate but defendants have not challenged the averments made in the plaint nor they have produced oral or documentary evidences and also submitted written consent about the plaintiff's claim, hence, as per provisions of law discussed above, the defendants have not defend the suit, the plaintiff is entitled to get a decree for any sum mentioned in the plaint, hence in view of O. 37, R. 2 (3) of C. P. Code, I pass the following order.

:- ORDER :-

1] The defendants are hereby ordered and directed to pay an amount of Rs. 24,96,699/-- (Rupees Twenty Four Lakh Ninety Six Thousand Six Hundred Ninety Nine Only) to the plaintiff within 60 days from the date of this order with interest @ 9% p. a. from the date of filing of the suit till the date of realization of the same amount.

2] The defendants shall bear their and plaintiff's cost.

3] Decree be drawn accordingly.

Pronounced in the open Court today on this 25th day of July, 2025 at Unjha.

Date : 25/07/2025

Place : Unjha, Mahesana.

(Devindrakumar Ashokkumar Raval)

Principal Senior Civil Judge

Unjha, Mahesana

U. I. C. No. GJ-01095