



Received on : 19-06-2023
Registered on : 01-05-2024
Decided on : 19-01-2026
Duration : Yrs. Mts. Days.
01-08-18

IN THE COURT OF 08 th ADDITIONAL SENIOR CIVIL
JUDGE, NADIAD

Regular Civil Case No- 99/2024

Exhibit- 49

Plaintiff :-

Suryakant Ambalal Patel
Residing at- Pij Road, Nadiad

V E R S U S

Defendants : -

Legal Heirs of Late Pavankumar Rijumal Lalvani

- (1) Jayaben W/o Pavankumar Lalvani
- (2) Soham S/o Pavankumar Lalvani
- (3) Riyaben D/o Pavankumar Lalvani

Residing at - 502, fifth flor, Changavala Estate,
Pij Road, Nadiad.

Subject:- Suit for recovery of money

APPEARANCE :---

Ld. Advocate Mr. Y. P. Hiragar for the plaintiff.

Ld. Advocate Mr. R. D. Bhavshar for the defendants.

Brief facts of the plaintiff's suit may be stated as under :-

(1) It is averred by the plaintiff that, the defendant late Pavankumar is a friend of the plaintiff's brother Kanubhai, therefore also became a friend of the plaintiff.

(1.2) It is further averred by the plaintiff that, as on the date-18/01/2019, defendant Pavankumar came before plaintiff and demanded Rs. 10,00,000/- for personal reason, hence plaintiff gave Rs.10,00,000/- to the defendant Pavankumar in a cash. The amount was taken with an obligation to repay the same on demand.

(1.3) It is further averred by the plaintiff that, the defendant had been repaid Rs. 5,00,000 as on dated-20/10/2020 and promise to repay remaining amount as early as possible. But the defendant is not repay remaining amount and makes false promises and not give proper reply to Plaintiff. Therefore, Plaintiff has issue demand notice through his advocate on dated 10/05/2023 by R.P.A.D and which was served on dated- 11/05/2023. Even after the legal notice duly served, defendant has not been paid back the remaining amount of Rs. 500000/-, therefore, the present suit is filed.

Defendant's Reply :-----

(2) Plaintiff had filed this suit in summary procedure under order-37 of Civil Procedure Code. Upon institution of the present

summary suit summons was issued against the defendants and it was duly served upon them. Then after my Ld. former Judge granted leave to defence application of the defendant and therefore this suit is convert in Regular Civil Suit. Then defendant have filed their written statements, vide, Exh. 22 and thereby denied all the facts of the plaintiff's case. It is specifically contended by the defendants that It had been already paid back the money which was taken bay the defendant late Pavankumar Rijumal from the plaintiff as on dated - 18/01/2019 with in the six months. It is further contended by the defendant that, defendant late Pavankumar had advanced a sum of Rs. 5,00,000/- to the Plaintiff as on date- 20/10/2020 . Plaintiff did not repay the same amount to the defendant, also filed a false and frivolous suit. Therefore , It is further contended by the defendant that, the suit is to be dismissed.

Issues :---

(3) Having regard to the rival contentions of the parties, my learned Predecessor has framed the following issues.

I S S U E S

Sr. No	Issue	The answer of the issue
1	Whether the plaintiff proves that the plaintiff is entitled to recover the remaining amount of Rs. 5,00,000/- from the defendant ?	In the affirmative.
2	Whether the defendants prove that late Shri Pavankumar Rijumal Lalwani paid the amount of Rs. 10,00,000/- as per written agreement dated 18.01.2019 ?	In the negative.

3	Whether the plaintiff proves that the plaintiff is entitled to get any interest on the principal amount, if yes then at what rate ?	In the affirmative. at 6% rate
4	Whether the plaintiff is entitled to get relief as claimed ?	In the affirmative.
5	Whether the suit filed by the plaintiff is barred by any law ?	In the negative.
6	What order and decree ?	As per the final order

---: Plaintiff's side Evidence :---

(4) Thereafter, plaintiff has produced the following oral as well as documentary evidence in support of his case.

Oral Evidence

Sr. No	Particulars	Exhs
1	Chief-examination of plaintiff Suryakant Ambalal Pate	28

Documentary Evidence

Sr. No	Particulars	Exhs
1	Giving in writing on the stamp paper by the Defendant for taking advanced money	32
2	Office copy of the Legal Notice which was given to the defendant	33
3	Receipt of the post department	34

4	Acknowledgement	35
5	Copy of Aadhar Card of the Plaintiff	36

Thenafter, Plaintiff has filed his closing pursis.

---: Defendant's side Evidence :---

(5) Thereafter, defendant has produced the following oral as well as documentary evidence in support of his case.

Oral Evidence

Sr. No	Particulars	Exhs
1	Chief-examination of Defendant Jayaben Pavankumar	39

Documentary Evidence

Sr. No	Particulars	Exhs
1	Giving writting by the plaintiff on the stamp papaer	43

Thenafter, Defendant has filed his closing pursis.

---: ARGUMENTS :---

(6.1) Plaintiff's Advocate has submitted written arguments , Exhibited- 46

(6.2) Defendant's Advocate has submitted written arguments , Exhibited- 48

---: REASONS :---**ISSUE NO. 1 to 6 :--**

(7) As all the issues are *inter se* connected contended, hence, they have discussed jointly for the sake of brevity and convenience.

The settled principle of law that the plaintiff has to prove his case on the strength of his own evidence and plaintiff cannot take advantage of weakness of the defendant's defence.

At this juncture, the following provision of the Evidence Act is required to be referred to,

Section 101. Burden of proof

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

(8) Now Considering the averments of the plaint, it is the say of the plaintiff's case that as on the date-18/01/2019, defendant late Pavankumar came before him and demanded Rs. 10,00,000/- for personal reason, therefore, he had given Rs.10,00,000/- to the defendant Pavankumar in a cash. *Per contra*, it is contended by the defendant that he had taken advanced Rs. 10,00,000/- from the plaintiff but it had been already paid back within the six months. Now, we summarize the rival pleading of the parties in the context of the plaint, It is undisputed that the defendant had been taken advanced Rs. 10,00,000/- from the plaintiff.

(9) Further, It is the say of the plaintiff's case that the defendant had repaid only Rs. 5,00,000/- out of Rs. 10,00,000/- and the remaining amount Rs.5,00,000/- has been not repaid. *Per contra*, It is contended by the defendant that he had advanced from the plaintiff but he had repaid the total amount within six month from it's received. In present case, defendant has been admitted that he had been taken money from the plaintiff hence the evidential burden shifts back to the defendant and defendant has to prove his case that he had been paid back the same amount. But the defendant has been not produced any documentary evidence in support of his case. Further more, defendant Jayaben Rijumal has also admitted in her deposition that she has not produced any documentary evidence which is show that the her late husband had been repaid total amount. Hence defendant has failed to proved his defence.

(10) It is also contended by the defendant that he has advanced Rs. 5,00,000/- to the plaintiff as on dated- 20/10/2020. But in present case defendant has not been filled counter claim for recovery of the said amount. Also Defendant Jayaben Rijumal has admitted in her deposition that she has not been initiated any legal proceedings from recover of advanced amount which has been given by his late husband to the plaintiff. It is also contended by the defendant that the plaintiff's suit is barred by laws. But persued the record, defendant has brought nothing on the record which is show that the plaintiff's suit is barred by law. Therefore this defence has not been helpful to the defendant in present case.

(11) Further more, no agreement made by the parties, for rate of interest on advanced amount , but the defendant is not repay the remaining amount of Rs. 5,00,000/- till today, therefore this court is believe that in interest of justice plaintiff is entitled to get interest of remain unpaid amount of Rs,5,00,00 at the rate 6 % per annum.

Hence, all the issues are answered accordingly and the plaintiff has proved his case.

(12) n view of the foregoing discussion, in the interest of justice, I pass the following final order.

:: ORDER ::

- The plaintiff's suit is hereby decreed.
- It is ordered that all the defendants do pay to the plaintiff the sum of Rs.5,00,000 (Rupees Five Lakhs only) with interest thereon at the rate of 6 % per annum from the date of filing the suit to the date of realization of the said sum.
- Parties shall bear their own cost.
- Decree be drawn accordingly.

Pronounced & signed in the open Court on 19 th, January , 2026

Place : Nadiad.

Date : 19/01/2026

(BHARATKUMAR M.PARMAR)
8th Addl. Senior Civil Judge & ACJM,
Nadiad,
Code No. GJ01348