



Filed on Dt. 8/10/2022
Decided on Dt. 5/8/2023
Duration 0y, 8m,27d

**IN THE COURT OF PRINCIPAL SENIOR CIVIL
JUDGE, AT VIJAPUR**

**Regular Summary Suit No. 5/19
Ex.**

Plaintiff:

(1)Patel Amrutbhai Haribhai, Age:62
Address: Hashnapur, Taluka Vijapur, Dist. Mahesana

VERSUS

Defendant:

(1)Patel Niravkumar Harekrushnbhai
Address: Khaladi, Taluka Mahudha, Dist. Kheda

Sub: Summary Suit for the recovery of Rs.13,15,500/-

Appearance:

Mr.R.G.Patel : Ld. Advocate for the Plaintiff
----- : Ld. Advocate for the Defendant

J U D G M E N T

[1] The short facts of the plaintiff case are that the plaintiff and the defendant are carrying their business of Tobacco, therefore, came in to contact with the each other. The plaintiff has purchased raw tobacco from the farmers and paid its price to them, and sent the tobacco to the defendant, and at the end of season, the total outstanding amount of Rs.13,15,500/- (Thirteen Lac Fifteen Thousand Five Hundred) is due from the defendant. It is further submitted that the defendant has accepted the accountability to pay the outstanding dues, and for the payment of is, the defendant has given the cheque dated 24/2/2022 for Rs. 13,15,500/- bearing cheque no.000991 of

HDFC Bank, College Road, Nadiad Branch. The plaintiff has presented the cheque, but returned with endorsement of Fund Insufficient, and the Bank has informed about it on Dt.17/5/2022, therefore, the plaintiff has contacted the defendant, and he has orally requested to present the cheque for encashment again on Dt.18/5/2022, therefore the plaintiff has again presented the cheque for encashment and again it returned unpaid on Dt.20/5/2022 for the reason of fund insufficient, and the plaintiff came to know about the breach of trust and cheating by the defendant. It is further pleaded that the plaintiff has sent a demand notice by RPAD to the defendant on Dt.14/6/2022 and the same is returned on Dt. 20/6/2022 with the endorsement that the defendant has left the place, therefore, the plaintiff had cause of action arose in this court jurisdiction. Therefore the plaintiff has filed the summary suit in this court to recover the amount along with interest till realization, and prayed to pass an Order and decree.

[2] As this suit was filed with the cause title of summary suit and the original documents are produced on record, it was duly registered and then after this court has ordered to issue process under CPC Order 37 Rule 1 to the defendant, that process is believed as duly served. The defendant never remained present before this Court. The plaintiff side has filed application vide Ex.8, wherein he has stated that the summons is sent and served to the defendant, by affixing the copy on last known address, and the defendant has not filed his appearance nor prayed for leave to defend, hence, as per mandatory provision under Order 37 Rule 3(6), of Code of Civil Procedure this Court should pass necessary decree.

[3] As the plaintiff filed this Summary suit, the defendant has not filed any application for leave to defend, nor has he filed any adjournment application, now the point for Determination arose before this Court that... **Whether the Plaintiff is entitled to be granted the relief as prayed for?** As the defendant did not appear before this court, the suit falls at the stage of necessary orders and decree, as per the mandate in Law.

[3.1] The plaintiff has filed this suit with supporting affidavit and documentary evidence vide list, fact of which is not challenged from the other side.

[4] Looking to the facts of the original documents, the plaintiff has outstanding due of a total sum of Rs.13,15,500/- to the Defendant, in return he has handed over the disputed cheque for the payment, but the same returned unpaid. Therefore, the fact of the suit and documents supports the plaintiff's version as he has claimed the dues to the defendant and interest upon the same.

[5] As the plaintiff side has filed a summary suit and this court has issued summons to appear as per summary suit wherein the amount of Rs. 13,15,500/- (Thirteen Lac Fifteen Thousand Five Hundred) is written and the same is duly sent, and the same is served, the defendant never appeared before this court, nor filed any application praying leave to defend himself nor prayed for time to do the same.

[6] The primary object under lying summary procedure is to prevent unreasonable arbitration by the defendant who has no defense, thereby aspect and securing speedy and expeditious disposal of cases treating a commercial operation will be surely embodied if money disputes between the parties are not adjudicated upon immediately. But care also should clearly be taken to ensure real and tribal issues are not sort out by the procedure laid in Order 37 which is both harass and recruits the procedure prescribed in Order 37 of the Code is a subject in securing early disposal of cases based on negotiable instrument by preceding summary procedure. Such the provisions therefore be interpreted liberally keeping in view the object entertained to be achieved by Law.

[7] Rule 1 of Order 37 lays down the procedure to be followed in summary suit. It states that after the summons of the suit has been issued to the defendant, the defendant must appear and the plaintiff will have a summons for judgment on the defendant. The defendant is not entitled to defend a summary suit unless he has entered an appearance. In default,

the plaintiff will have entitled to a decree which is executable forthwith.

[8] The words “allegation in the plaint shall be demanded” to be admitted impugned that the court will accept the statement in the plaint as correct and on that basis based a decree in favour of the plaintiff. These words embodied the acceptance to fundamental and basic principle of law that a plaintiff must prove the case with which he comes to court and dispensed with such proof in view of special nature of document amongst in Rule 1 the effect of this words is to accept the plaintiff to succeed on his own allegation, over they made of such nature that the defendant appeared and denied that, they would have to agree by the plaintiff by leading evidences. As stated in the case of Ajay Bansal Vs. Mehta 2007(2) Supreme Court Case 275.

[9] In case of Naam Karan Das Vs. Bhagwan Das reported in [AIR 1965 Supreme Court 1144], the Hon'ble Supreme Court considered this provisions and decided that “what it contemplates is that the court will accept the statement in the plaint as correct and on those statements pass such decree as the plaintiff matter in law be entitled.”

[10] The word allegation in the plaint can only impugned allegation of fact and nothing more, they do not take within their swipe, question of law or legal submission e.g. if the plaint disclose no cause of action, no court can pass a decree in favour of the plaintiff the court in passing a decree has to keep a law in mind. If the law requires the court to exercise a discretion in fact demanded to be admitted, the court is bound to consider them.

[11] Sub Rule (3) clearly states that if the defendant does not appear, the allegation in the plaint shall be deemed to be admitted, in such a situation the plaintiff is entitled to a decree for any amount not exceeding the same mentioned in the summons together with the interest and cost.

[12] Looking to the facts of this case on hand the plaintiff has declared on oath before this court that he has given an

outstanding amount of Rs.13,15,500/- to defendant. Therefore, the plaintiff is entitled to obtain a decree for sum of Rs. 13,15,500/- (Thirteen Lac Fifteen Thousand Five Hundred only) with interest at the rate of 6% till realization against the defendant as per the provision of section 34 of the Code of Civil Procedure. The defendant has not rebutted these facts, per contra, there is nothing on record which can incline this court to presume adverse to the plaintiff and the facts of the plaintiff, therefore, it is clear that the plaintiff is entitled to obtain a decree as prayed for. And hence, I answer the point for determination **in Affirmative**, and in view of foregoing reasons, I pass final following Order:

FINAL ORDER

This suit is allowed.

The plaintiff is entitled to receive a sum of Rs. 13, 15, 500/- (Thirteen Lac Fifteen Thousand Five Hundred only) and interest at the rate of 6% p.a. from the date of cheque i.e.Dt.24/2/2022, till realization, from the defendant.

Decree be drawn accordingly.

No order as to costs.

Pronounced today on 5th Day of August in the year of 2023.

(Ms. Bharati Kanubhai Jadav)
Principal Senior Civil Judge
Vijapur Code GJ00985