Reserved On : 24/06/2026
Pronounced On : 03/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1564 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No

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HIRJI JADVA VARSANI
Versus
PINDORIYA & CO.

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Appearance:
MR ANKIT Y BACHANI(5424) for the Appellant
MS VIDHI J BHATT(6155) for the Respondent

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

CAV JUDGMENT

1. The present appeal filed u/s 96 of the Code of Civil Procedure, 1908 (in short “the Code”) is directed against the judgment and decree of the learned 7th Additional Senior Civil Judge, Kachchh @ Bhuj dated 15th March 2005 in Special Civil Suit No. 27 of 1997, by which the learned trial court partly decreed the plaintiff's suit directing the defendant to pay Rs. 35,096/- with interest at 6% per annum from the date of the suit till realization.

2. For the sake of convenience and brevity, parties are referred to as per their original status before the learned trial Court.

3. Brief facts of the case are as under:-

3.1 The defendant, Pindoriya & Co. and Company Limited, was granted a contract by the State Government to construct police quarters at Mandvi, Kachchh. Upon receiving the work order, the defendant executed a subcontract on 6th January 1992 with the plaintiff.

3.2 The plaintiff completed the construction of police staff quarters at Mandvi under the said subcontract. Disputes thereafter arose regarding the amounts payable to the plaintiff, giving rise to the original suit.

3.3 In this factual background, the plaintiff filed a civil suit for recovery of amount of Rs. 5,06,029/- inclusive of interest at 30% per annum under multiple heads.

3.4 The defendant received security deposit of Rs. 2,85,000/- from the plaintiff. Out of this, only Rs. 2,60,000/- was returned, leaving Rs. 25,220 outstanding as principal. A further sum of Rs. 92,788/- was claimed as outstanding interest on the fixed deposit. Thus, the plaintiff stated a sub-total of Rs. 1,18,008/- under this head to be outstanding from the defendant.

3.5 The plaintiff claimed that the outstanding security amount payable by the defendant was Rs. 1,09,396. However, the defendant paid back only Rs.1 lakh to the plaintiff. Thus, Rs.9396/- remained outstanding from the defendant.

3.6 Running bill for the work done is amounted to Rs.52,99,761.81 paisa. The defendant, as against said bill, paid only Rs.51,89,794.81 paisa and hence, Rs.1,09,968/- remained outstanding to be paid by the defendant to the plaintiff. In addition thereto, the amount of interest of Rs.42,400/- remained outstanding. In total, Rs.2,79,772/- was claimed by the plaintiff to be outstanding. The plaintiff also charged interest at 30% per annum from 1st April 1995 to 1st April 1997. Hence, the plaintiff is entitled to Rs.5,06,029/- from the defendant.

3.7 The defendant filed a written statement at Exhs. 27 denying all contentions raised by the plaintiff. The defendant contended that there is no privity of contract between the parties with respect to any rate of interest or agreement regarding interest, and denied that any amount claimed by the plaintiff remains outstanding. The defendant further contended that the plaintiff was required to clear certain dues referred to as 'sales tax' before any final settlement could be made. Notwithstanding this, the defendant acknowledged that Rs. 35,096/- was payable to the plaintiff from the security deposit due since 1994, and expressed willingness to pay the same with interest.

3.8 The learned trial Court framed the issues and permitted both the parties to lead evidence.

3.9 After considering the evidence on record, the learned trial court partly decreed the suit and directed the defendant to pay Rs. 35,096/- with interest at 6% per annum from the date of the suit till realization.

3.10 Hence, present First Appeal by the plaintiff.

4. Heard learned advocate Mr. Ankit Bachani for the plaintiff. The respondent is represented by learned Advocate Ms. Vidhi Bhatt. Despite being granted sufficient opportunity, Ms. Vidhi Bhatt did not appear on 1st April 2026. This Court granted a final opportunity on that date, directing that no further adjournment would be given. Today also, learned advocate Ms. Vidhi Bhatt remained absent. Hence, the appeal has accordingly been heard *ex parte*.

5. Learned Advocate Mr. Bachani submitted that the trial court committed a gross error in granting only Rs. 35,096/- with 6% interest per annum, when the plaintiff had proved total outstanding dues of Rs. 2,96,029/-. He would further submit that the learned trial court failed to appreciate the deposition of the plaintiff's witness Dilubha Takhubha, who has established that no outstanding sales tax dues remain outstanding. He would further submit that the learned trial court failed to consider Exhs. 106 and 107, produced during

cross-examination of the defendant, which contain admissions regarding outstanding amount between the parties. He would further submit that the learned trial court erred in concluding that the plaintiff had failed to bring the case within the four corners of the plaint.

6. Upon above submissions, learned advocate Mr. Bachani prays to allow the first appeal, modify impugned judgment and the the reliefs as prayed in the original plaint be granted with costs.

7. This Court has heard the learned Advocate Mr. Bachani for the appellant. The respondent's advocate having remained absent, the matter has been considered on the material available on record.

8. Before the learned trial Court, the plaintiff entered into the witness box at Exh.55; Mr. Dilubha has been examined as PW 1 Exh.68. The plaintiff in addition to oral evidence produced documentary evidence. Copy of sub contract is produced at Exh.56;the documents of other contract at Exhs.59 and 60 and copy of NOC at Exh.70. Oral evidence of the defendant is at Exh.84 and during the cross-examination of the defendant, Exhs.106 and 107 are produced on record.

9. The learned trial Court examined the aforesaid evidence and framed following issues and answered them accordingly.

“(1) Whether the plaintiff proves his suit claim?

(2) Whether the plaintiff is entitled to recover the suit

amount from the defendant ?

(3) Whether the plaintiff is entitled for interest ? If yes, then of what rate ?

(4) What is found due ?

(5) What order and decree ?

(1) Partly affirmative, Partly Negative,

(2) Partly affirmative, Partly Negative

(3) In the negative.

(4) As per discussion & final order.

(5) As per final order."

10. The core finding of the learned trial Court to decree to the suit to the extent of Rs.35,096/- with 6% interest s para 28 to 31, which reads as under:-

"28. During the course of evidence the plaintiff has given deposition on oath, wherein the plaintiff stated about due amounts of deposits various bills and interest at the rate of 30%. But during the entire chief examination he is failed to give specific detail about various transaction with defendant which was required for proving his various claims. The plaintiff also failed to produce books of accounts, bills or other documents relating to transaction. Even after his admission have in his cross-examination he has already completed accounts. Further it is also appeared that he is also failed to give perfect actual figures about his actual amount of dues during his deposition. In above all circumstances it is clear that only deposition on oath of plaintiff is not enough to prove the claims of plaintiff and further corroborative evidence is required to prove his claims.

29. As per the plaint, the plaintiff has asked various kinds of interest from the defendant but as per above

discussion when the plaintiff is failed to prove his claims during the course of evidence. Also the plaintiff has not given the detail in respect of interest and above all it is also clear that there is not a single condition mentioned in the contract produced at Exh.56 in respect of any kind of interest on any due amount. In above all circumstances it is also clear that the plaintiff is also failed to prove his claims regarding the various interest on various due: amount and therefore the plaintiff is also not entitled to get decree in respect of interest as he claimed.

30.At this stage it is necessary to note about the arguments of plaintiff-side on documents at xh.106. According to the Learned Advocate for plaintiff that Exh.106 is the complete account and it is admitted by the defendant therefore it is reliable evidence, and as per Exh.106 the plaintiff claims are proved, but I do not agree with this arguments of Learned Advocate for the plaintiff because during the course of cross-examination the defendant do not specifically admitted about the any due amount mentioned in Exh. 106. He also specifically do not admitted about any claim or dues as mentioned in Exh.106 but during the course of his deposition he accept only Rs. 35,096/- He specifically denied all kinds of claims during his examination in chief as well as in cross-examination. Further looking to the form of Exh. 106; it is a xerox copy and there is not mentioned any particular date of its preparation to clarify the situation of any particular date as well as it is also not signed by any party. As discussed above it is clear that only Exh. 106 is not enough evidence for plaintiff to prove his claims.

31. As discussed above when the plaintiff has not produced any reliable and enough evidence for proving his suit claims it is clear that except the admitted due amount of Rs. 35,096/- the plaintiff is failed to prove his various due amounts against the defendant.

11. Thus, upon above findings, the learned trial court found that the plaintiff did not produce account books, bills, and corroborative documents to prove the claims under each head. This Court has examined the relevant exhbitis to determine whether the appellant has discharged this burden. Learned advocate Mr. Bachani in his arguments failed to point out any of the evidence on record except Exh.106 to confirm the stand that the plaintiff has produced enough evidence.

12. Before, I discuss evidence of Exh.106, let refer the recent findings of this Court in regards to burden of proof on the plaintiff to prove the claim u/s 101 and 102 of the Evidence Act. This Court in case of **District Collector and another Vs. Iqbalhussain Ibrahim Shaikh, rendered in First Appeal No.6729 of 1998**, held in para 21 to 24 as under:-

> *"21. Sections 101 and 102 of the Indian Evidence Act, cast the burden upon the plaintiff to prove the facts asserted by him. Sections 101 and 102 of The Indian Evidence Act, 1872, read as under:*
>
> > ***"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.*

> ***102. On whom burden of proof lies.*** *- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.***"**

22. In the case of ***Rangammal Vs. Kuppuswami****, reported in* ***AIR (2011) SC 2344****, the Hon'ble Supreme Court held that when a person is bound to prove the existence of any fact, it is said that burden of proof lies on that person. Thus, the burden of proving fact always lies upon the person who asserts it. Unless such burden is discharged, the other party is not required to be called upon to prove his case.*

22.1 In the present case, the burden squarely rested upon the plaintiff to positively establish that he had suffered loss of the specific articles, furniture, fixtures, sewing machines and other belongings referred to in the impugned judgment, though not specifically pleaded in the plaint. The plaintiff was further required to establish the extent of the economic loss allegedly suffered by him by leading cogent and reliable evidence. Mere non-appearance of the defendants in the witness box would not, by itself, advance the case of the plaintiff or relieve him of the burden of proving his claim.

23. In ***Rangammal (supra)****, the Hon'ble Supreme Court, in paragraph Nos. 36 to 38, reiterated the aforesaid principles and held as under:*

> *"36. The onus was clearly on the plaintiff to positively establish his case on the basis of material available and could not have been allowed by the High Court to rely on the weakness or absence of defence of the defendant/appellant herein to discharge such onus. The courts below thus have illegally and erroneously failed not to cast this burden on the plaintiff/respondent No.1 by clearly misconstruing the whole case and*

thus resulted into recording of findings which are wholly perverse and even against the admitted case of the parties.

37. It is further well-settled that a suit has to be tried on the basis of the pleadings of the contesting parties which is filed in the suit before the trial court in the form of plaint and written statement and the nucleus of the case of the plaintiff and the contesting case of the defendant in the form of issues emerges out of that. This basic principle, seems to have been missed not only by the trial court in this case but consistently by the first appellate court which has been compounded by the High Court.

38. Thus, we are of the view, that the whole case out of which this appeal arises had been practically made a mess by missing the basic principle that the suit should be decided on the basis of the pleading of the contesting parties after which Section 101 of The Evidence Act would come into play in order to determine on whom the burden falls for proving the issues which have been determined.

24. Elaborating upon the same proposition of law, the Hon'ble Supreme Court in the case of ***C.N. Ramappa Gowda v. C.C. Chandregowda (Dead) by LRs & Anr.*** *examined the scope and effect of Order VIII Rule Rule 10 and Order XII Rule 6 of the Code of Civil Procedure. The Court held that mere failure of the defendant to file a written statement does not automatically entitle the plaintiff to a decree, nor can the defendant be non-suited solely on that ground. In such circumstances, the Court is required to adopt a cautious approach and satisfy itself that the plaintiff has established his claim on the basis of admissible and reliable evidence. Paragraph 29 of the aforesaid judgment reads as under:*

"29.It is a well acknowledged legal dictum that assertion is no proof and hence, the burden lay on the

> *plaintiff to prove that the property had not been partitioned in the past even if there was no written statement to the contrary or any evidence of rebuttal. The trial court in our view clearly adopted an erroneous approach by inferring that merely because there was no evidence of denial or rebuttal, the plaintiff's case could be held to have been proved. The trial court, therefore, while accepting the plea of the plaintiff-appellant ought to have recorded reasons even if it were based on ex-parte evidence that the plaintiff had succeeded in proving the jointness of the suit property on the basis of which a decree of partition could be passed in his favour. "*

13. It is clear case that the plaintiff has miserably failed to prove by leading cogent and convincing documentary evidence which may entail that Rs.5,06,029/- is outstanding amount against the defendant. The plaintiff having relied upon deposition of PW 1 Dilubha at Exh.68 and Exh.70 being NOC to submit that witness Dilubha is Junior Clerk in Geology Department and further deposed that NOC has been issued to the defendant on 23.11.1994 and produced said NOC at Exh.70. In his deposition, witness Dilubha deposed that no outstanding amount lies against the defendant. In cross-examination, he has admitted that no final bill can be repaid till NOC is produced before the concerned department. He has further admitted that before issuance of NOC, the department is checking different records. He has further admitted that NOC is given for different work individually.

14. Learned advocate Mr. Bachani also relied upon cross-examination of the defence witness and submitted that the defendant has accepted in cross-examination that the petitioner is entitled to the amount of deposit with interest.

However, the learned trial Court has misread the evidence. What could be noticeable on going through the cross-examination of the defence witness at Exh.84 (Page 82 of the paper book) that the plaintiff's own advocate put a suggestion to the defendant's witness that Rs. 35,096/- remains outstanding. This suggestion was admitted. A further suggestion that the defendant is ready to pay Rs. 35,096/- was also admitted. Such submission assumed significance on the ground that learned advocate appearing for the plaintiff made aforesaid suggestion to the defendant’s witness against whom he is seeking recovery of the amount. The suggestion itself makes it clear that the plaintiff is confining his relief to the extent of recovery of Rs.35,096/- only. The defendant's witness also stated in cross-examination that the entire security deposit had been returned to the plaintiff.

15. As far as Exh.106 is concerned, it is the photocopy of accounts maintaining on some plain paper. The defendant's witness admitted that the handwriting on Exh.106 is that of his son. However, the defendant did not admit the contents of Exh. 106 as a true and correct account. A mere admission of handwriting does not amount to an admission of the document as a correct account. Further, Exh. 106 being a photocopy, the plaintiff was required to direct the defendant to produce the original and to lay preliminary evidence before relying upon it. In the absence of the original and without examination and proving of the contents, Exh. 106 cannot be relied upon to prove the outstanding amount. It is settled position of law that mere exhibiting the documents would not

prove content of the document.

16. In **Alumal Tahelram Versus Mehthram Basarmal, 1968 GLR 1078**, this Court even did not consider the entries in books of account as sufficient to pass decree. Para 4 thereof reads as under:-

> *"**4.** The net result of the reading of sec. 34 of the Indian Evidence Act together with various authorities referred to here above is that the entries from the hooks of account regularly kept In the course of business before they can be acted upon for holding a person liable thereunder must get some corroborative evidence from other sources. It may be either oral evidence of the plaintiff or of the person who wrote accounts. It may again also be from other documents such as vouchers receipts etc. in respect of the transactions that took place between the parties. But more determining factor should be the circumstances surrounding the accounts maintained by the plaintiff if they satisfy the Court about the correctness of those entries and statements made in such books of account and they can well serve as a corroborative piece of evidence required under sec. 34 of the Act as it may happen that evidence by way of vouchers receipts etc. may not be there and the oral evidence may not be available of the person who actually entered into that transaction. After all what would amount to any such evidence sufficient to corroborate the entries and statements in the account books would depend upon the facts of each case and there can be no hard and fast rule saying that particular type of evidence such as oral-direct evidence or of other documentary evidence is necessarily required."*

17. The above finding applies squarely to the present case. The plaintiff raised multiple claims under various heads but failed to produce account books, vouchers, or other corroborative evidence. The attempt to rely on Exh.106, which

is photocopies of the contents of which were not admitted by the defendant, does not cure this deficiency or help the plaintiff to substantiate his claim.

18. In view of the above, this Court finds no substance in the present first appeal. Accordingly, the first appeal stands dismissed.

19. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

(J. C. DOSHI,J)

SHEKHAR P. BARVE