
(2012) 12 GUJ CK 0073
In the Gujarat High Court
Case No : First Appeal No. 1447 of 2012

Patel Pultry and Cattle Feeds Limited Company and Others	APPELLANT
Vs	
Nitinchandra Chhunilal Modi and 1	RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 1, Order 37 Rule 2(1), 37

Citation : (2012) 12 GUJ CK 0073

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Advocate : Shailesh C. Sharma, s No. 1 - 8, for the Appellant; Zubin F. Bharda, Advocate for Defendant(s) No. 1, for the Respondent

Judgement

Honourable Mr. Justice Rajesh H. Shukla

1. Rule. Learned Advocate Mr. Zubin F. Bharda waives Rule for Respondent No. 1. The present First Appeal has been filed by the Appellants -Original Defendants being aggrieved with the impugned order in Summary Suit No. 2 of 2009 below Exh. 19 passed by the learned Senior Principal Senior Civil Judge, Gandevi dated 5.7.2010 on the grounds stated in the memo of First Appeal inter alia that the Defendants had a substantial defence and conditional leave has been granted. However, court below has not appreciated that there is no written contract between the parties for the alleged loan transaction or payment of interest, and therefore, the Suit itself was not maintainable u/s 37 of the Code of Civil Procedure.

2. Heard learned Advocate Shri Shailesh C. Sharma for the Appellants - Original Defendants. He has referred to the papers and submitted that the impugned order passed below Exh. 19 is without jurisdiction as the Suit itself is not maintainable as a Summary Suit under Order 37 of CPC. He therefore submitted that the Court had no jurisdiction and the order is erroneous. Learned Advocate Shri Sharma has also submitted that there is no written contract and the Suit is based only on the draft, and according to the provisions of Order 37 CPC such a

Suit was not maintainable. He has referred to and relied upon the judgment of the Hon''ble Rajasthan High Court produced at Annexure-E [Reported in Lalchand Jain Vs. Smt. Gheesi, .

3. Per contra, learned Counsel Shri Zubin Bharda for the Respondent however submitted that as per the order below Exh. 20 and 21 in the aforesaid Summary Suit No. 2 of 2009, the court had granted conditional leave to the Appellants - Original Defendants on condition of depositing Rs. 6,50,000/- after appreciating the material and evidence. Learned Counsel Shri Bharda has submitted that as recorded in the order Exh. 20 and 21, the same contentions have been raised that the Suit is barred and it has also been considered how the cheque has been issued. He submitted that the contention about bar of limitation was also raised and thereafter the order below Exh. 20 and Exh. 21 came to be passed by the learned Principal Senior Civil Judge, Gandevi dated 4.1.2010 granting conditional leave to the Defendants on depositing Rs. 6,50,000/- within one month. Learned Counsel Shri Bharda submitted that the said amount was not deposited in compliance with the order and on the contrary the said order was also challenged before the High Court by way of Special Civil Application No. 6135 of 2010 which came to be dismissed in limine by the order of the High Court (Coram: Ravi R. Tripathi, J) dated 13th May, 2010. Learned Counsel Shri Bharda therefore submitted that the present First Appeal also suffers from suppression of facts as it has not been conveniently stated. He therefore submitted that, as the order passed by the court below exh. 19 has been confirmed, and therefore, unless an amount has been deposited, he may not be heard as the order is confirmed by the Hon''ble High Court and the present First Appeal may not be entertained. He has also referred to Order 37 Rule 1 Clause 2(a) of CPC and submitted that such a suit could be filed on bill of exchange of hundies and promissory notes also. He therefore submitted that the written contract would be required as specified in Clause "b" of sub Section (2) of Order 37 CPC.

4. In view of this rival submissions, it is required to be considered whether the present First Appeal could be entertained or not.

5. It is evident from the narration of the facts and the rival submissions that after bipartite hearing and appreciating all the contentions including the contention regarding limitation, the order was passed below exh. 20 and 21 granting conditional leave to defend on condition of depositing Rs. 6,50,000/-. Admittedly, the same has not been deposited. Further, at the time of hearing of such an application Exh. 20 and Exh. 21, no contentions regarding jurisdiction or maintainability has been raised which has sought to be taken for the first time in the present proceedings. Further order below Exh. 20 and Exh. 21 was assailed by way of Special Civil Application No. 6135 of 2010 which has been dismissed in limine. Therefore, having regard to the fact that the said order has been confirmed and also considering the provisions of Order 37 Rule 2(1), it cannot be said prima facie that the Suit is not covered under Order 37 as sought to be canvassed. The reliance placed by learned Advocate Shri Shailesh Sharma for the

Appellants on the judgment of the Rajasthan High Court would not have any application to the facts of the present case.

6. Therefore, in view of the aforesaid discussion and also the fact that even the order passed below Exh. 20 and Exh. 21 granting conditional leave has not been complied with, there is no reason to entertain the present First Appeal and it cannot be said that there is any jurisdictional error, which would call for any interference. The present First Appeal therefore deserves to be dismissed and accordingly stands dismissed. Rule is discharged.