
(1982) 12 GUJ CK 0001
In the Gujarat High Court

Ratilal B. Shah and Co.

APPELLANT

Vs

Pari Prafullchandra Kantilal and Another

RESPONDENT

Date of Decision : 15-12-1982

Acts Referred:

Citation : (1983) 1 GLR 700

Hon'ble Judges : A.S. Qureshi, J

Bench : Single Bench

Judgement

A.S. Qureshi, J.—This civil revision application is filed by the original defendants Nos. 1, 2 and 3 against the judgment and order dated 17th August 1982 passed by the learned 2nd Joint Civil Judge (S.D.), Mehsana, granting the defendants leave to defend on condition that they deposit a sum of Rs. 20,901/- in the Court.

2. Mr. C.V. Jani, the learned Counsel for the petitioners, has submitted that the impugned order passed by the trial Court directing the defendants to deposit Rs. 20,901/- in a suit where the entire claim of the plaintiff is Rs. 24,900/- is unreasonable and the same deserves to be set aside. Mr. Jani has urged that in their leave to defend, the present petitioners had pointed out to the trial Court that the claim arises out of the amount alleged by the plaintiff to be due at the foot of the account. The defendants have not only challenged the correctness and accuracy of the amounts alleged to have been advanced to the defendants from time to time but also the rate of interest stated to be at 36 % per annum. The defendants have also averred that the plaintiff used to deduct the amount of interest at the rate of 36 % per annum at the time of paying the loan amount. Thus the defendants have averred that if the plaintiff renders true and correct account, it will be found at the foot of the account that no amount is payable by the defendants to the plaintiff.

3. Mr. N.S. Sheth, the learned Counsel for the respondent No. 1, has urged that a sum of Rs. 20,000/- is covered by three cheques, one of them being of Rs. 10,000/-, the other one being of Rs. 5,500/- and the third one being of Rs. 4,500/-, all of which have been dishonoured, and, therefore, according to Mr.

Sheth, at least, this principal amount should be taken to be prima facie due from the defendants to the plaintiff.

4. In view of the fact that the defendants' case is that this was an "account stated" and that the plaintiff is liable to render true and correct account, it would be premature to hold any specific amount being due from the defendants to the plaintiff. In the circumstances of the case, the learned trial Judge was not justified in imposing a condition that the defendants should deposit a sum of Rs. 20,901/- and allow the defendants to defend on that conditions only. In this matter, the defendants are entitled to an unconditional leave to defend because, at this stage, it is not possible to say as to what amount would be found to be due and payable by the defendants to the plaintiff. The defendants are, however, directed to file their written statement within four weeks from the day on which this writ is received by the lower Court and the trial Court is directed to take up this case immediately for hearing and dispose of the suit not later than 31st March 1983. Writ to be sent to the lower Court forthwith.

Rule made absolute with no order as to costs.