NEUTRAL CITATION
2026:GUJHC:53212-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3196 of 2011

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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LIQUIDATOR OF THE NARMADA ROO UTPADAKONI SAHAKARI SPINNING
Versus
PAVAN LAND & ESTATE PVT LTD THROUGH MANAGING DIRECTOR

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Appearance:
MR YN RAVANI(718) for the Appellant
MR PUSHPADATTA VYAS(1296) for the Defendant

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 20/08/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. This appeal arises out of judgment and decree dated 30.10.2010, passed in Special Civil Suit No.111 of 2005, whereby the 5th Additional Senior Civil Judge, Bharuch was pleased to dismiss the suit filed by the appellant to recover the amount of Rs.24 lakhs.

2. For the convenience, the parties are referred to as they were arraigned before the Trial Court.

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3. Brief facts leading to file this appeal are as follows:

3.1 The plaintiff – Narmada Cotton Produces Cooperative Spinning Mill Limited was the registered under the Gujarat Cooperative Societies Act (hereinafter referred to as "The Societies Act").

3.2 Vide order dated 19.04.2001 passed under Section 109 of The Societies Act, the society went into liquidation and for the day to day administration, the liquidator came to be appointed.

3.3 The appellant-society was having various lands at City Bharuch. The appellant-society, by public auction dated 15.10.1996 and 23.03.1997, invited proposals to sale its various lands, bearing Survey Nos.74, 75, 77 and 78 admeasuring 48890 and 9750 square meters respectively. In the auction, six parties, named in the plaint participated and finally, the appellant-society entered into agreement with the parties to sale the lands on the prescribed terms and conditions. The amount of consideration was Rs.3,30,00,000/- (Rupees Three Crores and Thirty Lakhs).

3.4 The purchaser of the lands, assigned their rights and liabilities with regard to the purchased lands in favour of respondent - defendant – Pavan Land & Estate Pvt. Ltd, through M.D. – Manoj Chokshi.

3.5 According to case of the appellant - plaintiff, the defendant was irregular in making the payment of consideration and due to delay,

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the dispute arose between the parties with regard to interest on delayed payment. There was an arbitration clause in the contract for resolution of any dispute with respect to lands in question. As a result, the matter was referred to sole Arbitrator Mr. Piyush Thakore. The Arbitrator vide its Award dated 08.03.1999, had determined the interest amount to be paid by the defendant herein and the time for terms and condition for making payment was being extended upto 15.04.1999. In the Award, the defendant was held liable for the payment due towards one Mr. Gajendra Nanalal Betwala, who had purchased piece of lands by way of assignment deed from the defendant herein. Admittedly, as per the terms and condition of the contracts, the defendant herein constructed different housing societies on the lands in question and sold it in the open market. Despite of this, the defendant was not able to clear the outstanding amount of consideration as Awarded by the Arbitrator. According to case of the plaintiff, the defendant lastly paid Rs.3,60,000/- on 30.10.2002. Thereafter, the defendant did not pay the remaining amount of consideration along with the interest. The total amount due was Rs.19,74,653/- along with interest of Rs.4,25,347/-. The plaintiff had served notices upon the defendant to clear the outstanding amount, but somehow, he could not clear the due amount.

3.6 In such circumstances, according to case of the plaintiff, the plaintiff was constrained to file a suit for recovery against the defendant herein. In para-4 of the plaint, it was averred that the cause of action arose on 30.10.2002, when the defendant by

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payment Rs.3,60,000/- acknowledging the liability and thereafter demanding the amount by way of letters as well as serving the legal notice on various dates.

4. The suit for recovery of the contractual amount towards the unpaid sale transaction being instituted on 14.10.2005 with the Civil Court at Bharuch.

5. Before the Trial Court, the suit was contested by filing written statement and raised the various contentions, *inter alia* stating that the suit is barred by limitation and liable to be dismissed for non-joinder of necessary and proper parties; Mr. Gajendra Nanalal and the erstwhile Chairman and Director of the Society are the proper and necessary parties because, the contractual transactions being directly entered into with the erstwhile Chairman of the Society, who was authorized by the other Directors to finalize the deal and had received the substantial amount of consideration, for which, the Criminal Cases against him came to be filed; that, after the Award of the Arbitrator dated 08.03.1999, no any action being initiated by the appellant society for the execution of the Award and therefore, the suit in present form is not maintainable.

6. On the above pleadings, the Trial Court had framed following issues:

(1) Does it prove that due to liquidation proceedings dated 19.04.2001, the plaintiff is being appointed as Official Liquidator?

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(2) Whether plaintiff proves that due to transaction of the lands, there was due amount of Rs.19.74,653/- and interest amount of Rs.4,25,347/- from the defendant ?

(3) Whether the Suit is barred by limitation?

(4) Whether Civil Court has jurisdiction to try the suit?

(5) Whether the suit is barred by non-joinder of necessary parties?

(6) Whether defendant proves his defence as claimed in para-10 of his written statement Exh. 17?

(7) Whether plaintiff is entitled to the relief claimed ?

7. Before the Trial Court, on the side of the plaintiff, the Official Liquidator an Accountant of the Society Mr. Kanubhai Shah and Suresh Paragjibhai Patel were being examined at Exh. 23 and 46 respectively. The plaintiff has proved and produced the documentary evidence Exh. 33 to 40, which are in nature of order, receipt, Award of the Arbitrator, Recovery notices etc.

8. On the side of the defendant, Manojbhai Choksi being M.D. of the Company was being examined at Exh. 55. The defendant did not have produced any documentary evidence in support of their pleadings.

Findings of the trial Court :

9. The Trial Court, on consideration of the oral and documentary evidence, found that :

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(i) the after an inquiry held by the Registrar, Cooperative Society under Section 86 of the Gujarat Cooperative Societies Act, 1961, the plaintiff Society was ordered to be wound up from 19.04.2001 and Official Liquidator came to be appointed. The issue Nos. 2 and 6 have been decided together by the trial Court.

(ii) On the issue of entitlement of the plaintiff to recover the part amount of the consideration along with interest, the trial Court held that, the plaintiff society did not have produced the any books of account, bank statement and receipt of last payment to prove the due amount and therefore, it is held by the trial Court that the plaintiff is not entitled to recover the amount along with the interest from the defendant.

(iii) On the issue of jurisdiction, the learned trial Court, after considering the provisions of the Gujarat Cooperative Societies Act, 1961, held and observed that the dispute of the parties do not touching the constitution, management and business of the society and therefore, suit before the Civil Court in the present form is maintainable.

(iv) On the issue of limitation, the learned trial Court held that the suit is barred by limitation as the last payment made by the defendant would not sufficient as there was no acknowledgement of payment in writing by the defendant.

(v) On the issue of non-joinder of necessary party, the learned trial Court held that, the erstwhile Chairman and Director of the Society

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as well as one Gajendra Nanalal, who had purchased some of parcel of lands are necessary and proper parties and suit is bad for non-joining of necessary and proper parties.

In the result, the learned trial Court was pleased to dismiss the suit of the appellant – plaintiff.

10. Being aggrieved by and dissatisfied with the dismissal of the suit, the appellant – plaintiff is before this Court by preferring the present First Appeal.

11. Mr. Yogesh Ravani, learned counsel appearing for the appellant has argued that the learned trial Court was not justified in dismissing the suit on the issue of limitation as well as non-joinder of necessary parties; that the suit is within limitation in as much as last payment made by the defendant was credited on 30.10.2002 for an amount of Rs.3,60,000/-; that such payment was in terms of Section 19 of the Limitation Act, 1963 and hence, the suit which was instituted within 3 years from the date of last payment, is within the limitation, as the payment which was made by the cheque and same was clear which do not necessitated written acknowledgement, as mandated under Section 19 of the Limitation Act.

12. Mr. Yogesh Ravani, learned counsel has submitted that the learned trial Court failed to appreciate the Award of Arbitrator produced at Exh. 36. The defendant was party to the arbitral proceedings and

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the contents of the Award was unchallenged. Thus, having regard to the operative part of the Award dated 08.03.1999, it is proved and established that the defendant failed to pay due amount along with the interest, as demanded; that the learned trial Court failed to appreciate the oral evidence of the plaintiff society; plaintiff's witness Suresh Paragji Exh. 46, who was at relevant time Accountant of the Society had produced the necessary accounts of the society to prove the due amount and as per his deposition, he had specifically stated that after the Award of the Arbitration, there was a due amount of Rs.19,74,653/- and interest at the rate of 18% on the said amount required to be paid by the defendant; despite of this evidence, the learned trial Court without any justification erred in holding that the plaintiff society failed to prove the due amount, which findings are apparently contrary to the oral and documentary evidence.

13. Mr. Yogesh Ravani, learned counsel has submitted that the learned trial Court has committed an error in dismissing the suit on the technical issue of non-joinder of necessary and proper party. The suit is for recovery of unpaid sale transaction and same is filed by the Official Liquidator. Thus, the erstwhile Chairman as well as Director of the Society cannot be said to be proper and necessary party to the adjudication of the matter; admittedly, the defendant herein by way of assignment, transferred the right, title and interest of some of the lands in favour of Gajendra Nanalal; the society has nothing to do with the said transaction and responsibility was on the defendant to recover the due amount from Gajendra Nanalal

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and said responsibility being reiterated by the Arbitrator in the Award Exh. 36; thus, therefore, the findings with regard to non-joinder of necessary and proper party is contrary to the settled principle of law and facts of the present case.

14. In such circumstances, Mr. Ravani, learned counsel has submitted that the findings and conclusion of the trial Court for the determination of the issue are contrary to the law and evidence on record and therefore, by allowing this appeal, the suit filed by the plaintiff – appellant may be decreed as prayed for.

15. On the other hand, Mr. Pushpadatta Vyas, learned counsel appearing for the respondent – defendant opposing the contentions raised by the appellant, has submitted that the trial Court has rightly dismissed the suit and findings for the issues are based on the evidence on record as well as on the settled principles of law and therefore, the trial Court has not committed any error while dismissing the suit.

16. Mr. Vyas, learned counsel further submitted that the cause of action for filing the suit arose from the date of Arbitral Award and the time limit for making payment, finally fixed by the Arbitrator. Thus, if we count the time period from the date of Award as well as the deadline of payment dated 15.04.1999, then the suit is not filed within 3 years from the date of cause of action and therefore, suit is barred by the limitation; referring to Section 19 of the Limitation Act, it was submitted that for the purpose of claiming

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extension of period of limitation, merely making of payment is not sufficient because limitation for 3 years has already been expired and therefore the cause of action from the date of last payment in computing 3 years of limitation, cannot be legally permissible.

17. Mr. Vyas, learned counsel has submitted that, the plaintiff Society had examined two witnesses, (i) Official Liquidator Mr. K.B. Shah, Exh. 23 and (ii) Accountant of the Society Mr. Suresh Paragji Exh. 46. Referring to the oral evidence, Mr. Vyas, submitted that the plaintiff society failed to prove their claim by producing the necessary books of accounts including the balancesheet and therefore, the learned trial Court has rightly held that the claim of outstanding amount along with interest is not established.

18. In such circumstances, it has been submitted that the findings of the learned trial Court are legal and based on the evidence on record and as such, no error either on fact or on law having been committed by the learned trial Court while dismissing the suit and thus, no ground exist to interfere with the impugned judgment and decree and it is further prayed that the appeal may not be entertained and same may be dismissed with cost.

19. Heard at length the learned counsels for the respective parties and perused the case papers. In the facts of the present case, the following facts are not in dispute:

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(i) The plaintiff Society being a registered Cooperative Society went into liquidation on 19.04.2001 and accordingly, the Official Liquidator was appointed by the authority concerned.

(ii) The present suit is filed by the Official Liquidator with respect to the unpaid sale consideration of the suit lands owned by plaintiff society. The plaintiff society had sold their lands in public auction. The parties, who succeeded in the auction, had transferred and assigned their rights and liabilities to the defendant herein. The defendant was liable to pay the entire consideration amount of Rs.3,30,00,000/- to the plaintiff. The transaction to purchase the lands being executed in the year 1997. The developers defendant had constructed Housing Society and also parted some of parcels of land to one Mr. Gajendra Nanalal.

(iii) The dispute arose between the parties about the delayed payment and interest thereon. In order to resolve the dispute, the sole Arbitrator Mr. Piyush Thakore was appointed. Vide Award dated 08.03.1999, the time limit for the payment was extended upto 15.04.1999 and the defendant was directed to make due amount of payment on or before 15.04.1999 and in default thereof, he has to pay 18% interest on the due amount. In the Award, the amount due from Gajendra Nanalal Betwala, the defendant was held liable to recover the said amount.

(iv) It is on record the defendant had paid Rs.3,60,000/- by way of cheque to the plaintiff herein on 30.10.2002.

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20. In such circumstances, the plaintiff society filed a suit for unpaid amount of consideration of Rs.19,74,653/- and the interest amount of Rs.4,25,347/- as decided by the Arbitrator.

21. The trial Court has dismissed the suit mainly on the ground of limitation and so far as merit is concerned, it is observed by the trial Court that, the plaintiff society failed to establish the due amount as claimed against the defendant.

22. Thus, following arise for determination of this appeal :

(i) Whether the suit of the appellant is barred by limitation?

(ii) Whether the appellant proves their claim of sum of Rs.19,74,653/- and the interest amount of Rs.4,25,347/- against the defendant?

23. It is the case of the appellant plaintiff that suit is within limitation in as much as last payment made by the defendant towards the due amount and therefore the limitation period commenced from the date of last payment dated 30.10.2002 and suit could have been filed within 3 years i.e. 29.10.2005, whereas, the suit is filed on 14.10.2005. The reference of Section 19 of the Limitation Act, 1963 was made to contend that once the payment is made towards part of total debt due, Section 19 comes into play, whereby, a fresh period of limitation started on payment having been made. On the other hand, the defendant by refuting the contention, stated that

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merely making a payment would not sufficient but payment must be made within prescribed period of limitation.

24. In order to appreciate the contentions advanced by learned counsels for the respective parties, it apt to refer Section 19 of the Limitation Act. Section 19 provides as follows :

> ***Section 19 : Effect of payment on account of debt or of interest on legacy***—
>
> *Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.*
>
> *Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.*

25. Section 19 deals with effect of payment on account of debt or interest on a legacy made before the expiry of period prescribed by a person liable to pay. It is only in such circumstances, that a fresh period of limitation shall be computed when the payment is made. A reference can be made to the judgment of the Supreme Court in ***Shanti Conductor (P) Ltd. Vs. Assam State Electricity Board, 2020 (2) SCC 677***, wherein, it was held that, two conditions are essential for extending the benefit of Section 19, there are – (i) payment must be made within prescribed period of

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limitation, and (ii) it must be acknowledged by some form of writing either in hand writing of payer himself or signed by him.

26. In the case on hand, based on running account maintained by the plaintiff society, the suit for recovery was filed against the defendant. In order to prove the sum of due amount as on 30.10.2002, the Official Liquidator Mr. K. B. Shah Exh. 23 was examined before the trial Court. On perusal of his oral evidence, it is evident that he has no personal knowledge about the transaction as well as factum of last payment, as at relevant time, he was not appointed as an Official Liquidator. The witness Suresh Paragji Exh. 46, was examined to prove the due amount against the defendant. The witness at relevant time was serving as an Accountant with the plaintiff society. In his evidence, he had stated that as per the accounts maintained with the society, the last payment of Rs.3,60,000/- received from the defendant on 30.10.2002 and the total amount due was Rs.19,74,653/-. In order to prove the due amount, the copy of statement of income and accounts of the defendant were produced with list 41/1 to 41/4. However, fact remains that books of accounts as relied having not been proved in ordinary course of business and therefore the trial Court did not have given exhibits to the documents as referred. In such circumstances, having regard to the evidence on record, the plaintiff society failed to prove the facts that as on 30.10.2002, the amount as claimed was due from the defendant. Both the parties have relied on the Award of the Arbitrator Exh. 36 dated 08.03.1999. The time for making payment was extended upto

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15.04.1999 by the Arbitrator. Thus, the suit could have been filed from 15.04.1999 to 14.04.2002 i.e. within 3 years as per Article 53 of the Schedule of the Limitation Act. Article 53 says that the suit for unpaid purchase money can be filed within period of 3 years and time begins to run from the date for completing the sale or (where title is accepted after the time fixed for completion) the date of acceptance. In such circumstances, it is proved and established that at the time of making last payment of Rs. 3,60,000/- the essential condition to attract Article 19 of the Limitation Act, is not satisfied, as the payment was not made within prescribed period of limitation. Admittedly, on 30.10.2002 the payment towards the due amount was made. In other words, it was made after expiration of 3 years. Therefore, the benefit of Section 19 of the Limitation Act is not available to plaintiff society and therefore, the suit filed by the appellant is barred by the limitation.

28. For the reasons aforementioned, the appellant plaintiff failed to establish their claim along with amount of interest against the defendant and the suit apparently was filed beyond period of limitation. Thus, the trial Court in our opinion, has rightly determined the issue of limitation as well as entitlement of the plaintiff to recover the due amount of the sale consideration. The trial Court has assigned sufficient reasons for its conclusion and has not committed any error either on facts or on law.

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29. In such circumstances, we do not find any grounds to interfere with the impugned judgment and decree. Accordingly, the Appeal fails and is hereby dismissed. Registry is directed to send back the R&P to the concerned court forthwith. There shall be no order as to costs.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

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