

SUMMARY SUIT No. 249 of 2025**ORDER BELOW EXHIBIT 1**

S. S. Tiwari, learned advocate for the plaintiff.

None appeared on behalf of the defendant.

1. Heard the learned advocate for the plaintiff.
2. The plaintiff has filed this suit against the defendant and the defendant was duly served with the summons of the suit. Thereafter, the defendant has neither appeared personally nor through the ld. advocate before the Court and nor filed the appearance within Ten Days after service of the summons. Therefore, the plaintiff has given the application at Exhibit 7 to pass ex-parte decree against the defendant with affidavit.
3. That Order XXXVII Rule 2(3) of Civil Procedure Code, 1908 provides that defendant shall not defend the suit unless he enters and appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and plaintiff shall be entitled to decree of any sum not exceeding the sum mentioned in the summons together with interest at the rate specified, if any, upto the date of decree.

4. Thus, in spite of service on the defendant, the defendant is failed to enter an appearance and thus the allegations in the plaint are to be construed to be true and the facts mentioned in the plaint are true and supported by documents produced by the plaintiff.

5. In the case of **Maheshkumar Tribhovandas Patel Vs. Rameshkumar Ratilal Patel** reported in **2001(2) GCD 976**, the Hon'ble High Court of Gujarat has confirmed the decree passed by Trial Court for failure of defendant to observe mandatory provisions of Order XXXVII Rule 2(3) of Civil Procedure Code, 1908.

6. Therefore, when the defendant has not filed his appearance after duly serving the summons, under Order XXXVII Rule 2(3) of the Civil Procedure Code, the plaintiff is entitled to get the ex-parte decree against the defendant. Therefore, Considering the documentary evidence led by the plaintiff, I pass the following final order in the interest of justice :-

- : O R D E R :-

1. The suit of the plaintiff is hereby partly allowed.
2. It is hereby ordered to the defendant to pay the

amount of Rs.35,892/- (Rupees Thirty Five Thousand Eight Hundred and Ninety Two Only) to the plaintiff along with 9 % per annum interest thereon from the date of the suit till realization.

3. The defendant shall pay the cost of the suit to the plaintiff and bear his own.

4. Decree be drawn accordingly.

Pronounced and signed in the open Court on 22th day of April, 2026.

Date: 22.04.2026

Place: Surat.

(Bhaskar Chandubhai Bhalia)

Additional Judge

Small Cause Court, Surat.

(Code No.GJ01469)