

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 4561 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE DEVAN M. DESAI**

Approved for Reporting	Yes	No

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MOHANLAL S. MITHAIWALA AND SONS PRIVATE LIMITED (AMENDED
AS PER HON'BLE COURT'S ORDER DTD 11/07/24) & ORS.

Versus

DIPAKBHAI BABULAL PAREKH

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Appearance:

DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES

for the Appellant(s) No. 2

MR PARTH SALUJA for MR AS VAKIL(962) for the Appellant(s) No. 1

MR HJ DHOLAKIA(5862) for the Defendant(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE DEVAN M. DESAI**

Date : 08/01/2026

ORAL JUDGMENT

1. By way of present First Appeal, the appellants - original defendants have challenged the judgment and decree dated 30.7.2004 passed by the learned Chamber Judge, City Civil Court, Ahmedabad in Summary Civil Suit No.3702 of 2002.
2. Heard learned advocate Mr. Parth Saluja for the learned advocate Mr. A. S. Vakil for the appellant and learned advocate Mr. H. J. Dholakia for respondent No.1. Perused

the record.

3. The challenge in the present first appeal by the appellant is on the ground that the learned trial Court had decreed the suit *ex-parte* despite the fact that the summons of the suit was not duly served upon the defendants. It is also the contention of learned advocate for the appellant that though the report of the Bailiff dated 5.4.2004 (Mark 8) Indicates that the summons of the suit has returned back unserved, the learned trial Court relying upon the Rojkam dated 23.6.2004 which mentions “refusal” of the summons passed an *ex-parte* decree against the present appellants - original defendants. It is therefore contended that an opportunity be given to the appellants to defend the suit as the defendants have a good case both; on facts as well as on law. It is further prayed that the Judgment and decree be quashed and set aside and the matter may be remanded back to the learned trial Court for the expeditious final hearing of the suit. No other submissions are made except the above.

4. Per contra, learned advocate for the respondent - plaintiff could not contradict the aforesaid factual position and could not point out from the record that the summons of the summary suit was duly served upon the defendants.
5. Considering the overall submissions and on perusal of the Recorded & Proceedings, it appears that upon presenting the plaint, the Court below issued Notice / Summons to the defendants, however, the Bailiff report dated 5.4.2004 alongwith the other endorsements of the Bailiff prior to the date of 5.4.2004 indicate that the summons of the suit has not been duly served upon the defendants and the learned trial Court on an assumption that defendants have refused the Summons, passed an *ex-parte* decree. Undisputedly, defendants had no opportunity to resist the suit on merits. I am fully satisfied on perusal of the record as well as Bailiff report (mark 8) that the summons of the suit has not been duly served upon defendants and the defendants had no opportunity to appear and contest the suit. Resultantly, the

impugned judgment and decree dated 30.7.2004 passed by the learned Chamber Judge, City Civil Court, Ahmedabad in Summary Civil Suit No.3702 of 2002 is hereby quashed and set aside and the matter is remanded back to the concerned trial Court for the expeditious final hearing of the suit.

6. The defendants are permitted to file Written Statement within a period of 15 days from the date of this order. Upon filing the Written Statement by defendants, the learned trial Court shall frame issues and decide the suit as expeditiously as possible within a period of *six* months. The parties shall submit their list of witnesses as contemplated under Order 16 - Rule 1 of the Code of Civil Procedure, 1908 within a period of two weeks from the date of framing of issues. Both the parties shall give full cooperation to the learned trial Court without asking for unnecessary adjournments.
7. The present first appeal is allowed accordingly. Summary

Civil Suit No.3702 of 2002 is restored to its original file. The amount which has been deposited by the defendants before the learned trial Court shall remain with the Court below till final disposal of the suit. If the amount has not been invested in a fixed deposit, the same shall be invested in a Fixed Deposit in any Nationalized Bank fetching more interest. Original FDR to be retained by Nazir of the learned trial Court.

8. Record & Proceedings, if any, be sent back to the concerned Court forthwith. Interim Relief, if any, stands vacated forthwith. No order as to costs.
9. It is made clear that while passing this judgment/order, this Court has not gone into the merits and demerits of the case and all contentions of respective parties are kept open.

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(D. M. DESAI,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: VATSAL KOTECHEA(HC00352), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 09/01/2026 13:10:31