

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/APPEAL FROM ORDER NO. 240 of 2025
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/APPEAL FROM ORDER NO. 240 of 2025

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR. JUSTICE DEVAN M. DESAI**

Approved for Reporting	Yes	No

KRISHNAN SATISHBHAI PATEL & ANR.**Versus****PANKAJ VASANTLAL JAIN****Appearance:****MR YN RAVANI(718) for the Appellant(s) No. 1,2****CORAM: HONOURABLE MR. JUSTICE DEVAN M. DESAI****Date : 22/01/2026****ORAL JUDGMENT**

1. By way of present Appeal, the present appellants have challenged the order dated 12.9.2025 passed by the learned Judge of City Civil & Sessions Court, Ahmedabad in Civil Misc. Application (DC) No.155 of 2024 below Exh.23, by which, the application of present appellants to restore Civil Suit No.908 of 2021 was rejected under Order 9 - Rule 13 of Code of Civil Procedure, 1908 (For short, hereinafter referred to as 'the CPC').



2. Heard learned advocate Mr. Y. N. Ravani for the appellants.
Perused the record.
3. The brief facts of the case are as under:
4. A civil suit was filed by the present respondent - original plaintiff for the recovery of possession of the suit property, which is situated at District Sub District Ahmedabad - 4 (Paldi) being T.P. Scheme No.26, Final Plot No.147 of village Vasna, Taluka Sabarmati. An ex-parte judgment and decree came to be passed by the learned trial Court on 1.2.2024 in favour of the respondent - plaintiff. The original defendant- mother of present petitioner expired after the judgment and decree on 24.2.2024. An application under Order 9 - Rule 13 of the CPC for setting aside the judgment and decree came to be filed by the present appellants. After hearing the parties, learned Court below rejected the said application. Being aggrieved and dissatisfied with the impugned judgment and order, the appellants are before this Court.



5. Learned advocate for the appellants, at the outset, contended that the learned trial Court passed an ex-parte decree without any opportunity of being heard given to the mother of present appellants against whom the suit was instituted. It is contended that pursuant to a loan transaction, the original defendant executed an agreement to sell in favour of the plaintiffs and thereafter, a registered sale deed was executed in favour of the plaintiffs. It is also contended that the mother of appellants did not receive the full amount of consideration. It is further contended that the plaintiff, by misusing the blank Cheques of the appellant's mother, deposited the same in his bank and on return of Cheques, the plaintiff had filed a complaint under Section 138 of the Negotiable Instrument Act, 1881. It is contended that the transaction was never that of a leave and license as alleged by the plaintiff in the plaint. It is further contended that the property in question is the ownership property of the appellants and their mother, which can be established on perusal of the sale deed. It is



therefore contended that the appellants have ownership right in the suit property. It is submitted that the appellants came to know about the impugned judgment and decree from papers which were discovered after the death of mother. The moment, appellants found that a suit has been instituted, inquired about the status of the suit and upon inquiry, they found that the impugned decree has been passed against their mother and the defendant - mother was directed to hand over the full and vacant possession of the suit property. It is contended that if an opportunity is given to permit the appellants to contest the suit, the appellants would be able to establish that the suit of the plaintiff is not maintainable and no decree of possession can be passed against the mother. In support of his contention, learned advocate for the Appellants has relied upon the decision in the case of **M. K. Prasad v. P. Arumugam reported in AIR 2001 SC 2497**. By relying upon such decision, it is submitted that while deciding an application under Order 9 - Rule 10 of the CPC, the Court should keep in mind the judgment impugned and the

extent of property involved and the stake of parties. By relying upon the decision of the coordinate bench of this Court in the case of ***K.D. Patel v. State of Gujarat reported in 1993(2) GLH 941***, it is contended that a liberal view is required to be taken for restoring the matter to file if the matter has been dismissed for default of appearance of litigant's advocate. Default of appearance on the part of advocate may not be construed as a default of the litigant in non-contesting the matter. No other submissions are made except the above.

6. I have considered the submissions canvassed by learned advocate for the appellants and also perused impugned the judgment and decree as well as the paper-book placed on record.
7. The grievance voiced out by the appellants in the present appeal is that a Civil Suit for possession was filed against the mother of appellants for the recovery of possession of the suit property. The admitted and undisputed fact comes



out from the application under Order 9 Rule 13 of the CPC is that there is no dispute that the summons of the suit was not properly served upon the defendant - mother. It is also not the case of the appellants that the learned advocate for the defendant did not remain present and the suit proceeded in the absence of defendant mother. The bone of contention in the application as well as during the submissions of learned advocate for the appellants is that the transaction between plaintiffs and defendant was that of a money transaction and the mother of appellants executed a Banakhat in favour of the plaintiffs as the defendant - mother was in need of money and as a security, the agreement to sell was executed. A sale deed was executed pursuant to agreement to sell.

8. It is also submitted by learned advocate for the Appellants that after the judgment and decree passed against the mother defendant, the present appellants have filed a separate suit on a separate cause of action with regard to the suit property. It is submitted by way of Special Civil Suit



No.286 of 2024, the appellants have sought for cancellation of the registered sale deed dated 8.8.2018 and for declaration and permanent injunction against the plaintiff – present respondent.

9. A copy of sale deed dated 8.8.2018 is placed on record at page no.25 of the paper-book indicates that the sale deed has been executed by defendant mother in favor of the plaintiff – respondent. The leave and license agreement dated 8th August, 2018 also came to be executed between plaintiff and defendant, whereby, the suit property was given on license basis to the mother. It is pertinent to observe at this stage that during the lifetime of mother i.e. from 8.8.2018 till her death, the original defendant has never raised any objection or grievance with regard to the execution of the sale deed and also with regard to execution of a leave and license agreement in her favor. At page number 59 of the compilation, appellants have produced a copy of complaint filed by mother under Section 154 of Cr.P.C. against the plaintiff and other



persons mainly alleging the threats being given by the accused therein for the recovery of the loan amount. A request was made to the Police Inspector Vasana police station, Vasana, Ahmedabad to inquire with regard to the allegations made in the complaint. Learned advocate for the appellants submitted at this stage that no FIR has been registered by the concerned police station pursuant to the aforesaid complaint.

10. The case on hand is regarding an issue that when an *ex parte* decree is passed against the defendant, under what circumstances the Court can be said to be satisfied with the causes shown by defendant in the application as sufficient cause. At this stage, it would be profitable to reproduce the relevant provision of Order 9 Rule 13 of the Code of Civil Procedure.

13. Setting aside decree ex parte against defendant.—

In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as



to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.

[Provided further than no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]

2[Explanation.—Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.]”

11. Rule 13 of Order 9 of the CPC contemplates that the defendant may apply to the Court for setting aside a decree passed ex-parte. The condition precedent for setting aside an ex-parte decree is that the defendant has to satisfy the Court that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing. The Court, if satisfied may impose cost while setting aside an ex-parte decree. The Proviso to Rule 13 of Order 9 states that no Court shall set aside a decree passed *ex-parte* merely on the ground that there has been an irregularity in the service of summons. If it is satisfied that the defendant



had notice of the date of hearing and had sufficient time to appear and answer the summons decree which is passed, cannot be set aside. The Proviso to Rule 13 of Order 9 states that if it is satisfied that the defendant had noticed of the date of hearing and had sufficient time to appear and answer the plaintiff's claim, no court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons.

12. This Court has very minutely considered the application for setting aside decree. In paragraph No.5 of the application, it is stated by the appellants that on checking papers after the death of their mother on 24.2.2024, appellants came to know about the suit proceedings and a decree being passed in the suit. Undisputedly, present appellants were not parties to the suit proceedings. The defendant was the mother, admittedly, though served with the summons and notice of the suit neither appeared nor engaged any advocate. The appellants while invoking the proviso of Order 9 Rule 13 of the CPC must establish sufficient cause



for the non-appearance of defendant – mother in the suit proceedings. In absence of even a word or statement in the application as to why the mother, though served with the summons did not contest the suit, no sufficient cause could be presumed. It is not even the case of the appellant's that defendant – mother was not aware about the suit proceedings, the only contention raised by the appellant is that the appellants were not aware about the suit proceedings till they inquire from the documents after the death of their mother.

13. In the case of ***M. K. Prasad (Supra)***, the facts which can be gathered from reading the decision is that the appellant - defendant No.9 was served with summons and appeared through his counsel in the trial court and as the counsel for the appellant did not appear and other defendants did not contest the claim, the trial court decreed the suit. Thereafter, an application for setting aside the judgment and decree with an application for condonation of delay came to be filed which was rejected by the learned trial



court against which the defendant filed Revision Petition before the High Court which also came to be dismissed. While interpreting sufficient cause as contemplated under Section 5 of the Limitation Act, 1963 the Honorable Apex Court in the background of the facts and more particularly the reasons assigned in the application for condonation of delay, condoned delay and set aside ex-parte judgment and decree. In the present case, it is not the case of the appellants that the learned counsel of the defendant mother though engaged, did not remain present, resultantly an ex-parte decree came to be passed. As observed hereinabove, the appellants have not pleaded a single instance showing any cause, much less, sufficient cause for the non-appearance of defendant mother in the suit proceedings. Considering the said fact, the decision relied upon by learned advocate for the appellant is not applicable.

14. In case of ***K.D Patel (Supra)*** as it can be found from perusing the decision that averments were made in the



petition to the effect that the city of Ahmedabad was affected by communal tension which was not controverted by respondent. A telegram was also sent by the petitioner for seeking adjournment is also not controverted by respondent. This being one of the grounds for non-appearing before the concerned authorities, the coordinate bench of this Court condoned delay.

15. Even if the Court wants to take a lenient view in setting aside a decree passed *ex parte* against defendant, the defendant, at least must show a plausible sufficient cause which prevented the defendant to appear and contest the suit. The Court cannot presume any cause being a sufficient cause and set aside a decree passed *ex parte* merely on the statement that after mother's death, upon inquiry from papers, applicants received the knowledge of decree being passed against mother - original defendant. Learned advocate for the appellant stated that a separate civil suit challenging the sale deed and seeking a relief of declaration is also filed and the same is pending as on



today. It appears from the record that the plaintiff in the suit has claimed title of the suit property on the basis of a registered sale deed. Since the question of title has been raised, of course, after the impugned judgment and decree is passed, this Court at this stage is not delving into the controversy of title with regard to the suit property. Therefore, I am limiting my observations only on the question whether any case is made out by the appellants in the application for setting aside *ex-parte* decree whereby this Court can interfere in the reasonings and findings given by the learned Court below.

16. I am in complete agreement with the findings given by the learned trial Court and I am not inclined to interfere in such findings considering the fact that no case is made out by the appellants in establishing a sufficient cause for non-appearance of defendant mother.

17. In view of above, the present Appeal lacks merit and it requires to be dismissed. Accordingly, it is dismissed.



Record and Proceedings, if any, be sent back to the concerned authority, forthwith. Interim Relief, if any, stands vacated forthwith. No order as to costs.

18. Connected civil application also stands disposed of as it would not survive in view of dismissal of the main matter.

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(D. M. DESAI,J)