



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 388 of 2026

**With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/SECOND APPEAL NO. 388 of 2026**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
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HEMILABEN SAVJIBHAI KANERIYA & ANR.

Versus

THE STATE OF GUJARAT & ORS.

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Appearance:

JAY J JANI(9303) for the Appellant(s) No. 1,2

MR TEJAS S TRIVEDI(5692) for the Appellant(s) No. 1,2

MS FORUM SHAH, AGP for the Respondent(s) No. 1,2

MS.FALGUNI D.TRIVEDI(3912) for the Respondent(s) No. 3,5,7

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CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 11/08/2026

JUDGMENT

1. Heard Mr. Jay J. Jani, learned advocate with Mr. Tejas S. Trivedi, learned advocate for the appellants, Ms. Forum Shah, learned AGP for the respondent Nos. 1,2 and Ms. Falguni D. Trivedi, learned advocate for the respondent Nos. 3, 5 and 7.

2. ADMIT. Ms. Shah, learned AGP, waive service of notice of admission for and on behalf of the respondent



Nos. 1 and 2 and Ms. Trivedi, learned advocate waives service of notice of admission for and on behalf of respondent Nos. 3, 5 and 7.

3. With the consent of the parties, the present Second Appeal is taken up for hearing.

4. The following substantial question of law is framed.

“Whether the Ld. Appellate Court has passed the impugned judgment and order without serving notice of Regular Civil Appeal to the appellants herein and without following principle of natural justice?”

5. Mr. Jani, learned advocate, would submit that the appellants were not served with the notice of the appeal filed by private respondents and without appreciating such fact, in a cursory manner, the Appellate Court has allowed the appeal vide its impugned judgment and decree dated 06.08.2024.

5.1. Mr. Jani, learned advocate, has drawn the attention of this Court towards the bailiff report dated 28.08.2023 and contained that as per the report, it has been specifically observed that the present appellants who



happen to be respondent Nos. 3 and 4 of the appeal left the premises and the bailiff is not in a position to get their fresh address, thus, without serving a notice of appeal upon appellants, he has returned the notice to the Appellate Court, as unserved.

5.2. Mr. Jani, learned advocate, would submit that the impugned judgment and decree passed by the Appellate Court in flagrant violation of principles of natural justice and this Court should allow this appeal and remand the matter to the Appellate Court to decide afresh the appeal in question.

6. *Per contra*, Ms. Trivedi, learned advocate, appearing for some of the private respondents is not in a position to dispute the aforesaid submissions and the bailiff report placed on record by Mr. Jani, learned advocate for the appellants. Likewise, Ms. Shah, learned AGP is also not in a position to dispute the aforesaid fact of non-service of notice to present appellants.



7. Having heard learned Counsels for the respective parties and upon perusal of the aforesaid bailiff report, *prima facie*, it appears that the notice of Regular Civil Appeal No. 20 of 2023 in question was never served upon the appellants who happen to be respondent Nos. 3 and 4 of the aforesaid appeal.

7.1. It further appears that the Appellate Court in Para-3 of its impugned judgment although recorded that the process was issued and served upon the appellants, is factually incorrect. As such, the observation made by the Appellate Court in this regard is perverse and grossly erroneous. The Appellate Court assumed that the appellants herein were duly served and not remained present and accordingly, decided the appeal, in fact *ex parte*. Moreover, learned advocates appearing for the respondents are also not dispute the aforesaid bailiff report made available on record.

8. In light of the aforesaid facts and circumstances of the case and having fully satisfied that the impugned



judgment and decree passed by the Appellate Court against the appellants, without giving them an opportunity of hearing, it is nothing but a judgment/decreed passed by the Court in violation of principles of natural justice. Thus, it is unsustainable in law.

9. In view of the aforesaid facts and for the foregoing reasons, I am of the view that the impugned judgment and decree dated 06.08.2024 passed by 2nd Additional District Judge, Keshod in Regular Civil Appeal No.20 of 2023 is required to be quashed and set aside, which is hereby quashed and set aside.

9.1. Accordingly, the matter is remanded back to the Appellate Court for rehearing of the aforesaid appeal afresh. Consequently, the Regular Civil Appeal No. 20 of 2023 is restored back on its original file of the Appellate Court.

10. Since all the parties concerned to the present



second appeal are before this Court, they are directed to remain present either in person or through their lawyers before the Appellate Court concerned on **17.09.2026**.

10.1. Thereafter, the Appellate Court shall afford an opportunity of hearing to all the parties concerned and decide the *lis* between the parties afresh, meaning thereby, the aforesaid Regular Civil Appeal No. 20 of 2023 shall be heard and decided afresh without being influenced by any of its observations made in the impugned judgment and decree dated 06.08.2024 which otherwise no longer survived. Thus, the rights and contentions of the respective parties are hereby kept open to be decided by the Appellate Court.

11. As a sequel, the Civil Application would not survive and hence, it is disposed of.

12. In view of the foregoing conclusion, the present Second Appeal is partly allowed. No order as to costs.

SHAHANAZ

(MAULIK J.SHELAT,J)