

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10916 OF 2017**

Rohit Dhiraj Bhanushali	...Petitioner
<i>Versus</i>	
Shamji Laxmidas Bhanushali & Ors	...Respondents

Mr Indrajeet R Kulkarni, *for the Petitioner.*

CORAM: G.S. PATEL, J
DATED: 9th November 2017

PC:-

1. There is no reason to interfere with the impugned Appellate order. The appeal filed by the Defendant was allowed. The judgment and decree was set aside and the matter was remanded for consideration afresh. The limited ground was that the summons was not properly served. The Appeal Court noticed the very great controversy about the summons including that there was overwriting and the use of whitener on the bailiff's reports and service documents. The submission is that the Appeal Court was bound to take evidence itself, and this was within its power. Moreover, the remand should have been on the limited aspect of the summons. Obviously this is untenable. This argument proceeds on the incorrect basis that the service was proper. Further, an appeal court is not bound to take evidence itself, though it has that power. Last, the suit had proceeded

ex parte against the Defendant. On remand, therefore, the matter will have to be fully heard.

2. There is no infirmity shown in the impugned order. There is no cause made out for interference.

3. The Writ Petition is rejected. No costs.

(G. S. PATEL, J.)