IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL FIRST APPEAL NO. 28 OF 2025
WITH
INTERIM APPLICATION NO. 6956 OF 2025
IN
COMMERCIAL FIRST APPEAL NO. 28 OF 2025

Chandresh G. Sanghvi & Anr. ...Appellants/Applicants

Versus

S.K. Singhi and Partner LLP & Ors. ...Respondents

Mr. Faiyaz Khan a/w Aquil Khan & Kunal Haresh Punjabi for Appellants/Applicants.

Ms. Akshaya Puthran a/w Ankur Singhi i/b S. K. Singhi & Partners LLP for Respondent Nos.1 & 2.

AJIT RAMESH PATHRIKAR
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CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

DATE: 20th AUGUST 2026

P.C.

1. This Appeal impugns the judgment and decree dated 25th June 2024 passed by the learned District and Additional Sessions Judge, Bombay City Civil Court at Mazgaon, Bombay (Court Room No. 14), in Commercial Suit No. 872 of 2024, whereby the suit came to be partly decreed, Defendant Nos. 1 to 5 being directed, jointly and severally, to pay Rs. 31,00,000/- with interest at 9% per annum from the date the amount fell due until realisation.

2. It is undisputed on the face of the record that the suit proceeded *ex parte* against the Appellants by order dated 4th April 2024, and that the decree was passed without the Appellants having filed a written statement or being heard in the proceedings.

3. Heard Mr Faiyaz Khan, learned counsel for the Appellants and Ms. Akshaya Puthran, learned counsel for the Respondent Nos. 1 and 2.

4. The grounds urged in the appeal are that the writ of summons was never served upon the Appellants; that the affidavit of service filed on behalf of the original Plaintiffs is unreliable and inconsistent, inasmuch as it speaks of communication with a person arrayed as a Defendant who is said to have died in 2021, and a WhatsApp message, the delivery of which was itself admitted to be pending, and for such reasons the Appellants were consequently deprived of the opportunity to file a written statement and to be heard.

5. In the instant case, a decree is passed *ex parte*; the remedy of an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 ('**CPC**') is the appropriate remedy as provided by law, as the challenge rests upon non-service and denial of opportunity which are matters integral to the proceedings of the civil suit. It is only in the circumstances of the present case considering the object and intention of the said provision which enables a defendant to approach the very same court, so that the said court can examine such contentions on whether the passing of an *ex parte* decree was justified.

6. Hence, in our opinion, the Appellants need to approach the Trial Court under the provisions of Order IX Rule 13 of the CPC at the first instance for adjudication of the said issues as asserted by the Appellants. Rather than to relegate the Appellants to institute fresh proceedings, present proceedings can be considered and dealt as the application under Order IX Rule 13 of the CPC. We

permit the parties to present these proceedings to the District and Additional Sessions Judge, Bombay City Civil Court, to be treated as an application under Order IX Rule 13 of the CPC. We permit any additional application to be filed by the Appellants.

7. We express no opinion on the merits of the Judgment and Order, and the Trial Court shall hear and decide the Appellants' application to set aside the Judgment and Order passed *ex parte* against the Appellants on its own merit and in accordance with law. If any execution proceedings are initiated and pending before the Execution Court, the said Court shall defer the hearing of those proceedings until the Trial Court decides the Appellants' application for setting aside the *ex parte* Judgment and Order.

8. The parties shall appear before the Trial Court in such proceedings on 31st August 2026.

9. The Appeal is disposed of in the aforesaid terms.

10. In view of the above, pending Interim Applications, if any, shall also be disposed of.

11. No costs.

(DR. NEELA GOKHALE, J) (G. S. KULKARNI, J.)