



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3296 of 2026

**With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/FIRST APPEAL NO. 3296 of 2026**

=====

THE ORIENTAL INSURANCE COMPANY LTD.

Versus

A MANIYAR HEALTHCARE PVT. LTD.

=====

Appearance:

MS DIMPLE A THAKER(6838) for the Appellant(s) No. 1
NOTICE THROUGH SPEED POST NOT RECEIVED BACK for the
Defendant(s) No. 1

MR V M PATEL, ADVOCATE for the Defendant(s) No.1

=====

**CORAM:HONOURABLE THE CHIEF JUSTICE MRS.
JUSTICE SUNITA AGARWAL**

and

HONOURABLE MR.JUSTICE D.N.RAY

Date : 20/07/2026

ORAL JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. This appeal under Section 13 of the Commercial Courts Act, 2015 is directed against the judgment and order dated 15.03.2025 whereby the Commercial Civil Suit No.244 of 2024 has been proceeded ex-parte, on the premise that the defendant did not appear in the proceedings registered as a summary suit.

2. It is sought to be demonstrated before us by Ms. Dimple



A. Thaker, learned advocate appearing for the appellant that the original plaintiff/respondent herein presented the suit under Section 37 of the Code of Civil Procedure, 1908 for recovery of money against the defendant/appellant herein. In the said suit, the summons was sent to the defendant at the given address and it was returnable on 25.06.2024. In addition to the normal mode of service, the plaintiff was also directed to serve summons of the suit to the defendant through Registered Post A.D. by the Court and through E-mail. Direct service was also permitted. The same is evident from the order dated 06.05.2024 passed below Exh.1 at page-‘36’ of the paper-book.

3. It seems that by order dated 03.09.2024, the summary suit was converted into a long cause suit with the observation by the Court that the case does not fall within the purview of Order 37 of the Code of Civil Procedure, 1908. Simultaneously, while disposing of application Exh.9 filed by the plaintiff to proceed the suit ex-parte on account of failure of defendant to appear before the Court, by order dated 03.09.2024, while converting the summary suit to long cause suit, it was directed to be proceeded ex-parte.



4. It is categorically submitted by Ms. Dimple Thaker, learned advocate for the appellant that after conversion of the summary suit into a long cause of suit with the observation in the order dated 03.09.2024 that the suit filed by the plaintiff was not within the purview of Order 37 of the CPC, it was incumbent upon the commercial court/ trial court to issue fresh summons and the long cause suit could not have been proceeded ex-parte on the basis of the order dated 03.09.2024 passed on Exh.9 filed in the summary suit. This submission of the learned counsel for the appellant could not be disputed by the learned counsel for the respondent/ original plaintiff.

5. Only this much is sought to be submitted that before institution of the suit as a summary suit, the plaintiff had initiated *Pre-Institution Mediation* under Section 12 of the Commercial Courts Act, 2015. A Non Starter Report was submitted by the City Civil Court Legal Services Authority dated 22.08.2023 in Pre-Institution Mediation Case No.366 of 2023, wherein it is recorded that the notice for pre-institution mediation purpose had been served upon the opponent through bailiff and the opponent either on its own or through



its authorized representative or counsel did not give consent on the date fixed for appearance.

6. From a perusal of the Non Starter Report dated 22.08.2023 at page-‘35’ of the paper-book, only this much can be gathered that the defendant did not appear in the pre-institution mediation proceedings, on the dates fixed, i.e. 26.05.2023 and 17.08.2023. However, the knowledge of the defendant about the pre-institution mediation proceedings or the summons served in a summary suit would have no bearing on the contention of the appellant/defendant that after conversion of the summary suit, which was found not maintainable under Order 37 CPC, into a long cause suit, no notice or summons was issued to the defendant.

7. We find that the Commercial Court has committed a grave error of law in proceedings ex-parte on the basis of the order dated 03.09.2024 passed while converting summary suit into a long cause suit. For this reason alone, the judgment and order dated 15.03.2025, partly decreeing the Commercial Civil Suit No.244 of 2024 which has been proceeded ex-parte throughout, cannot be sustained.



8. While setting aside the judgment and order dated 15.03.2025, the Commercial Civil Suit No.244 of 2024 is restored. The matter is relegated to the concerned court for fresh adjudication in the suit with the directions as follows:-

(i) The appellant herein/original defendant and the respondent herein/original plaintiff represented by their advocates are directed to appear before the trial Court on **17.08.2026**, to enable the Commercial Court to proceed with the suit.

(ii) The Commercial Court shall make an endeavour to expedite the proceedings of the suit and make an endeavour to decide the same, preferably within the period of one year after giving due opportunity to both the parties to lead their evidence.

(iii) Both the parties are directed to co-operate in the proceedings, and in case of any non-corporation of any of the parties, it would be open for the Commercial Court to proceed ex-parte by passing an appropriate order, in accordance with



law.

9. With the above, the present appeal stands disposed of.
No order as to costs.

Consequently, the connected Civil Application would not survive and the same is disposed of, accordingly.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

A. B. VAGHELA