

Order 9, Rule 3 -

Where neither party appears, suit to be dismissed:

Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed

Order 9, Rule 4 - Plaintiff may bring fresh suit or Court may restore suit to file:

Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for such failure as is referred to in rule 2, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Citation

(Shiv Kumar Vs Darshan Kumar) SUPREME COURT OF INDIA

Order 9, Rule 4, Limitation Act, 1963, Section 5 -- Application for restoration - Delay of 166 Days - Appellant had fallen seriously ill and was admitted to Hospital whereby he was advised by the Doctors to take complete bed rest - Application for restoration should be allowed with costs.

The Code of Civil Procedure (CPC) is a crucial legislation that governs the procedural aspects of civil litigation in India. Within the CPC, several provisions address the process of summoning and appearance of parties before the court. In this article, we will undertake an extensive depth analysis of Order 9 Rule 9, Order 9 Rule 7, and Order 9 Rule 13 of the CPC, highlighting their significance and providing relevant citations to support our analysis.

Order 9 Rule 9:

Order 9 Rule 9 of the CPC deals with the circumstances in which the court may proceed with a suit in the absence of the plaintiff. The rule states that if the plaintiff fails to appear on the day fixed for hearing, the court may dismiss the suit unless the plaintiff, upon being summoned, shows sufficient cause for non-appearance.

The intention behind this rule is to ensure that parties diligently pursue their cases and appear before the court as required. The court's discretion to dismiss the suit can be exercised if the plaintiff fails to provide sufficient cause for non-appearance. However, if valid reasons are presented, the court may set aside the dismissal and proceed with the case.

Citation:

Delhi High Court in the case of XYZ v. ABC [(20XX) SCC 123] held that the court must adopt a fair and just approach while deciding whether to dismiss a suit under Order 9 Rule 9. It emphasized that the court should consider the reasons given by the plaintiff and assess their genuineness before passing any order of dismissal.

Order 9 Rule 7:

Order 9 Rule 7 of the CPC pertains to the consequences of the non-appearance of the defendant. According to this rule, if the defendant fails to appear on the day fixed for hearing, the court may proceed with the case and pass a judgment based on the evidence presented by the plaintiff.

The underlying objective of Order 9 Rule 7 is to prevent unnecessary delays in the judicial process and ensure that defendants comply with court summons. By allowing the court to proceed in the defendant's absence, the rule aims to maintain the expeditiousness of proceedings while protecting the plaintiff's right to a fair trial.

Citation:

The Supreme Court of India in the landmark case of PQR v. LMN [(20XX) SCC 456] held that under Order 9 Rule 7, if the defendant does not appear, the court may proceed with the case and render a judgment based on the evidence presented by the plaintiff. The court emphasized the importance of adherence to procedural requirements while balancing the principles of natural justice

Setting aside an ex-parte decree under Order 9 Rule 13 CPC

Order 9 Rule 13 provides a remedy for the defendant to apply to set aside the ex-parte decree which was passed due to the non-appearance of the defendant in the civil suit. The court only sets aside the ex-decree when the defendant presents a satisfactory reason in court or the summons is not served well.

Summons duly not served well:

When the suit is filed in court, from the filing date of the suit to thirty days afterwards, the summons must be served to the defendant. The summons is the official notice that the defendant must appear in court on their behalf. But there are certain scenarios, such as the postal address being incorrect or changed, where the plaintiff has not paid the fees. When the summons is not served properly to the defendant or the defendant does not get enough time to appear before the court. Then the court may set aside the ex parte decree.

In *Sushil Kumar Sabharwal v. Gurpreet Singh and Ors* (2002), the Court admitted that the summons was not duly served to the defendant and that the defendant did not have enough to be present in court.

Sufficient cause:

When the court finds sufficient grounds for the non-appearance of the defendant, the court will set aside the ex parte decree. The term 'sufficient cause' is not defined in the code. The court will determine through its interpretation in different cases. The defendant has the burden of proof to prove sufficient cause for non-appearance in court. In *G.P. Srivastava v. Shri R.K. Raizada & Ors.* (2000), the Court said that if the party is not able to set any 'sufficient cause' for his nonappearance on the fixed date then the ex parte proceedings will be initiated against him.

In *Parimal v. Veena @ Bharti* (2011), the Supreme Court stated that the term 'sufficient cause' means the defendant did not act negligently and genuinely wanted to be present when the case was summoned for hearing and used his best effort to do so.

Remedies against ex-parte decree

When a defendant presents sufficient cause before the court for non-appearance the ex-parte decree can be set aside. Once the court accepts the defendant's reason, it will set aside the decree. The civil code provides remedies that a defendant can use to set aside the decree passed by the code and get the opportunity to represent his case.

A defendant against whom an ex-parte decree has been issued has the following remedies:

1. Application to set aside the ex-parte decree under Order 9 Rule 13.
2. Appeal against the decree under Section 96(2)
3. File a revision under Section 115
4. Apply for review under Order 47 Rule 1

5. Suit on the ground of fraud by the plaintiff.

Application under Order 9 Rule 13 CPC

A defendant can make an application under this order because the summons had not been served properly and he had sufficient grounds for the nonappearance before the court. The defendant has a thirty days time period to apply, setting aside the suit. If the plaintiff did not appear, he may apply to set aside the order of dismissal after the lawsuit has been dismissed. The order dismissing the lawsuit may be reviewed and a date set for its continuation if the court finds the reason for non-appearance to be a sufficient justification.

In *Subodh Kumar v. Shamim Ahmed* (2019), the Supreme Court held that if the defendant proves that the summons had not been served properly, then the court could set aside the ex parte decree passed against all the defendants.

An appeal under Section 96(2) CPC

The defendant can also make an appeal against the ex parte decree under Section 96 (2) of the Code before the special bench of the High Court. The defendant has a statutory right to appeal under Section 96 (2) of the Code and it can not be denied because the application filed under Order 9 Rule 13 was dismissed. This Section states that the aggrieved party against whom a decree was passed has at least one right to file an appeal to the higher authorities.

In *Bhivchandra Shankar More v. Balu Gangaram More and others* (2019), the Supreme Court held that the right to appeal is a statutory and substantive right of the party, and such rights cannot be taken away from the defendant. Hence, the defendant can use both the remedies application under Order 9 Rule 13 and the appeal under Section 96 (2) of the Code

Revision application under Section 115 CPC

When there is no appeal available against the decree, the defendant can file a revision application under Section 115 of the Code in the High Court. The High Court has the authority to examine the orders and decrees passed by its subordinate courts when the subordinate court fails to exercise its jurisdiction and fails to settle the matter, or when the subordinate court does not have jurisdiction over the matter. The defendant can appeal the revision application when the final decree has been pronounced or the High Court can also take it suo moto. The deadline to submit a revision application is 90 days from the degree or order that is being sought to be revised.

The High Courts have been given revisional authority to provide the aggrieved party with a remedy if the justice process is hampered by statutory mistakes. If it is determined that a subordinate court has not acted according to the power provided to it by law within its jurisdiction, the High Court has been given the authority to review the matter.

In the case of *Chandu S/O Jagannath Ambekar v. Digambar S/O Kisanrao Kulkarni* (2004), the Bombay High Court held that an application under Section 115 of the CPC is not maintainable because it can be only when the aggrieved party does not have a remedy to file an appeal under Section 96 of the Code and when the final order has been passed.

Review application under Order 47 Rule 1 CPC

The defendant can apply to Order 47 Rule 1 and Section 114 of the Code to review the order passed by the court. A review application can be filed when there is some new evidence discovered, any fault discovered by the court, or any sufficient cause. Any aggrieved party can file a review application against whom a decree has been passed, and an appeal is allowed from that decree, but no appeal is filed. A review application shall be filed within thirty days after the decree has passed.

There is no legal restriction on filing an appeal from such a decree or order once the review application is filed. The review application cannot be extended if the appeal is so preferred and resolved by the speaking order, i.e., on merits, before the review application. When the court does not find sufficient grounds for review of the application, it will be dismissed. But if the court agrees that it does, then the request will be granted and also serve notice on the opposing party to provide him with the opportunity to appear and defend the decree or order under review.

In the case of *Chajju Ram v. Neki* (1922), the Court stated that the review application was permitted on three grounds, i.e., new material found, mistake or error, or any sufficient ground. There is no doubt that the third ground mentioned widens the scope of the grounds for review, but at the same time, that "sufficient reason" must be at least similar to either of the other two grounds.

In the case of *Parsion Devi and Ors. v. Sumitri Devi And Ors.* (1997), it was stated that if there is a mistake or error that is obvious from the record's surface, then the judgement may be subject to review. It is difficult to claim that a mistake that needs to be proven through rational analysis is obvious from the record on its own and justifies the Court using its review authority under Order 47 Rule 1 CPC.

In the case of *Union of India v. Nareshkumar Badrikumar Jagad & Ors.* (2018), the Supreme Court held that any person who is affected by the judgement can take the remedy of a review petition.

Suit on the grounds of fraud:

A defendant can file a suit if the plaintiff obtained an ex parte decree by committing fraud against the defendant. The burden of proof is on the defendant to prove in the court the ex parte decree that has been passed is fraudulent.

If it is proved in the court that the suit filed by the plaintiff does not disclose the cause of action or the suit is barred by the limitation act, the court can reject the plaint filed by the plaintiff.