

29 MISC DJ ADJ 382/25
LAJWANTI JAIN Vs. AJAY KUMAR JAIN

07.07.2026

Present: Ms. Sapna Sinha, Ld. LAC for applicant/defendant.
Applicant/defendant in person.
Sh. Anu Kumar, Ld. Counsel for non applicant/plaintiff in person
and Sh. Mayank Gupta, Ld. Counsel for non applicant/plaintiff

An application under Order IX Rule 13 CPC is filed for setting aside the *ex-parte* decree dated 13.10.2016.

It is stated that the plaintiff's suit for recovery of Rs.16,98,378/- was decreed *ex-parte* in favor of plaintiff vide judgment & order dated 13.10.2016. Applicant has prayed for the setting aside of the order on the ground that summons of the suit were never served on defendant and defendant has a prima facie case in his favor. The application is also accompanied with an application under Section 5 of Limitation Act, 1963 seeking condonation of delay of 3078 days in filing WS.

Plaintiff/respondent has contested the application and has filed a reply to the same.

Arguments heard. Record perused.

Applicant has sought condonation of delay of 3078 days on the ground that he had no knowledge of the pending proceedings and if he had any knowledge, he would have moved application at the early stage.

In the reply, the plaintiff has stated that in a connected matter between both the parties one Cr. Rev. Petition was filed by the applicant bearing no.227/2019 titled as Ajay Kumar Jain Vs. State & Ors. The said Criminal Revision Petition was filed against the order dated 22.09.2025 declaring the defendant as proclaimed offender. In the reply filed on behalf of the plaintiff on

20.08.2019 in the said revision, the fact of pendency of the execution petition was disclosed. True copy of reply dated 20.08.2019 is produced.

Para no.10 of the said reply is reproduced hereinbelow.

“That the address furnished by the accused in the present Revision Petition is a rented premises. In the police verification dt. 07.05.2019 conducted for the said rented premises, the Revisionist furnished C-1/33, Himalayan Apartment, Plot No-10, Sector- 22, Dwarka, Delhi as his permanent address. However, in an Execution Petition filed by Respondent No. 2, titled as Lajwanti Jain v. Ajay Kumar Jain pending before the Hon'ble ADJ, Sh. Balwant Rai, Dwarka Court, the address of property bearing no. C-1/33, Himalayan Apartment, Plot No-10, Sector- 22, Dwarka, Delhi was furnished by the Decree Holder, Smt. Lajwanti Jain for the purpose of Attachment in her Execution Petition. On service on the said address, one Animesh Kumar filed an objection that the Property No. C-1/33, Himalayan Apartment, Plot No-10, Sector-22, Dwarka, Delhi is owned by him and that Ajay Kumar Jain had rented that property in the year 2011 and vacated it in 2013 (copy of the Police Verification of the current rented premises of the Revisionist along with copy of Objections Annexed herewith as AnnexureA-4). The same was pointed out before this Hon'ble Court in the course of the Court Proceedings on the last date of hearing”.

Order IX Rule 13 CPC provides that an ex-parte decree can be set aside if defendant successfully shows that the summons were not served or there was any sufficient cause that prevented him from appearing before this court.

As per Section 5 of Limitation Act, 1963 the applicant has to satisfy the court that he had sufficient cause that prevented him from appearing or moving an application within the limitation period. The limitation period for

moving an application under Order IX Rule 13 CPC is 90 days from the date of judgment & decree.

In the present case, defendant cannot take the defence that he had no knowledge of the same. In the reply that was filed by the plaintiff in the revision petition, to which defendant was a party. The details of the execution petition were clearly mentioned. Notice lexically means when a person has knowledge of an existing fact or would have acquired such knowledge had they exercised due diligence.

In the present case, it cannot be believed that defendant had no knowledge of the present proceedings. Hence, this court finds no ground to condone the delay in filing of application under Order IX Rule 13 CPC.

Accordingly, the application under Section 5 of Limitation Act, 1963 is dismissed. As a natural corollary, the application under Order IX Rule 13 CPC also stands dismissed.

File be consigned to Record Room.

(Abhitosh Pratap Singh Rathore)
DJ-05 (SW)/Dwarka Courts
New Delhi: 07.07.2026