

Satbir Vs Jagbir

Present: Sh. PS Yadav, Ld. Counsel for applicant/Defendant No. 1.
Sh. Jagpal Yadav, Ld. Counsel for respondent/plaintiff.

Application under Order IX Rule 13 of CPC for setting aside the *ex parte*
order dated 20.02.2017 and exparte judgment
and decree dated 09.09.2022

ORDER

This order of mine shall dispose of an application under Order IX Rule 13 of CPC for setting aside ex-parte order dated 20.02.2017 and ex-parte judgment and decree dated 09.09.2022, moved on behalf of applicant/defendant No. 1.

2. It has been argued by the Ld. Counsel for the applicant/defendant No. 1 (hereinafter referred to as 'applicant') that the Court has passed an ex-parte order dated 20.02.2017 on account of non-appearance of the applicant and as a necessary consequence thereto, the judgment and decree dated 09.09.2022 was also decided ex-parte qua the applicant. The Ld. Counsel has further argued that the previous counsel of the applicant had expired and therefore the applicant did not have the knowledge of the suit, due to which he could not appear on the date fixed and therefore he was proceeded against ex-parte. Upon making such averments, a prayer is made that the ex-parte order dated 20.02.2017 and ex-parte judgment and decree dated 09.09.2022 be set aside.

3. Per contra, Ld. Counsel for the respondent/plaintiff (hereinafter referred to as 'plaintiff') has argued that the suit was instituted on 24.07.2015 and the applicant did enter appearance and even filed a written statement and further contested the case for about two years; however, thereafter the applicant intentionally did not appear and was consequently proceeded against ex-parte. It has further been argued that the present application has been filed merely to linger on the matter and to delay the proceedings. It has further been argued that the

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applicant has not shown any just and sufficient cause for his non-appearance and therefore, no relief can be granted in favor of the applicant.

4. I have heard the learned counsels for the parties and perused the case file carefully.

5. A perusal of the record indicates that the applicant was proceeded ex-parte vide order dated 20.02.2017 and thereafter an ex-parte judgment and decree was passed against him. It is pertinent to mention that in his application seeking to set aside the aforementioned order and judgment, the ground claimed by the applicant is that he neither received any summons nor he had any knowledge about the pendency of the suit, however during the course of arguments the Ld. Counsel for the applicant admitted that the applicant did enter appearance and even filed the written statement and contested the case for a while. Such facts are also evident in the judgment dated 09.09.2022, wherein it has been specifically observed that the applicant had initially entered appearance and was proceeded against ex-parte only at a later stage. In view of the same, the argument of the applicant that he did not receive any summon or that he did not have knowledge of the pendency of the suit, cannot be accepted.

6. Furthermore, the applicant has merely argued that his counsel had expired and consequently, he did not have the knowledge of the suit. However, no material has been placed on record substantiating such averment. Even otherwise, such an excuse cannot be regarded as a '*sufficient cause*', in terms of Order IX Rule 13 of CPC, that could have prevented the applicant from appearing when the suit was called for hearing. A perusal of the record reveals that the applicant was proceeded against ex-parte vide order dated 20.02.2017 and an ex-parte judgment was passed on 09.09.2022. Furthermore, the present application was filed only on

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21.12.2023, along with an application for condonation of delay on the ground that the applicant was suffering from illness, due to which he could not contact his counsel and on account of not possessing knowledge regarding the hard procedure of law, the applicant could not file the present application within time. However, it is no more *res integra* that mere general and vague averments cannot be made to supply '*sufficient cause*' in terms of the mandate of Order IX Rule 13 of CPC. Furthermore, in line with the principle of '*vigilantibus non dormientibus jura subveniunt*', the litigant has to be vigilant in pursuing his case and he cannot solely rely on the advocate. Reliance in this regard is placed on the decision of the Hon'ble Punjab and Haryana High Court titled as **Manjit Kaur vs. Manpreet Kaur and Others (CR-9429 of 2025 (O&M). D/d.13.01.2026.)**, wherein the following pertinent observations have been made –

“13. A bare reading of the above averments shows the same to be utterly vague and general in nature. Petitioner has stated nothing as to on which date petitioner had approached her counsel; on which date petitioner had engaged new counsel; name of the counsel et cetera. No details with regard to cause of delay are forthcoming from the said application. Thus, the ostensible reasons given by the petitioner for delay in filing application under Order [9](#), Rule [13](#) CPC do not bear scrutiny. In fact, it would appear that the matter has been deliberately delayed by the petitioner only to circumvent due process and to defeat rights of plaintiffs.

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16. It is cardinal principle of law that delay of each day has to be explained. In this regard, reference may be made to a recent

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judgment of the Hon'ble Supreme Court in Civil Appeal No. 11794 of 2025 titled as Shivamma (Dead) by LRs v. Karnataka Housing Board and others, 2025 INSC 1104 decided on 12.09.2025, Law Finder Doc Id # 2777666, wherein it is held that each day's delay has to be explained in a mathematical manner, which has not been done by the petitioner. No cogent reason or plausible explanation has been furnished by the petitioner for condonation of such an inordinate and unexplained delay in filing the accompanying appeal. Moreover, condonation of such an inordinate delay would be tantamount to declaring the law of limitation obsolete/redundant, without any justification. Even after appearing before the Executing Court, application under Order 9, Rule 13 CPC was moved 9 months thereafter; and over 1 year after passing of judgment dated 16.12.2016. The Hon'ble Supreme Court in Pathapati Subba Reddy (Died) by LRs and others v. The Special Deputy Collector (LA), Law Finder Doc Id # 2542600, has recently held as under:-

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

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(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to dis-regarding the statutory provision."

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18. Moreover, duty lies upon the petitioner to be vigilant towards her rights to pursue litigation diligently. The petitioner cannot totally sleep upon the matter after allegedly entrusting the same to her counsel. In this situation, it would be apposite to refer to recent judgment of the Delhi High Court in *Moddus Media Pvt. Ltd. v. M/s. Scone Exhibition Pvt. Ltd., (Delhi)*: Law Finder Doc Id # 887148 holding that:

"11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted."

8. When the facts of the case are viewed in light of the aforementioned proposition of law, it becomes evident that averments of a general nature have been made, bereft of sufficient particulars, and each day's delay has not been explained.

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Furthermore, no sufficient cause has been made out by the applicant as to why he sat idle for a period of 6 years and therefore, his conduct does not reflect due diligence. In view of the same, the essentials conditions required to set aside the ex-parte order and judgment remain unfulfilled and consequently, the present application is accordingly dismissed. File be consigned to record room, as per rules, after due compliance.

Announced in open court.
01.07.2026

(Chanderkant Yadav)
Civil Judge (Junior Division)
UID No.HR0697

Note:- Certified that all the seven (7) pages of this Judgment have been checked and signed by me.

(Chanderkant Yadav)
Civil Judge (Junior Division)
UID No.HR0697

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Present: Sh. PS Yadav, Ld. Counsel for applicant/Defendant No. 1.
Sh. Jagpal Yadav, Ld. Counsel for respondent/plaintiff.

Today the case was fixed for arguments on an application filed under Order IX Rule 13 of CPC. Arguments heard. Vide my separate order of even date, the application of the applicant/defendant has been dismissed. File be consigned to the record-room after due compliance.

Announced in open court.
01.07.2026

(Chanderkant Yadav)
Civil Judge (Junior Division)
UID No.HR0697