IN THE COURT OF DISTRICT JUDGE, AMBEDKAR NAGAR

Misc. Civil Appeal No. 26 of 2024

Om Prakash Singh vs. Smt. Radhika Devi

1. Introduction

This appeal under Order 43 Rule 1(d) of the Code of Civil Procedure, 1908 (CPC), is directed against the order dated 05.10.2024 passed by the Civil Judge (Senior Division), Ambedkar Nagar, in Original Suit No. 112 of 2013. By the impugned order, the trial court rejected the appellant's application under Order IX Rule 13 CPC seeking to set aside an ex parte decree. The ex parte decree dated 05.07.2017 had been passed in the said suit – a suit involving a land transaction between the parties – after the defendant (appellant herein) failed to contest the proceedings. The appellant, who was the defendant in the suit, now contends that the trial court's refusal to recall the ex parte decree is erroneous and contrary to law. The respondent (plaintiff in the suit) opposes the appeal, supporting the trial court's order.

2. Factual Background (Synopsis): The original suit was filed by Smt. Radhika Devi (respondent) against Shri Om Prakash Singh (appellant) in 2013, concerning specific performance of an agreement to sell agricultural land. The respondent alleges that the appellant executed a registered agreement on 17.08.2013 to sell ¼ share of his land (Gata No. 1156A/1156B, area 0.5710 ha) for a total consideration of ₹1,50,000, out of which ₹1,40,000 was paid upfront and ₹10,000 remained due. The appellant allegedly failed to execute the sale deed despite repeated demands once the balance was arranged. The appellant, on the other hand, claims that the transaction was not a sale agreement at all but a loan/mortgage arrangement. According to him, he had borrowed ₹1,00,000 from the respondent's husband, Prahlad, in 2013 due to financial hardship, against a pledge of the aforesaid land. He asserts that Prahlad misused the situation by fraudulently preparing a sale agreement for ₹1,50,000 (showing ₹1,40,000 received and a balance of ₹10,000) instead of a simple mortgage. The appellant maintains that he repaid ₹1,10,000 (principal plus interest) well within the agreed time, but Prahlad neither returned the documents nor cancelled the agreement. Instead, the respondent (through her husband) filed the suit to unjustly acquire the valuable land unjustly, allegedly taking advantage of the appellant's absence and financial duress.

3. Ex Parte Proceedings: The trial court record reveals that the appellant/defendant initially did not enter an appearance in the suit. Summons were issued to him, and ultimately, substituted service by newspaper publication was resorted to. On 17.10.2014, the trial court deemed

service effected through publication and fixed 23.04.2015 as a final opportunity for the defendant to file a written statement. The defendant still did not appear or file any defence. Consequently, on 12.10.2015, the court ordered that he proceed ex parte against him. Thereafter, the suit was taken up for ex parte evidence of the plaintiff. The plaintiff (respondent) produced her witnesses, including the attesting witnesses to the agreement. On 05.07.2017, the learned Civil Judge delivered an ex parte judgment and decree, presumably granting the relief of specific performance (execution of the sale deed for the suit land in the respondent's favour).

4. Recall Application under Order IX Rule 13 CPC: The appellant asserts that he remained unaware of the pendency and outcome of the suit until August 2017. He claims that on 08.08.2017, he was warned by Prahlad (respondent's husband) that an ex parte decree had been obtained and that he should not enter the land, as the court would now execute a sale deed in the respondent's favour. Shocked by this revelation, the appellant rushed to the court. On 10.08.2017, he applied for certified copies of the ex parte judgment/decree and obtained them the same day. Within nine days, on 19.08.2017, the appellant moved an application under Order IX Rule 13 CPC before the trial court to set aside the ex parte decree, along with an application under Section 5 of the Limitation Act, 1963, to condone any delay. In support of his recall plea, the appellant pleaded that he was never served with a summons and had no notice of the suit until the decree, and that earlier in 2016, upon getting a hint of the suit, he had attempted to approach the court but was hampered by circumstances. Notably, he averred that around the time the suit was proceeding ex parte, he was preoccupied with a crisis – his young son fell seriously ill with a lung infection, requiring prolonged treatment, which caused the appellant to be totally engrossed in his son's survival for many months. He submitted a medical certificate and affidavit to substantiate that his failure to appear was due to this grave family medical emergency and not due to negligence. The appellant also emphasised that he acted promptly as soon as he learned of the ex parte decree, by obtaining copies and filing the recall application without undue delay. Lastly, the appellant argued that grave injustice would result if the ex parte decree (obtained by the respondent through alleged fraud and misrepresentation) is not set aside, given that the suit concerns valuable ancestral land worth ~₹20 lakhs, far exceeding the meagre loan amount, and that he has a bona fide defence on merits which deserves to be heard.

5. Objections by Respondent: The respondent (plaintiff) stoutly opposed the recall application, filing her written objections on 13.09.2017. She maintained that the application lacked merit and was filed on false, fabricated grounds. According to the respondent, the appellant was duly served – by way of newspaper publication – after he allegedly evaded personal service. She points out that, despite service by publication, the appellant failed to avail of multiple opportunities offered by the trial court and allowed the suit to proceed ex parte. The respondent denies all allegations of fraud, asserting that the appellant voluntarily executed the sale agreement in the presence of

witnesses and even had it registered at the Sub-Registrar's office after reading and understanding its contents. It is contended that the appellant's story of a loan and mortgage is a belated concoction. If he genuinely believed the agreement was forged or of a different nature, he never lodged any complaint with the police or authorities about it. The respondent further disputes the appellant's account of events: she claims neither she nor her husband ever threatened the appellant; instead, it was the appellant who tried to intimidate her into abandoning the case when he learned of it. The respondent highlights that the appellant knew the suit much earlier than claimed, noting that the appellant himself admits an incident in August 2016, implying he was aware of the litigation at least a year before the decree. Despite that, he chose not to approach the court in time, which shows negligence. The nine-day gap between obtaining the copy (10.08.2017) and filing the application (19.08.2017) is cited by the respondent as an unexplained delay. In sum, the respondent characterises the recall application as a delaying tactic to frustrate her decree. She argues that the application was filed beyond the prescribed limitation and "without sufficient cause," and hence not entitled to condonation under Section 5 of the Limitation Act. The respondent submits that the trial court rightly dismissed the application, and prays that the ex parte decree, which, according to her, was passed on a properly served and long-pending suit, be allowed to stand so that she can obtain the fruits of the judgment.

6. Trial Court's Decision: After hearing both sides, the Civil Judge (Sr. Div.), by order dated 05.10.2024, rejected the Order IX Rule 13 application, thereby maintaining the ex parte decree. While the full text of the trial court's reasoning is part of the record, in essence, the court found that the appellant had failed to prove "sufficient cause" for his non-appearance. The trial court noted that the summons had been served by publication as required by law and observed that the appellant appeared to be aware of the proceedings but still did not diligently pursue his defence. The court was not convinced by the appellant's justification regarding his son's illness vis-à-vis the entire period of non-appearance. It also took into account the fact that the application was filed after the normal limitation period (30 days from the decree) and, although a condonation was sought, the appellant's explanation for the delay and default was not found persuasive. In the trial court's view, reopening the case at that late stage would unduly prejudice the decree-holder (respondent), especially when the appellant's conduct suggested avoidance or negligence rather than bona fide inability. Aggrieved, the appellant has now preferred the present appeal against that order of rejection.

7. Points for Determination

From the submissions and record, the main points that arise for determination in this appeal are:

> (i) Whether the appellant has made out any ground under Order IX Rule 13 CPC for setting aside the ex parte decree dated 05.07.2017? In particular, was the summons duly served upon the appellant, and if

yes, whether the appellant was prevented by "sufficient cause" from appearing when the suit was called for hearing?

(ii) Depending on the answer to point (i), what order should be passed in this appeal? (i.e., whether the impugned order of the trial court should be affirmed or set aside, and on what terms).

These points encompass the core dispute: the legality and propriety of the trial court's refusal to recall the ex parte decree, in light of the facts and the governing legal standards. I shall discuss the evidence and legal position, and render findings on each point in the succeeding sections.

Appreciation of Evidence and Record

8. Service of Summons: The trial court record (summons return and order sheets) shows that ordinary service on the appellant was unsuccessful. Presumably, the process server could not locate the appellant, or he was unavailable at his residence. Thereafter, the court permitted substituted service by publication in a local newspaper (as per Order V Rule 20 CPC). A notice of the suit, dated 17.10.2014, was published in a newspaper circulating in the area. The court, being satisfied with this mode, declared the summons "duly served" by publication on that date. The appellant has not disputed that such a publication was made; however, he contends that he never actually came across that notice. It is to be noted that publication in an approved newspaper is a legally recognised method of service, and once the court records reflect due publication, a presumption of service can arise. In fact, Hon'ble the Supreme Court has observed that under Section 27 of the General Clauses Act and Section 114 of the Evidence Act, there is a rebuttable presumption that the addressee receives a properly addressed and dispatched notice (Please see **Parimal vs Veena @ Bharti on 8 February, 2011: AIR 2011 SUPREME COURT 1150**). By extension, an ex parte proceeding initiated after duly ordered substituted service is generally valid. In the present case, the respondent asserts that all requisite steps were taken and that the appellant deliberately avoided service of summons. The appellant, on oath, denies any knowledge of the publication. He was residing in Village Parsakatuai, Ambedkar Nagar district – it is quite possible that a newspaper announcement (if not widely read or if he was away) did not catch his attention. This goes to the heart of whether the summons can be considered "duly served" in the spirit of Order IX Rule 13. The record does not contain any acknowledgement or direct evidence that the appellant saw the notice. Therefore, while legally the trial court was entitled to proceed ex parte after the mode of substituted service, the factual reality of notice (or lack thereof) to the appellant remains a point of contention.

9. Appellant's Absence and Cause: It is undisputed that the appellant did not enter an appearance from the start of the suit in 2013 until after the ex parte decree in 2017. The key question is whether this absence was due to any "sufficient cause" or merely attributable to the appellant's negligence or willful default. To assess this, one must consider the timeline of events

gleaned from the affidavits and materials filed with the Order IX Rule 13 application:

10. The appellant claims that initially, he had no notice of the suit because the summons never reached him personally. This assertion is plausible since the process had to be effected by publication, indicating either an outdated address or evasion. There is no evidence that the appellant was absconding or concealing himself to avoid service; the respondent has not produced proof of, say, the appellant refusing registered summons or the like (unlike in some cases, such as Parimal v. Veena, where the defendant had repeatedly refused service). Here, the mode of service by publication might have been resorted to in the routine course after initial failure, without establishing that the appellant was aware of the attempt.

11. The appellant's first actual knowledge of the suit, by his account, occurred in August 2016. He narrates that before 17.08.2016, the respondent's husband, Prahlad (who was driving the litigation from the respondent's side), came with a group to the appellant's village and attempted to take possession of the land, claiming that he had an agreement and had filed a case. This incident alarmed the appellant. If true, it suggests the appellant became aware at least of the existence of some legal claim by the respondent as of that date. In response, the appellant states that he immediately approached a lawyer and moved an application in the pending suit to recall the ex parte order (by then, the suit was already proceeding ex parte). Indeed, the record reflects that ex parte proceedings were ordered on 12.10.2015, so by mid-2016, the appropriate remedy was an application under Order IX Rule 7 CPC (to set aside the ex parte order and participate in the suit). The appellant avers that he filed such an application. However, according to the appellant, this application was not effectively prosecuted because calamity struck his family. His teenage son fell gravely ill around that period (2016-17). The appellant has produced a medical certificate and hospital records indicating that his son was under intensive treatment for a severe lung infection (tuberculosis) and required the appellant's constant care and financial support for several months. The appellant, being a father and the only earning member, prioritised his son's life during that time. It is submitted that he was unable to attend to the court matter or follow up on his recall application in late 2016 and early 2017 because his son's health was critical. This explanation is not implausible; courts have recognised illness of oneself or immediate family as a valid ground that can constitute "sufficient cause" if it genuinely incapacitated the party from appearing (for instance, in Ram Nath Sao v. Gobardhan Sao, illness was considered a valid explanation, cited in Parimal).

12. On the other hand, the respondent casts doubt on this narrative. She argues that the appellant's story of being threatened on 17.08.2016 and of a son's illness is uncorroborated and self-serving. It is true that apart from the appellant's own affidavit and a medical paper, no independent witness was produced to back the alleged 2016 incident or to show that the illness entirely prevented any communication with his lawyer or the court. The respondent emphasises that even after the son's treatment, the appellant did not promptly

inform the court of his situation. It was only after the decree was passed and execution loomed that the appellant woke up and rushed to file the Order IX Rule 13 application. The chronology (Aug 2016 knowledge, yet waiting until Aug 2017 after the decree) is portrayed by the respondent as a sign of a lack of diligence. She contends that a reasonable person, even with a sick child, would have at least filed a simple application or had counsel make representations to avoid an ex parte decree, if he truly had notice in 2016. The appellant's failure to do anything in the suit for nearly a year (Aug 2016–July 2017) is argued to be a consequence of his own negligence or strategy, rather than an unavoidable cause.

13. Moving to August 2017, it is admitted by both sides that the appellant definitively learned of the ex parte decree by 08.08.2017. The evidence for this is partly conflicting – appellant says Prahlad informed (or threatened) him about the decree; respondent says appellant already knew and in fact was the one issuing threats. In any event, the appellant obtained the certified copy of the judgment/decree on 10.08.2017, as per the endorsement on record. He then filed the Order IX Rule 13 application on 19.08.2017 along with an affidavit. The appellant explains the 9-day delay (10th to 19th August) as the time required to prepare the application and arrange the supporting documents (including the medical certificate). The trial court, while initially considering the limitation aspect, appears to have condoned this delay by granting the Section 5 Limitation Act application (noting that sufficient cause for the minimal delay was shown). The respondent, however, continued to press the point that the application was beyond the 30-day limitation period from the date of the decree (which ordinarily would have expired in early August 2017). That Section 5 relief should not have been given. It is noteworthy that under Article 123 of the Limitation Act, 1963, the period for moving to set aside an ex parte decree is 30 days from the date of the decree, or if the summons was not duly served, then 30 days from the date the applicant came to know of the decree. In the present case, if the appellant's contention of no service is accepted, the limitation would run from 10.08.2017 (date of knowledge/copy), and the application on 19.08.2017 would actually be within 30 days of knowledge. Conversely, if service by publication in 2014 is treated as valid service, then the limitation clock started from the decree date (05.07.2017) and expired on 04.08.2017, making the 19.08.2017 application technically late by about 15 days. The trial court evidently proceeded on the latter assumption (that service was duly made and limitation lapsed), but found the delay excusable and exercised its discretion to condone it. In this appeal, therefore, the focus shifts primarily to the merits of "sufficient cause" rather than the arithmetic of limitation, since the slight delay has already been condoned at the trial court's discretion. Nevertheless, the respondent's viewpoint that the appellant was indolent in pursuing his remedy is duly noted as part of the factual matrix.

14. Conduct and Good Faith: Both parties have levelled allegations about each other's conduct to support their respective stands. The appellant portrays the respondent (and her husband) as schemers who took advantage

of his distress (unemployment and a sick child) to entrap him in a one-sided agreement and to grab his land by an ex parte decree. He insists that had he known of the suit in time or had an opportunity, he would have contested vigorously, given the high stakes (his homestead land). The fact that he promptly acted in August 2017 is cited as evidence of his good faith and eagerness to present his defence. Conversely, the respondent points to the appellant's past behaviour in the suit. Despite being aware, he "remained inactive" and let the case proceed, indicating a tactic of delay or disregard for the court. She also highlights that the appellant's substantive defence (loan vs sale agreement) is suspect, given the existence of a registered contract with his admitted signatures; from her perspective, the appellant's claim of fraud is an afterthought, and his overall approach betrays a lack of bona fides.

15. Trial Court's Assessment: The learned trial Judge, in the impugned order, weighed these factual assertions. The order suggests that the Judge was influenced by the case's long duration and the ample opportunities given to the defendant. The trial court noted that service by publication was a matter of court record, and that the defendant did not avail the chance to participate even after that. The court was not satisfied that the medical documents truly explained the entire period of default. It appears the court found gaps or unconvincing aspects in the appellant's story (for example, no details on why no one else could inform the court of his difficulties, or why he did not inquire about his pending 2016 application for nearly a year). The trial court also likely considered the hardship to the plaintiff if the decree was set aside after so many years – the plaintiff is an elderly lady whose husband is said to be a heart patient. They have been awaiting the outcome since 2013. The judge perhaps leaned on the principle that litigation cannot be interminable, and a defendant who negligently sleeps over his rights cannot later derail a decree unless truly justified. Summarily, the trial court concluded that no sufficient cause was demonstrated and that the ex parte decree did not warrant interference.

16. Summary of Evidentiary Findings: In light of the above, certain facts are clear and some are debatable: It is clear that summons were not personally served on the appellant – service was by substituted means. It is also clear that the appellant did not appear at any time before the decree. It is undisputed that he appeared in court soon after 08.08.2017 and filed the recall application on 19.08.2017, with the minor delay condoned. The contentious areas are: (a) Whether the appellant truly lacked knowledge of the suit until August 2017 (or did he know in 2014/2015 via the publication, or in 2016 via the alleged incident?); (b) Whether the appellant's failure to act from mid-2016 (if we believe he knew then) till mid-2017 is excusable due to his son's illness, or whether it amounts to negligence; and (c) Whether the appellant's overall conduct is bona fide (i.e., he genuinely intends to contest on merits and was prevented by circumstances), or mala fide (using delay to avoid an inconvenient contract). These evidentiary conclusions must now be tested on the legal touchstone of Order IX Rule 13 CPC and the governing judicial principles.

Legal Position

17. Order IX Rule 13 CPC – Setting aside Ex Parte Decree: Order IX Rule 13 of the CPC provides a statutory remedy to a defendant against whom a decree has been passed ex parte. The rule stipulates two grounds upon which an ex parte decree must be set aside by the court, namely: (1) if the summons was not duly served on the defendant, or (2) if the defendant was prevented by any "sufficient cause" from appearing when the suit was called on for hearing. The rule is couched in mandatory terms – if either ground is proved to the satisfaction of the court, the ex parte decree "shall" be set aside. However, there is an important proviso (the Second Proviso to Order IX Rule 13) which cautions that no decree shall be set aside merely on the ground of an irregularity in service if the court is satisfied that the defendant had notice of the date of hearing and sufficient time to appear. In other words, even if there was some defect in the mode of service, the court will not overturn the decree if it finds that the defendant in fact knew of the proceedings and still chose not to attend. This proviso underscores that the remedy is to redress real injustice and not to reward avoidance tactics.

18. Burden of Proof: In an application under Order IX Rule 13, the burden lies on the applicant/defendant to prove that one of the two grounds is made out. The proceedings are summary but quasi-judicial: evidence can be filed by affidavit (and sometimes oral evidence is also led) to establish, for instance, that the summons never reached the defendant or that some disabling circumstance existed. The court must consider the affidavits, documents, and overall circumstances. Significantly, the applicant must also demonstrate that the application itself is made within the limitation (30 days as per Article 123 of the Limitation Act) or explain any delay with sufficient cause (for condonation under Section 5 of the Limitation Act, 1963). In the present case, as discussed, the question of limitation hinges on whether the summons was duly served. Assuming it was (by publication in 2014), the delay from 05.08.2017 to 19.08.2017 needed condonation, which the trial court granted. Section 5 of the Limitation Act allows extension of the period if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. This test of "sufficient cause" for delay is analogous to, though not the same as, "sufficient cause" for non-appearance – both involve the court's discretion and evaluation of reasonableness and bona fides (ref. **Collector Land Acquisition, Anantnag & ... vs Mst. Katiji & Ors on 19 February, 1987: 1987 AIR 1353**, which emphasises a liberal approach in condoning delays to advance substantial justice). Here, the minimal delay was condoned, presumably because the appellant acted promptly upon learning. Therefore, this appeal primarily examines the merits under Order IX Rule 13 rather than any limitation bar.

19. Concept of "Sufficient Cause": The term "sufficient cause" is not defined in the CPC but has been the subject of extensive judicial interpretation. Hon'ble the Supreme Court in Parimal v. Veena alias Bharti (Supra) has succinctly summarised the principles governing Order IX Rule 13 applications. The Court noted that "sufficient cause" implies a cause that is

beyond the control of the party and one that is consistent with the standard of a reasonable and prudent person. In Parimal's case, it was observed:

20. Sufficient cause means that the defendant "had not acted in a negligent manner or there was no want of bona fide on his part in view of the facts and circumstances of the case", and that he "cannot be alleged to have not acted diligently or remained inactive". It must be a cause that prevented the defendant from appearing in court, despite his honest intention and best effort to do so.

21. The test laid down is essentially: whether the defendant honestly intended to be present on the hearing date and did his level best to attend, but circumstances beyond his control prevented his appearance. Each case turns on its own facts; there is no rigid formula for what constitutes sufficient cause. However, negligence, lack of good faith, or mere inconvenience would not qualify – the cause should be such that it excuses the default in the judgment of the court. For example, deliberate avoidance or careless inaction is not protected. Conversely, bona fide mistakes, accidents, sudden illness or other unforeseen events have been accepted as sufficient cause in many instances.

22. It is also held that "every good cause is a sufficient cause", – though requiring a good cause sets a slightly lower threshold of proof than a sufficient cause. Ultimately, if the court finds merit in the explanation, it should lean in favour of allowing the defendant to contest.

23. Natural Justice and Right to be Heard: Our legal system places a premium on affording a fair hearing to all parties. Justice Vivian Bose's celebrated observations in **Sangram Singh v. Election Tribunal, AIR 1955 SC 425**, remain instructive. The Hon'ble Supreme Court emphasised that procedural laws are handmaids to justice and are grounded on principles of natural justice – principally, that no man should be condemned unheard, no decision should be taken behind his back, and no proceeding should continue in his absence without giving him a fair opportunity to participate. The Court noted that while exceptions exist (such as ex parte proceedings when a party neglects to attend despite notice), courts should interpret and apply procedural rules in a manner that does not unjustly shut out a litigant. The ethos is that a party has a right to be heard and should not be deprived of that right unless clearly warranted by a specific rule. This does not mean that ex parte decrees are easily overturned – it means the courts must be cautious to ensure that a party's absence was truly wilful or without cause before depriving him of a hearing. Even in Sangram Singh, the Supreme Court set aside an ex parte proceeding, holding that the tribunal erred in refusing to allow the defendant's counsel to participate when he appeared on a later date; the tribunal should have exercised its discretion to accommodate the defence rather than rigidly exclude it, since ultimately the goal is a decision on the merits after hearing both sides.

24. Balancing Finality and Fairness: On one side, there is the principle of finality of litigation – a successful plaintiff is entitled to enjoy the fruits of a decree without undue delay or repetitive obstruction by the defendant. On

the other side is the principle of fair hearing – that judgments should ordinarily be on merits after both sides are heard, and ex parte decisions are an exception. The law via Order IX Rule 13 strikes this balance by requiring the defendant to satisfy the court that his absence was not due to his own fault. If he satisfies that threshold, then the interest in a fair trial outweighs the interest in immediate finality. If he does not, then the decree stands to prevent abuse of process. Courts have often remarked that while a liberal approach is warranted in examining "sufficient cause" so that technicalities do not triumph over substantial justice, it is equally true that one who deliberately or carelessly absents himself cannot later seek the indulgence of the court as a matter of right (Sangram Singh observes that some defined exceptions must apply where a party's conduct is unjustifiable). Thus, each case requires a judicial discretion to be exercised, weighing the extent of the defendant's fault, the prejudice to the plaintiff, and the overall equities.

25. Case Law Guidance: A few precedents may be noted that illuminate the contours:

In Parimal v. Veena (supra), the Hon'ble Supreme Court upheld the dismissal of an Order IX Rule 13 application where it found the defendant (wife in a divorce case) had willfully avoided service and the evidence showed she was aware of the proceedings. The Court held that sufficient cause must be proven and cannot be based on vague assertions; if the defendant's conduct is lacking in bona fides, the ex parte decree should not be disturbed.

In **G.P. Srivastava v. R.K. Raizada, (2000) 3 SCC 54**, it was reiterated that the test is whether the defendant's absence was beyond his control. In that case, an ex parte decree was set aside because the defendant was hospitalised on the relevant date and produced medical documents – the court found it to be a genuine and sufficient cause (even though the trial court had initially been sceptical).

In Sangram Singh (supra), as noted above, the Hon'ble apex court stressed that a person should not be lightly denied a hearing. Even if a party was negligent on one hearing, if he appears at the next and shows willingness to proceed (and the case has not been concluded), the court should ordinarily allow participation rather than treat the earlier absence as an irrevocable default (this is more relevant to Order IX Rule 7 scenarios). The spirit of the law is to decide on the merits whenever reasonably possible.

In **Bhanu Kumar Jain v. Archana Kumar, (2005) 1 SCC 787**, the Hon'ble Supreme Court dealt with a scenario of an ex parte decree and discussed the remedies available. It held that a defendant against whom an ex parte decree is passed has two avenues: (i) apply under Order IX Rule 13 CPC, or (ii) file a regular appeal under Section 96(2) CPC challenging the decree on merits. These remedies can be pursued simultaneously, but there are caveats. Suppose the defendant files an appeal, and it is decided (the appellate court confirms or modifies the decree on the merits). In that case, an Order IX Rule 13 application becomes infructuous due to the merger of the decree and the Explanation to Rule 13. Conversely, if the defendant first tries Order IX Rule

13 and fails, he is not barred from filing a regular appeal on the merits so long as the appeal is within limitation, but he cannot re-argue the ground of "not having an opportunity to contest" in that appeal. In other words, once a court of competent jurisdiction (including the appellate court under O43) has found against the defendant on the issue of absence/sufficient cause, that issue attains finality. It cannot be raised in a Section 96 appeal. The significance in the present context is that the appellant has chosen the Order IX, Rule 13 route (and its appeal), indicating that he primarily asserts the right to be heard on account of excusable absence, rather than immediately attacking the decree on factual or legal grounds. If this fails, his ability to challenge the decree on merits is practically foreclosed now by lapse of time. Thus, the stakes are high – if sufficient cause is not found, the ex parte decree remains and the appellant loses his land without a contest. If adequate cause is found, the suit reopens on the merits. This underscores why courts must scrutinise the circumstances carefully, neither liberally allowing dilatory defendants to abuse the process, nor rigidly shutting the door on defendants who had genuine difficulty.

It is also apt to cite Sangram Singh again for the proposition that the consequences of non-appearance (ex parte proceedings) are not meant as a "penalty" or punishment, but simply as a procedure to keep the suit moving. If, later, a valid excuse is brought forth, the rules allow the court to lift the ex parte order (Order IX Rule 7 before decree, or Order IX Rule 13 after decree). The code discourages viewing an ex parte decree as a punitive measure against the absent defendant; rather, it is a conditional determination that stands unless the defendant satisfactorily explains his absence.

26. Application of Law to Facts: In summary, to succeed in this appeal (and thus in the Order IX Rule 13 application), the appellant must demonstrate that either (a) the summons was not duly served on him in the suit, or (b) he had sufficient cause for not appearing on the relevant dates. The evidence has thrown up arguments on both aspects: the appellant maintains that summons were never effectively served (which could qualify under ground (a)), and also that even if deemed served, he was prevented by sufficient cause (ground (b)). The trial court's finding was negative on both counts – it implicitly held service was duly made by publication and that the cause shown was not sufficient. This appellate court must independently evaluate those conclusions against the legal standards discussed.

With these principles in mind, I now proceed to record my findings on the Points for Determination.

Findings

27. Point (i): Whether the appellant has shown any ground under Order IX Rule 13 CPC to set aside the ex parte decree (in terms of non-service of summons or sufficient cause for non-appearance).

28. On Non-Service of Summons: In the strict technical sense, the summons in this case can be considered "duly served" because the trial court ordered substituted service via publication and the requirements of that procedure

were complied with. There is no allegation that the publication was not carried out as directed. Therefore, on record, the summons was duly served. However, the substantive question is whether the appellant actually had notice of the suit. Having considered the material, I find that it was not convincingly established that the appellant had real notice of the suit prior to August 2016. The mode of service (publication) is by its nature a matter of legal fiction – it is deemed service whether or not the party actually sees the notice. The appellant's unrefuted statement is that he did not see it. The respondent has not shown any evidence that, for instance, the appellant or someone on his behalf responded to that notice or acknowledged it. Thus, while I do not hold that the summons was "not duly served" in the procedural sense (the trial court was entitled to proceed ex parte), I do acknowledge that the appellant lacked actual knowledge of the proceedings at least until the point the ex parte order was passed (Oct 2015). This finding is relevant when assessing sufficient cause – a defendant cannot appear if he genuinely had no notice. In many cases, courts treat want of due service and adequate cause as intertwined: if the defendant honestly never knew of the hearing, that in itself is a sufficient cause for absence. Indeed, if a summons never reaches a defendant, it is the quintessential adequate cause for not appearing. Here, except for the constructive service, there is no evidence of actual service. Therefore, I am inclined to give the benefit of the doubt to the appellant on the question of notice. There is nothing on record to suggest he was deliberately evading (no reports of refusal, etc., as was in Parimal's case).

That said, the appellant learned of the suit by August 2016 (through Prahlad's attempt to take possession). From that point onwards, the onus was on him to act diligently. Any lack of notice after mid-2016 cannot be claimed, so the focus shifts to whether his subsequent absence (despite knowledge) can be excused.

29. On Sufficient Cause for Non-Appearance: This is the crux. Having weighed the evidence and the parties' contentions, I find that the appellant has shown sufficient cause for his failure to attend the suit before the ex parte decree. My reasons are as follows:

30. No deliberate inaction: The narrative presented by the appellant, though partially disputed, indicates that he did not simply sit idle or ignore the court knowingly. Once he learned of the suit (in 2016), he immediately sought legal recourse by applying (presumably under Order IX Rule 7 CPC) – this demonstrates his intent to contest rather than acquiesce in the suit. The unfortunate illness of his son is a factor that the court cannot lightly brush aside. Medical emergencies within the immediate family are recognised in law as valid causes that can prevent a litigant from pursuing matters. The appellant produced a medical certificate, which the other side did not effectively rebut. It shows treatment around the relevant period. Being a village resident of modest means, it is credible that the appellant had to personally care for his son and arrange the funds for treatment, to the exclusion of other concerns.

31. Timeframe of default explained: The critical period to explain is roughly from late 2016 to mid-2017 (when the suit proceeded ex parte to final judgment). The appellant's son's health crisis explains this period. The respondent argued that this was a self-serving excuse; however, there is no counter-evidence to show that during this time the appellant was free and capable of attending court but chose not to. There is no indication that he engaged in other activities or litigations that would cast doubt on his claimed preoccupation. On the contrary, the speed with which he acted in August 2017 (within days) to file the recall plea suggests that the appellant was earnest about defending his case and moved as soon as circumstances permitted. If he intended to delay, he might not have acted so promptly post-decree; instead, his behaviour post-knowledge aligns with that of someone genuinely caught unawares and then hurried to rectify the situation.

32. Principle of substantial justice: In line with the guidance from higher courts, when there is a reasonable, although not conclusive, explanation for the absence, courts should err on the side of allowing a hearing, especially in civil cases where property rights are at stake. The second proviso to Order IX Rule 13 (regarding irregular service not being a ground if the defendant had notice and time) also indirectly supports the appellant here – it would apply to deny relief if I found that the appellant had notice and yet sufficient time to attend but neglected. In this case, I see the appellant did not have adequate notice in a timely manner. By the time he concretely learned (2016 or certainly by 2017), the suit was either on the verge of completion or already over. Thus, he cannot be said to have willfully flouted court dates with impunity.

33. No evidence of mala fides: The respondent's claim that the appellant is abusing the process to harass her appears, on balance, to be unsupported by clear evidence. There is no doubt that the respondent has suffered a long delay in her quest for relief. However, the material does not show that the delay was a stratagem by the appellant. For instance, we do not see a pattern of the appellant appearing and seeking adjournments or any such misuse – he was absent until he applied to set aside. If one believes his version, his absence was involuntary. If one thinks the respondent, his absence was irresponsible. The truth likely lies somewhere in between. Even if some negligence is attributable to the appellant (perhaps he might have been more vigilant or deputed someone to check court status in 2016), it is not so egregious as to forfeit his right to a hearing altogether. Minor negligence, if any, can be compensated by costs rather than denying a day in court. The law does not require perfection; only diligence commensurate with that of a prudent person. Given the personal and financial turmoil the appellant was in, it is understandable that the suit did not get his full attention at the relevant time.

34. Meritorious Defence Exists: Although strictly the merits of the claim are not to be decided at this stage, the court can take a peek at the nature of the defence to ensure it's not a frivolous attempt. The appellant's defence is that the agreement is vitiated by fraud and that he had repaid a loan. If true, this is a substantial defence going to the root of the plaintiff's case (specific performance). It raises triable issues, such as whether the contract was a

loan/mortgage or a sale, whether the consideration was paid or repaid, etc. These issues cannot be adjudicated without a proper trial. The value of the property (asserted to be much higher than the contract amount) also suggests that an unconscionable bargain might be alleged. All these factors persuade me that there is a serious dispute requiring adjudication on the merits, and it would be unjust to shut the door on the appellant without a trial permanently. This aligns with the sentiment expressed in precedent that courts should, wherever possible, afford a chance for the real issues to be decided unless the defendant's conduct is inexcusable.

35. Counterpoint – Plaintiff's prejudice: I also consider the opposite side: the respondent has obtained a decree and been waiting. Setting it aside means further delay and the effort of a trial. However, any prejudice to the plaintiff can be mitigated by appropriate terms (discussed shortly). The interest of the plaintiff in a speedy conclusion, while valid, cannot outweigh the fundamental requirement of a fair hearing if indeed the defendant was kept out of court by sufficient cause.

Taking an overall view, I am satisfied that the appellant's absence was the result of a concatenation of lack of proper notice and personal difficulties, rather than a willful disregard of the court process. In legal parlance, sufficient cause stands proved in this case.

36. Result on Point (i): In light of the above analysis, the appellant's case falls within the ambit of Order IX Rule 13. The summons, though served by substitution, did not in fact notify him in time, and he was prevented by sufficient cause (family health emergency and related impediments) from appearing when the suit was heard. He has approached the court with reasonable promptitude and a credible defence. Therefore, the trial court's refusal to set aside the ex parte decree was not justified. The impugned order dated 05.10.2024 suffers from a material irregularity in the exercise of discretion. The trial court seemed to have given predominant weight to the procedural aspect of service and to the delay caused, without adequately appreciating the compelling circumstances and substantial justice aspect in the appellant's favour. This court, as the appellate court, finds that the ex parte decree cannot be sustained under these circumstances and must be set aside.

(Alternatively, even if I were to assume arguendo that the appellant's reasons were not entirely convincing, I would still lean in favour of giving him one opportunity, because the law tilts towards deciding matters on the merits whenever possible. As the Supreme Court observed, in determining sufficiency of cause, the court must keep in mind the goal of substantial justice and not allow technicalities or a few lapses to prevent adjudication. In this case, the balance of justice clearly favours a fresh hearing of the suit.)

Before moving to the consequential order, it is necessary to address a hypothetical consideration: The respondent's counsel argued that even if this court is inclined to accept the appeal, the appellant's conduct warrants that the decree not be set aside. The scenario posed is that, sometimes, courts, while finding some cause shown, do not upset the decree if the conduct was

borderline and instead grant other relief. However, in the CPC framework, for an ex parte decree, the remedies are binary – either the decree stands or it is set aside (subject to conditions). There is no halfway measure. The court does have the power to impose terms. Therefore, to ensure that the appellant does not unfairly benefit from the delay and to ameliorate the hardship caused to the respondent, I deem it appropriate to impose reasonable conditions upon the appellant for setting aside the decree. This is in line with Order IX Rule 13 itself, which permits the court to do so "upon such terms as to costs, payment into court or otherwise" as it thinks fit.

Accordingly, the ex parte decree shall be set aside on the conditions that the appellant pays appropriate costs to the respondent and complies with further orders to expedite the trial. The imposition of costs serves to compensate the respondent for the inconvenience and expense caused by the delay and also signals that the appellant must henceforth prosecute the matter with diligence.

(For completeness, had I found against the appellant on sufficient cause, the outcome would have been to dismiss the appeal and uphold the trial court's order. In that event, the ex parte decree would remain in force and the respondent would be free to proceed with its execution. However, given the findings in favour of the appellant, that scenario does not arise except as a note that the court did consider both sides before arriving at the decision.)

37. Point (ii): Relief and Consequential Order

In view of the finding that the trial court's rejection of the Order IX Rule 13 application was not legally sustainable, this appeal deserves to be allowed. Consequently, the ex parte decree dated 05.07.2017 is liable to be set aside, and the suit restored for hearing on merits. However, to balance equities, the court will impose conditions permitted by law.

Order

The appeal is allowed. The impugned order of the Civil Judge (Sr. Div.), Ambedkar Nagar, dated 05.10.2024 (rejecting the application under Order IX Rule 13 CPC) is hereby set aside. As a result, the appellant's Application No. 3-C(1) under Order IX Rule 13 CPC stands allowed, and the ex parte judgment and decree dated 05.07.2017 in Original Suit No. 112 of 2013 are hereby set aside. The suit is restored to the trial court's file for fresh disposal on merits, after giving the defendant (appellant) an opportunity to file a written statement and contest the case.

This relief is made subject to the following conditions imposed on the appellant, in the interest of justice:

(a) Costs: The appellant shall pay a sum of ₹5000 (Rupees Five Thousand) as costs to the respondent (plaintiff) within 30 days from today. This amount is quantified as a reasonable compensation for the delay and inconvenience caused to the respondent.

(b) Written Statement: The appellant shall file his written statement in the suit on or before the next date fixed by the trial court (which date shall be not later than 30 days from restoration of the suit). Along with the written statement, he may file all documents in his support. No undue adjournment shall be sought by the appellant for the filing of the written statement. If the appellant fails to file the written statement by the given deadline, the trial court would be at liberty to refuse him further opportunity, and the setting aside of the ex parte decree may stand vacated at the discretion of that court.

(c) Future Proceedings: The parties shall appear before the learned Civil Judge (Sr. Div.), Ambedkar Nagar, on 19.12.2025, for further directions. The trial court is requested to expedite the hearing of the suit, given its long pendency (originally filed in 2013). Both sides should cooperate to expedite the disposal of the suit. The trial court may, in its discretion, place the suit on a fixed trial timetable. The appellant is specifically directed to avoid any delay or dilatory tactics in the future scrupulously. If the trial court observes any such conduct, it shall be free to impose further costs or sanctions as per law.

Compliance and Execution: If the appellant fails to pay the cost to the respondent as directed or commits a breach of any condition above, the respondent is at liberty to move the trial court for appropriate orders, including revival of the ex parte decree. Conversely, upon the appellant's compliance, the trial court shall proceed to hear the matter de novo after joining the pleadings. The evidence recorded ex parte can be treated as a deposition on the plaintiff's side (subject to recall for cross-examination if so applied), or the trial court may direct fresh evidence as it deems fit for a fair trial. The trial court shall consider all earlier evidence and steps taken in accordance with the law and the interests of justice.

Conclusion: The right to be heard is a fundamental aspect of civil jurisprudence. In the present case, allowing the defendant one opportunity to contest the suit on the merits will serve the ends of justice, while the terms imposed will safeguard the plaintiff's interest. This court trusts that both parties will now proceed with the litigation in a responsible manner so that the truth of the transaction in question is determined after a full and fair trial, and the dispute is conclusively resolved.

The appeal is disposed of in the above terms. The parties are to bear their own costs of this appeal (aside from the cost imposed for restoration). A copy of this judgment shall be sent to the trial court along with the record for compliance.

Pronounced in open court on this 19th day of November, 2025.

(Chandroday Kumar)

District Judge, Ambedkar Nagar (U.P.)