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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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CS(OS) 1239/2008

IN THE MATTERS OF:

SHRI RAMESH CHANDER GOEL

S/O SHRI R.N. AGGARWAL

R/O BT-61, SHALIMAR BAGH

DELHI - 110088.

.....PLAINTIFF

Through: Mr. P. D. Gupta, Sr. Adv. with Mr. Abhishek Gupta, Adv.

Versus

MASTER CHIRAG GOEL (MINOR)

S/O SHRI DAYA KISHAN GOEL

R/O 45-D, VENUS APARTMENTS

FLAT NO.49, 13th FLOOR

R.G. THADANI MARG, WORLI SEA FACE

MUMBAI-400018.

THROUGH HIS FATHER & NATURAL GUARDIAN

SHRI DAYA KISHAN GOEL

ALSO AT :

5704/24, NORTH

BASTI HARPHOOL SINGH

SADAR THANA ROAD

DELHI - 110006.

.... DEFENDANT

Through: Mr. Ramesh Singh, Sr. Adv. with Mr. Siddhant Buxy, Ms. Hage Nanya and Ms. Rupinder Kaur, Adv.



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CS(OS) 1240/2008**SHRI RAMESH CHANDER GOEL**

S/O SHRI R.N. AGGARWAL

R/O BT-61, SHALIMAR BAGH

DELHI - 110088.

.....PLAINTIFF

Through: Mr. P. D. Gupta, Sr. Adv. with Mr. Abhishek Gupta, Adv.

versus

SHRI DAYA KISHAN GOEL

ALIAS DINESH GOEL

S/O SHRI R.N. AGGARWAL

R/O 45-D, VENUS APARTMENTS

FLAT NO.49, 13th FLOOR

R.G. THADANI MARG, WORLI SEA FACE

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DELHI - 110006.

.... DEFENDANT

Through: Mr. Ramesh Singh, Sr. Adv. with Mr. Siddhant Buxy, Ms. Hage Nanya and Ms. Rupinder Kaur, Advs.-----
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Reserved on: 08.08.2025

Pronounced on: 28.08.2025
-----**I.A. 16751/2025 (filed by the defendant for setting aside *ex parte* judgment and decree dated 11.11.2022) in CS(OS) 1239/2008****I.A. 16971/2025 (filed by the defendant for condonation of 10 days delay in filing the rejoinder) in CS(OS) 1240/2008**

1. A brief perusal of the record indicates that the instant civil suits for



recovery were instituted by the plaintiff/non-applicant, seeking recovery of a sum of Rs. 1,54,43,120/- from the defendant/applicant, being his nephew, Master Chirag Goel, represented through his father and natural guardian, Daya Kishan Goel, together with *pendente lite* and future interest at the rate of 18% per annum from the date of institution of the suit until realization thereof. Additionally, another civil suit bearing CS(OS) No. 1240/2008 was filed for recovery of a sum of Rs. 3,15,57,680/- against the brother of the defendant, Daya Kishan Goel. Both suits were tried analogously and were decreed *vide* judgment and decree dated 11.11.2022 in the following terms:-

“38. In view of the findings on the issues as discussed above, it is held that plaintiff is entitled to recovery of Rs.1,00,28,000/- in CS(OS) 1239/2008 and to Rs. 2,04,92,000/- in CS(OS) 1240/2008 along with pendete lite and future interest @ 6% p.a. from the date of institution of the suit till the date of payment in both the suits. The two Suit of the plaintiff are accordingly decreed. Parties to bear their own costs.”

2. The aforesaid judgment and decree were pronounced *ex parte*. Prior to the order declaring the defendant *ex parte* and the consequent decree, an order dated 08.08.2022 was passed by the learned Joint Registrar, whereby the evidence of the defendant/applicant was closed on account of persistent non-appearance notwithstanding the extension of multiple opportunities. The relevant excerpt from the order dated 08.08.2022 is reproduced hereunder:-

*“1. There is no appearance on behalf of defendant despite repeated calls.
2. This matter is connected with CS(OS) 1239/2008.
3. Evidence of the defendant has been closed in CS(OS) 1239/2008 and the said matter has been placed before the Hon'ble Court for further directions on 26.09.2022.
4. In the present facts and at request of Ld. Senior Advocate for plaintiff, let the present matter be also placed alongwith CS(OS) 1239/2008 before the Hon'ble Court for further directions on 26th September, 2022.”*

3. The matter was proceeded *ex parte* on 26.09.2022, and the judgment



was reserved.

4. Order dated 26.09.2022 reads as under:-

- “1. Present none on behalf of the defendant.*
- 2. The perusal of the record reveals that the defendant has not been appearing before this Court and even before the Joint Registrar. The affidavit of defendant No. 1 had been filed, though even examination-in-chief has not been completed. Thereafter, the defendant has not been appearing.*
- 3. The defendant’s evidence has been closed by the Joint Registrar vide Order dated 08th August, 2022.*
- 4. The defendant is proceeded ex parte.*
- 5. Arguments heard.*
- 6. Judgement reserved.”*

5. On 11.11.2022, this Court pronounced an *ex parte* judgment and decree. Subsequently, the defendant/applicant preferred an application under Order IX Rule 13 of the Code of Civil Procedure, 1908, (*hereinafter referred to as “CPC”*) on 29.11.2022. The said application was rejected by this Court *vide* order dated 23.01.2023. The concluding paragraphs of the said decision are extracted as under:-

“34. The other reasons given by the applicant that his wife and father were not keeping well and he also had severe back ache, therefore, could not attend the court proceedings on several dates which were fixed by the Joint Registrar as well as by the Court, are also not sufficiently established to show that the ex-parte decree deserves to be set aside. The ailments or diseases as mentioned in the application by the applicant, do not necessitate the patient to take bed rest for a long time. During the arguments, learned counsel for applicant has failed to produce any medical certificate to reasonably establish that due to those ailments, the applicant was not able to attend the court proceedings.

35. The order dated 8th August, 2022 passed by the learned Joint Registrar cannot be challenged in the instant proceedings of the Order IX Rule 13 as the same not maintainable as per the Delhi High Court (Original Side) Rules, 2018. The said order can only be challenged by way of a Chamber Appeal.

36. Bare reading of the order and the decree passed by the predecessor of this Court as well as other documents, which are referred to by the applicant during the arguments, show that the predecessor of this



Court has considered entire material on record and thereafter, passed the ex-parte decree on 11th November, 2022.

37. The applicant has not been able to show any sufficient cause for setting aside the ex-parte decree passed against him. 38. In view of the above facts and circumstances, this Court does not find any substance in the instant application. 39. Accordingly, the instant application, being bereft of any merit, is dismissed. 40. The judgment be uploaded on the website forthwith."

6. Against the aforementioned order, the defendant preferred FAO(OS) 26/2023 and FAO(OS) 27/2023.

7. The appeal was heard by the Division Bench, which, *vide* order dated 07.12.2023, rejected the challenge. Paragraphs 6 to 10 of the order passed by the Division Bench are extracted as under:-

"6. We have perused the entire record. Admittedly, on 05.10.2020, DW1 was absent and also he failed to file receipt for payment of cost. Similarly on 02.02.2021, 01.09.2021, 12.11.2021 and 19.04.2022 same orders were passed noting the absence of appellant and non payment of cost. Ultimately on 08.08.2022, the learned Joint Registrar noted there has been no appearance on behalf of the appellant despite repeated calls and not even the receipt of cost has been filed. The Court noted the matter was listed for the evidence of the appellant since 07.04.2015 and thereafter number of opportunities were granted and the cost was even not deposited and no one is appearing on behalf of the appellant since 16.04.2019, hence the evidence of the defendant was closed in CS(OS)1239/2008.

7. On 26.09.2022 the Court confirmed the closure of the appellant's evidence in both the suits and proceeded appellant ex-parte. The arguments were heard and the judgment was reserved. On 11.11.2022 the ex-parte judgment was pronounced in the money suit and the suits were decreed. Later applications under Order 9 Rule 13 CPC were also dismissed.

8. We have perused the impugned order dated 27.01.2023 which is as under:

"32. This Court has perused the documents as well as the reply filed by the plaintiff to the application. The main issue involved in the present application is "whether the applicant has made out sufficient cause for setting aside ex-parte decree dated 11th November, 2022 under Order IX Rule 13 of the Code of Civil Procedure, 1908.



33. In view of the discussion and foregoing paragraphs, there is no dispute that the applicant was duly served. Thereafter, he appeared through his advocate and filed the written statement. The Court has framed the issues and thereafter the plaintiff filed his affidavit of evidence and examined his witnesses. The matter was adjourned from time to time, the applicant as well as his advocate failed to attend the court proceedings thereafter. The reasons given by the applicant in the application about his health as well as non-information from the erstwhile counsel about the date fixed by the court are very difficult to accept. This Court finds force in the arguments of learned senior counsel appearing on behalf of non- applicant. In the day and age of virtually operating Courts and independent e-filing, every proceeding is being uploaded by the Registry of the Court on its website and the applicant, being an educated person, could get the information from the website.

34. The other reasons given by the applicant that his wife and father were not keeping well and he also had severe back ache, therefore, could not attend the court proceedings on several dates which were fixed by the Joint Registrar as well as by the Court, are also not sufficiently established to show that the ex-parte decree deserves to be set aside. The ailments or diseases as mentioned in the application by the applicant, do not necessitate the patient to take bed rest for a long time. During the arguments, learned counsel for applicant has failed to produce any medical certificate to reasonably establish that due to those ailments, the applicant was not able to attend the court proceedings.

35. The order dated 8th August, 2022 passed by the learned Joint Registrar cannot be challenged in the instant proceedings of the Order IX Rule 13 as the same not maintainable as per the Delhi High Court (Original Side) Rules, 2018. The said order can only be challenged by way of a Chamber Appeal.

36. Bare reading of the order and the decree passed by the predecessor of this Court as well as other documents, which are referred to by the applicant during the arguments, show that the predecessor of this Court has considered entire material on record and thereafter, passed the exparte decree on 11th November, 2022.

37. The applicant has not been able to show any sufficient cause for setting aside the ex-parte decree passed against him.

38. In view of the above facts and circumstances, this Court does not find any substance in the instant application.

39. Accordingly, the instant application, being bereft of any merit, is dismissed.”

9. The impugned order is passed purely on facts. During the course of



arguments, the learned counsel for the appellant has not been able to show any illegality in the said order. It has been the contention of the learned counsel for the appellant that throughout his counsel never told him about the dates in the suits and his family members and he himself were ailing but admittedly in a criminal trial in the learned Session's Court at Rohtak, Haryana in case titled as Daya Kishan vs. State of Haryana CRA82/2017 on 01.04.2022 the appellant appeared in person. The order dated 01.04.2022 passed by learned Sessions' Court, Rohtak, Haryana, is annexed at Page 227 of the paper book which belies the claim of the appellant that because of aforesaid ailing health of himself or his family members he was indisposed. Admittedly the appellant did not produce medical certificates.

10. The learned single Judge had rightly noted the appellant could have joined the proceedings even through video conferencing or at least had made a request in this regard. Nothing of this sort was done. Thus there is no cogent reason to upset reasoned order(s) passed by the learned single Judge, hence we find no merit in both the appeals. Accordingly, both the appeals are dismissed. Pending application(s), if any, also stand disposed of."

8. Thus, the Division Bench upheld the order of rejection of the application under Order IX Rule 13 of CPC, finding no sufficient cause for the non-appearance of the applicant/defendant. Aggrieved by the aforesaid order, the defendant preferred a Special Leave Petition before the Supreme Court, which was disposed of *vide* order dated 08.05.2025 with the following observations:-

"1. The respondent-plaintiff filed two money suits against the appellant-defendant and his minor son in C.S. (O.S) No. 1239/2008 and in C.S. (O.S) No. 1240/2008. The appellant entered appearance in the said suits and also filed the written statements in both the suits. However, at the stage of cross-examination of the appellant, he was proceeded ex-parte on 26.09.2022 and a common exparte order was, accordingly, passed against him on 11.11.2022 in both the suits. The appellant, then filed two applications under order IX Rule 13 of the Code of Civil Procedure, 1908 (for short, the 'CPC') seeking to set aside the common ex-parte order dated 11.11.2022 in both the suits. The said applications were dismissed by the Single Judge of the High Court, vide orders dated 23.01.2023 and 27.01.2023. Aggrieved, the appellant preferred two appeals before the Division Bench of The High Court, challenging the aforesaid orders, which have been dismissed,



vide the impugned judgment.

2. We are not inclined to interfere with the impugned Judgment of the Division Bench only on the premise that a decree has been drawn in pursuance of the ex-parte order passed by the learned Single Judge.

3. In such view of the matter, liberty is granted to the appellant to file an appropriate application within a period of four weeks from today, challenging the ex-parte decree in the manner known to law, in which case, the impugned judgment of the Division Bench and the order(s) passed by the learned Single Judge will not stand in the way.

4. The question of limitation shall also not be put against him as we are inclined to apply Section 14 of the Limitation Act, 1963.

5. The appeals are disposed of, accordingly. All the issues are left open, including the maintainability of the application to be filed by the appellant.

6. Pending application(s), if any, shall also stand disposed of.”

9. Pursuant to the liberty granted by the Supreme Court, the instant application under Order IX Rule 13 of CPC has been filed. This Court was, tentatively, of the view that the same may not be maintainable in light of the limited liberty granted by the Supreme Court to challenge the *ex parte* decree, as well as the findings previously rendered by the learned Single Judge, which were affirmed by the Division Bench, and subsequently upheld by the Supreme Court. However, learned counsel appearing for the applicant endeavoured to derive a converse conclusion.

10. Heard Mr. Ramesh Singh, learned Senior Counsel appearing on behalf of the applicant/defendant, and Mr. P.D. Gupta, learned Senior Counsel appearing on behalf of the non-applicant/plaintiff.

11. Mr. Ramesh Singh, learned Senior Counsel for the applicant/defendant, advanced the following broad submissions:-

- i. The Supreme Court, *vide* its judgment and order dated 08.05.2025, has expressly granted liberty to the applicant/defendant to file an appropriate application, with a clear observation that the orders passed by the Division Bench and the learned Single Judge shall not operate



as a bar to the applicant/defendant in pursuing such an application.

- ii. In light of the direction of the Supreme Court, the instant application under Order IX Rule 13 of CPC, must be adjudicated afresh, and that the earlier orders shall not stand in its way.
- iii. The Supreme Court was conscious of the distinction between *ex parte* “order” and *ex parte* “decree”, and that the Court has granted liberty to specifically challenge the *ex parte* “order”.
- iv. Reliance is placed on the circumstances in which the earlier orders and the impugned *ex parte* judgment and decree dated 11.11.2022 were passed.
- v. Drawing the attention of the Court to the list of dates and events, it was highlighted that on the last four hearings prior to the defendant being proceeded *ex parte*, neither the defendant nor his counsel were present. He meticulously referred to the earlier proceedings conducted before the learned Joint Registrar to indicate that the defendant’s absence was attributable to the disruptions caused by the COVID-19 pandemic, which led to the defendant losing track of the proceedings.
- vi. The absence of the defendant on the said dates when the matter was proceeded *ex parte*, as well as when the *ex parte* judgment and decree were pronounced, was *bona fide* and supported by sufficient cause, warranting interference under Order IX Rule 13 CPC.
- vii. Reliance is placed on the decisions of the Supreme Court in ***P. Govindaswamy v. S. Narayanan***¹, and ***Jaikishan Jagwani v. Britomatics Enterprises (P) Ltd***², to contend that the order setting the

¹ 1987 Supp SCC 58

² 1987 Supp SCC 72



defendant *ex parte* was an interlocutory order, which is tentative by its very nature, and that disposal of matters must be on merits rather than on observations in interlocutory orders.

- viii. Further, to substantiate the existence of sufficient cause for the defendant's absence, Mr. Singh relied upon the decision in ***G.P. Srivastava v. R.K. Raizada***³, to contend that where a defendant approaches the Court promptly within the statutory period, discretion is ordinarily exercised in his favour if the absence was not *mala fide* or intentional, with the opposite party compensable by costs and the *lis* should be decided on merits. The applicant acted expeditiously upon learning of the *ex parte* decree, his non-appearance stemming from uncontrollable factors, thereby evincing *bona fides*.
- ix. In Suo Moto Writ Petition (C) No. 3 of 2020, the Supreme Court excluded the period from 15.03.2020 to 28.02.2022 from limitation due to the COVID-19 pandemic, to prevent prejudice. It would thus be unreasonable to proceed *ex parte* against the applicant, who faced COVID-related challenges and had otherwise diligently prosecuted the suit before the pandemic.
- x. The inquiry under Order IX Rule 13 CPC is confined to whether sufficient cause for non-appearance is shown, without regard to past conduct. The order dated 26.09.2022 and the impugned judgment dated 11.11.2022 erroneously proceeded *ex parte* based solely on past conduct, contrary to this principle and accordingly, such conduct ought not to influence the present adjudication.
12. In response to the submissions advanced by the applicant, Mr. P.D.



Gupta, learned Senior Counsel appearing for the non-applicant/plaintiff, has made the following broad submissions:-

- i. Two of the decisions relied upon by the applicant, namely ***P. Govindaswamy*** and ***Jaikishan Jagwani***, were rendered by the Supreme Court with the consent of the parties and, therefore, lack binding precedential value.
- ii. The order directing closure of the applicant's evidence is not amenable to challenge under Order IX Rule 13 of CPC. At best, the applicant may prefer a chamber appeal, and if the Appellate Court is satisfied that the defendant was wrongly proceeded *ex parte*, it is empowered to intervene. The Supreme Court, while disposing of the matter *vide* order dated 08.05.2025, consciously refrained from remitting the matter back to the High Court for reconsideration of the *ex parte* order.
- iii. According to Mr. Gupta, the issue of maintainability has also been left open by the Supreme Court, indicating that the applicant, if aggrieved, should take recourse of filing an appropriate appeal, and in that event, the limitation would not come under the way.
- iv. Mr. Gupta further emphasised the words 'setting aside' and 'challenging'. He submits that an appeal under Section 96 CPC entails challenging the judgment and decree, whereas an application under Order IX Rule 13 CPC seeks to set aside the *ex parte* decree. The two remedies are distinct in their scope and purpose.
- v. Mr. Gupta further contends that the mere drawing of the *ex parte* decree does not warrant reopening the entire matter, as this Court, in

³ (2000) 3 SCC 54



adjudicating the instant application, does not sit as an appellate authority over its own decision, which was affirmed by both the Division Bench and the Supreme Court. He lays further emphasis on the aspect that the Supreme Court expressly declined to interfere with the findings of this Court.

vi. It is also pointed out that during the same period, when the applicant defendant was *proceeded ex parte*, he was appearing in the matter before the Court at Rohtak.

13. In rejoinder, Mr. Ramesh Singh, learned Senior Counsel for the applicant/defendant, submits as follows:-

- i. The two judgments relied upon by the applicant, i.e., **P. Govindaswamy** and **Jaikishan Jagwani**, have been misconstrued by the non-applicant. Contrary to the submissions of Mr. Gupta, these decisions were not rendered with the consent of the parties; rather, only the appointment of the arbitrator in those cases was consensual. Accordingly, these judgments retain binding precedential value.
- ii. In the criminal matter at Rohtak, the applicant/defendant relied on his advocate's communications regarding Court appearances, which explains his attendance there.
- iii. Additionally, medical reports substantiating the applicant's circumstances have been placed on record as Document Nos. 19 and 20.
- iv. The applicant has demonstrated sufficient cause for his non-appearance, and there exists no basis to deny the setting aside of the impugned *ex parte* judgment and decree dated 11.11.2022.
- v. The orders passed by the learned Joint Registrar, including the order



dated 08.08.2022 closing the applicant's evidence, need not be challenged through a regular appeal, as they have merged into the *ex parte* decree. Consequently, if the decree is set aside, all such interlocutory orders would *ipso facto* be rendered a nullity.

14. I have heard learned senior counsel appearing for the parties and have perused the record.

15. The foremost issue warranting consideration is the maintainability of the present second application under Order IX Rule 13 of CPC, in view of the liberty granted by the Supreme Court, *vide* its order dated 08.05.2025 in Civil Appeal Nos. 10255-10256 of 2024.

16. The consequential issue is, if at all the second application is held to be maintainable, whether the order setting the applicant/defendant *ex parte* is liable to be set aside on merits.

17. Since the present application has not been filed within the ambit of a statutory provision permitting a second application under Order IX Rule 13 of CPC, as there is none, there is no quarrel with regard to the fact that the same is solely founded on the liberty granted by the Supreme Court.

18. Thus, its maintainability is required to be tested in light of the order of the Supreme Court, whereby such liberty was granted, *vis-à-vis* the statutory provisions.

19. A perusal of paragraph 2 of the order of the Supreme Court reveals that the orders passed by this Court on 23.01.2023 and by the Division Bench on 07.12.2023 have not been interfered with. The Supreme Court, upon pursuing the impugned orders, has refused to interfere with the findings, and in view of the same, the findings have attained finality.

20. The Supreme Court duly noted that a decree had been drawn pursuant



to the *ex parte* judgment, thereby obviating the need for intervention.

21. Consequently, the dismissal of the Order IX Rule 13 CPC application has attained finality, and the applicant/defendant has failed to indicate any sufficient cause for non-appearance.

22. Thus, no infirmity has been found insofar as the order setting the applicant/defendant *ex parte* and the consequential decree is concerned.

23. On a careful perusal of the order dated 08.05.2025, it becomes evident that liberty has been granted to the defendant/applicant to prefer an “*appropriate application challenging the ex-parte decree in the manner known to law*”, with the express direction that, in such an event, the aforesaid orders of the learned Single Judge and the Division Bench shall not stand in the way.

24. Furthermore, the Supreme Court has extended the benefit of Section 14 of the Limitation Act, 1963, for the purposes of limitation, and has also left open the issue pertaining to the maintainability of such an application.

25. Pursuant to the same, the applicant/defendant herein has filed an application under Order IX Rule 13 of CPC seeking to challenge the *ex parte* decree. Order IX Rule 13 of CPC reads as under:-

“13. Setting aside decree ex parte against defendant.

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit;

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

Provided further that no Court shall set aside a decree passed ex parte



merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

Explanation-

Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree."

26. Under CPC, a defendant against whom an *ex parte* decree has been passed under Order IX Rule 6 for default of appearance at the hearing, is entitled to avail the following remedies:-

- (i) Appeal from the *ex parte* decree under Section 96 CPC, which is available irrespective of whether the decree is passed *ex parte* or on merits.
- (ii) Apply for a review of the judgment under Order XLVII Rule 1 CPC, a remedy similarly available for both *ex parte* and contested decrees.
- (iii) Apply under Order IX Rule 13 CPC for an order to set aside the *ex parte* decree, provided the application is filed within 30 days from the date of the decree, or, where summons were not duly served, within 30 days from the date the defendant acquired knowledge of the decree, as stipulated under Article 123 of the Limitation Act, 1963.

27. The first two remedies, appeal and review, are available to any party against whom a decree is passed, whether *ex parte* or otherwise. However, the remedy under Order IX Rule 13 of CPC is exclusively available where the decree is passed *ex parte* due to the defendant's default of appearance. If the decree is predicated on grounds other than non-appearance, such as failure to file a written statement, the remedy lies in appeal rather than under this rule. The Court retains jurisdiction to set aside an *ex parte* decree upon



sufficient cause being established, even if the decree has been executed, and may impose conditions such as payment of the decretal amount or costs as a prerequisite for such relief.

28. Therefore, a defendant is at liberty to pursue any of these remedies independently. An appeal under Section 96 of CPC or an application for review under Order XLVII Rule 1 of CPC may be filed without first applying to set aside the *ex parte* decree under Order IX Rule 13 of CPC. The institution of an application under Order IX Rule 13 of CPC does not preclude or suspend the right to appeal or seek review at a subsequent stage. In the event an application under Order IX Rule 13 of CPC is rejected, the defendant may appeal against such rejection under Order XLIII Rule 1(d) of CPC, or, alternatively, challenge the *ex parte* decree itself by way of appeal under Section 96 read with Order XLI of CPC without being obligated to appeal the rejection order. The remedy under Order IX Rule 13 of CPC is a statutory recourse, and its pursuit does not operate to bar or defer other remedies such as appeal or review.

29. Furthermore, an order of rejection of the application under Order IX Rule 13 is amenable to an additional remedy of appeal, in addition to the appeal available against the original *ex parte* decree. Needless to observe, the former appeal, filed under Order XLIII Rule 1(d) of CPC, is limited to the extent of examination of the order setting the defendant as *ex parte* and the latter appeal, filed under Order XLI of CPC, is a general appeal against the decree corresponding with Section 96 of CPC, wherein all contentions qua the merits of the decree are open to scrutiny.

30. However, upon examining the appeals filed under Order XLI read with Section 96 of the CPC, it appears that the intention of the



applicant/defendant herein was solely to challenge the order setting the defendant *ex parte*, and not the decree, thereby, in effect, making the appeal one preferred under Order XLIII of CPC, and not one under Order XLI. Furthermore, the decision of the Division Bench primarily addressed the order setting the defendant *ex parte* and did not pertain to the decree itself.

31. This distinction is essential as an application under Order IX Rule 13 of CPC gets automatically barred after the disposal of an appeal against the *ex parte* decree, preferred under Order XLI read with Section 96 of CPC, in light of the Explanation to Order IX Rule 13 of CPC.

32. A plain reading of the Explanation unequivocally provides that where an appeal against an *ex parte* decree has been disposed of on any ground other than the withdrawal of the appeal, no application for setting aside the *ex parte* decree under Order IX Rule 13 of CPC shall be entertained.

33. The language of the Explanation is clear and unambiguous, stipulating that disposal of an appeal on any ground, save for withdrawal by the appellant, precludes the maintainability of such an application.

34. The Explanation specifically carves out a very specific and narrow exception to itself, stating that only where the appeal has been disposed of by way of withdrawal, would the bar to filing an application under Order IX Rule 13 of CPC not apply.

35. Put otherwise, the bar contemplated under the Explanation precludes any subsequent application under Order IX Rule 13 of CPC, except when the appeal has been disposed of as withdrawn. The legislative intent, as manifested in the Explanation, is to preclude subsequent applications under Order IX Rule 13 of CPC in all the cases of disposal of appeal, indicating a deliberate intent to limit such recourse when the appellate remedy has been



pursued and concluded on any ground other than withdrawal.

36. Be that as it may, when the Explanation is read in conjunction with the observation noted in paragraph 30 herein, that the intent of the applicant/defendant appears to be solely to challenge the order setting the defendant *ex parte* and not the decree itself, the *ex facie* view that the Explanation to Order IX, Rule 13 of CPC applies may not hold in the present matter. This is because no appeal has, thus far, been preferred by the applicant/defendant against the *ex parte* decree, as envisaged under Section 96 read with Order XLI of the CPC. Rather, in principle, only an appeal against the order setting the defendant *ex parte* has been filed.

37. The words “*Where there has been an appeal against a decree passed ex parte ...*”, as used in the Explanation, clearly indicate that the bar contemplated by the Explanation is attracted when prior to the filing of the Order IX Rule 13 CPC application, the defendant has preferred an appeal against the ‘*decree*’ itself. The only appeal which has been filed in the instant case was meant to challenge the ‘*order*’ of dismissal of the Order IX Rule 13 application and not the *ex parte* ‘*decree*’.

38. Understandably, an Order XLIII Rule 1(d) of CPC appeal is confined to examining the validity of the rejection of Order IX Rule 13 of CPC application, focusing on limited aspects such as sufficient cause for non-appearance or non-service of summons, as the case may be. Thus, the said appeal is limited in the sense that it only examines the claim of sufficient cause for non-appearance of the defendant, thereby questioning the *ex parte* nature of the proceeding and not the entire decree in itself.

39. Regardless of the above position with respect to the non-applicability of the bar contemplated by the Explanation, the present application under



Order IX Rule 13 is still not maintainable. It is so because the applicant/defendant has evidently misconstrued the liberty granted by the Supreme Court.

40. The liberty was granted to file an appropriate application to challenge the *ex parte* decree in the manner known to law. Out of the two possible challenges that the applicant/defendant could have levelled against the order setting the defendant *ex parte*, the one under Order IX Rule 13 CPC has already been pursued and exhausted.

41. The order declining the said challenge has attained finality up to the Supreme Court, and the order dated 08.05.2025 categorically records that the findings on that count have not been disturbed.

42. The only other statutory option available before the applicant/defendant was to file a statutory appeal under Section 96, read with Order XLI of CPC, against the *ex parte* decree. It is the only remedy available to the applicant/defendant in the manner known to law. Moreover, the order of the Supreme Court is fairly clear as it grants the liberty to move an appropriate application “*challenging the ex-parte decree*”, which could only be a statutory appeal, given the finality attained by the order rejecting the Order IX Rule 13 CPC application.

43. This position is fortified by the decision of a three-judge Bench of the Supreme Court in ***Bhanu Kumar Jain v. Archana Kumar***⁴, wherein the Court addressed a scenario where an *ex parte* decree was followed by the dismissal of an application under Order IX Rule 13 of CPC, an appeal under Order XLIII Rule 1(d) of CPC, and a revision petition. The Court clarified that the dismissal of an appeal under Order XLIII Rule 1(d) does not



preclude a first appeal under Section 96(2) of CPC, as the two remedies are concurrent but distinct. Thus, the remedy to file a statutory appeal still survives, and the liberty granted by the Supreme Court ought to be understood in this context. It would be apposite to note that an appeal preferred under Section 96(2) of CPC permits a broader challenge to the merits of the decree itself, including the sufficiency of the plaintiff's evidence or the maintainability of the suit.

44. Insofar as the present application is concerned, the same has already been adjudicated, and the adjudication against the applicant/defendant has been confirmed. Permitting a further application under Order IX Rule 13 of CPC would result in this Court revisiting an issue already determined up to the Superior Court, which is impermissible in light of the hierarchical structure of Courts and the appellate mechanism enshrined in the CPC. Equally, it would result in unsettling the rights of the parties despite adjudication by the appellate forum and would infuse an undesirable amount of uncertainty in the judicial process. The applicant's contention that the liberty granted by the Supreme Court is for filing a fresh Order IX Rule 13 application is unfounded. The liberty is broadly worded and is granted to challenge the *ex parte* decree by way of an appropriate application as per law. Further, the jurisdiction of this Court to decide whether any such application is in accordance with the law or not has been preserved. It is for this very reason that the order of the Supreme Court dated 08.05.2025 explicitly left the issue of maintainability open, to be determined by this Court.

45. To recapitulate, in the present case, the earlier application of the

⁴ (2005) 1 SCC 787



defendant under Order IX Rule 13 of CPC was rejected on 27.01.2023, and the subsequent appeal was dismissed by the Division Bench on 07.12.2023 on merits.

46. The order of the Supreme Court does not disturb these findings but permits a fresh challenge in accordance with law, which, in light of the above discussion, points to an appeal under Section 96(2) of CPC rather than a second application under Order IX Rule 13 of CPC. Permitting such an application would contravene the legislative intent of preventing multiplicity of proceedings and conflict of decisions, as well as the hierarchical appellate structure under the CPC. Moreover, the Supreme Court clearly upheld the findings rendered by the learned single judge and the division bench of this Court insofar as the rejection of the Order IX Rule 13 of CPC application is concerned on merits.

47. Thus, the instant applications stand dismissed as being inconsistent with law, and beyond the liberty granted to the applicant/defendant.

48. No order as to costs.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 28, 2025/p