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

Date of decision: 19.08.2026

CNR No. DLHC010878882025

+ **CM(M) 2147/2025 & CM APPL. 70221/2025 (Stay)**

SWAPNIL

.....Petitioner

Through: Mr. Saurabh Mishra, Senior
Advocate along with Mr. Lave
Kumar Sharma, Ms.
Deepshikha, Ms. Yashi Porwal
and Ms. Aarushi, Advocates.

versus

SAU NAMITA

.....Respondent

Through: Mr. Rajat Kapoor, Advocate.

CORAM:

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (Oral)

1. The present Petition has been filed under Article 227 of the Constitution of India, 1950 seeking quashing/setting aside of the **Order dated 06.09.2025¹** passed by the learned **Principal Judge, Family Court, East District, Karkardooma, Delhi** in **S.M.A Case No. 13/2022**.

2. The Impugned Order dated 06.09.2025 allows the Application filed by the respondent under Order IX Rule 7 of the Code of Civil Procedure, 1908 [“CPC”] read with Section 151 of the CPC and, consequently, sets aside the Order dated 22.03.2023 whereby the

¹ Impugned Order



respondent had been proceeded *ex-parte*.

3. Mr. Saurabh Mishra, learned Senior Counsel appearing on behalf of the Petitioner assails the Impugned Order primarily on the ground that the application under Order IX Rule 7 CPC was not maintainable at the stage at which it came to be filed.

4. Learned Senior Counsel appearing on behalf of the Petitioner submits that the hearing of the matter had already concluded and the matter had been reserved for pronouncement of judgment. Reliance is placed, in this regard, upon the judgments of the Hon'ble Supreme Court in *Arjun Singh v. Mohindra Kumar*², *Rasikalal Manikchand Dhariwal and Anr v. MSS Food Products*³ and *Bhanu Kumar Jain v. Archana Kumar & Anr.*⁴, wherein it has been held that an Application under Order IX Rule 7 for setting aside an *ex-parte* order is not maintainable after a matter is reserved for judgment.

5. Learned Senior Counsel appearing on behalf of the Petitioner submits that the order-sheets of the proceedings demonstrate that the Respondent was proceeded *ex parte* on 22.03.2023 and that the matter thereafter proceeded further. The matter was thereafter put up on 24.05.2023 and subsequently on 22.07.2023 and finally on 21.08.2023 on which date final arguments were heard and the matter was directed to be put up for judgments on 15.09.2023.

6. The Order dated 21.08.2023 reads as follows:-

“Present: Sh. L.K. Sharma, Ld. Counsel for the petitioner with petitioner in person.
None for respondent. Respondent is already ex -parte.
Written arguments has already been filed. Final arguments heard.

Put up for judgment on 15.09.2023.”

² AIR 1964 SC 993

³ (2012) 2 SCC 196

⁴ (2005) 1 SCC 787



7. It is further submitted that, thereafter, on 25.08.2023, i.e. after the matter had been heard and reserved for pronouncement of judgment, the Respondent instituted the application under Order IX Rule 7 read with Section 151 CPC. The said application was taken up on 28.08.2023. The learned Trial Court, while noticing the question concerning the maintainability of the application, observed that the same involved a mixed question of law and fact, permitted the parties to file their respective responses and referred the matter to mediation.

8. The matter could not be resolved through mediation. The question concerning the maintainability of the application under Order IX Rule 7 CPC was thereafter heard by the learned Trial Court on 17.09.2024 and on subsequent dates. The Impugned Order came to be passed on 06.09.2025, whereby the learned Trial Court allowed the application principally on the ground that the Respondent had engaged an Advocate, who had allegedly failed to inform her of the progress of the proceedings. The learned Trial Court also took into consideration the fact that the Respondent had earlier approached the Hon'ble Supreme Court for transfer of the proceedings and, consequently, found that she deserved indulgence in the interests of justice.

The relevant portion of the Impugned Order reads as under:-

“7. I have heard the submissions and carefully perused the record.

8. It is a settled principle of law that if a party shows sufficient cause for non-appearance, the Court may set aside the ex-parte proceedings.

9. In the present case, the stand of the respondent/applicant/wife is that though she had engaged an Advocate, he failed to defend her case and also did not inform her about the progress of the matter.

10. The record shows that the case was transferred to this Court on 05.05.2022 pursuant to the Hon'ble Supreme Court's order dated 27.01.2022. Thereafter, notice was issued to the respondent's Counsel, and Sh. Sambhav Shekhar entered



appearance on 09.01.2023 by filing vakalatnama. However, on 17.02.2023 and 22.03.2023, there was no appearance on behalf of the respondent, and consequently she was proceeded ex-parte. The case then proceeded to ex-parte evidence, and ultimately, on 28.08.2023, the present application for setting aside ex-parte order was filed. During this time, the matter was also referred to mediation, which, however, not settled.

11. Considering the averments in the application, particularly that the applicant/respondent/wife had indeed engaged an Advocate who has not informed her about the proceedings, I do not find any strong ground to disbelieve her version. More so, as she had herself taken steps earlier by approaching the Hon'ble Supreme Court for transfer of the case, which indicates her intent to contest the proceedings. Although it is true that a litigant must be vigilant and cannot completely abdicate responsibility to the Advocate, keeping in view that the respondent is a layperson and a destitute woman, she deserves some indulgence of this Court. In the interest of justice, therefore, the application merits acceptance.

12. In view of the above, the application for setting aside the ex-parte order dated 22.03.2023 is allowed, subject to costs of Rs.10,000/- (Rs.5,000/- to be deposited with DLSA by the respondent/applicant/wife and Rs.5,000/- to be paid by her to the petitioner/non-applicant/husband).

13. Accordingly, the application under Order IX Rule 7 read with Section 151 CPC filed by the respondent/applicant/wife stands disposed of in the above terms."

9. **Per contra**, learned counsel appearing on behalf of the Respondent relies upon the judgment of the Hon'ble Supreme Court in ***Lal Devi & Anr. vs Vaneeta Jain & Ors.***⁵, particularly paragraph nos. 14, 15 and 16, to submit that the Hon'ble High Court has the power to set aside *ex-parte* decree in an Appeal preferred against the decree.

ANALYSIS AND CONCLUSION:

10. This Court has heard learned counsel for the parties and, with their able assistance, perused the relevant order-sheets as also the Impugned Order.

11. At the outset, it would be apposite to examine the statutory scheme governing an application under Order IX Rule 7 of the CPC.

⁵ 2007 (7) SCC 200



Order IX of the CPC deals with the consequences flowing from the non-appearance of parties on the date fixed for hearing and provides distinct remedies depending upon the stage at which such non-appearance occurs.

12. Order IX Rule 6 CPC contemplates a situation where, upon the matter being called for hearing, the Plaintiff appears but the Defendant does not appear. Depending upon the circumstances relating to the service of summons, the Court may either proceed *ex parte* against the Defendant, direct issuance of fresh summons or postpone the hearing. Where the Court proceeds *ex parte* against the Defendant, the proceedings do not, by themselves, come to an end. The suit may thereafter continue *ex parte*, with the Plaintiff being permitted to lead evidence and address arguments in support of the relief sought.

13. It is at this stage that Order IX Rule 7 CPC becomes relevant. The Rule contemplates a situation where the Court has adjourned the hearing of the suit *ex parte* and the Defendant appears at or before such hearing and assigns good cause for his previous non-appearance. Upon the Court being satisfied as to the existence of such good cause, the Defendant may be permitted to participate in the proceedings and be heard in answer to the suit, subject to such terms as to costs or otherwise as the Court may deem appropriate.

14. The language of Order IX Rule 7 CPC is significant. The Rule proceeds on the premise that, notwithstanding the order directing the suit to proceed *ex parte*, the hearing of the suit is still continuing and has been adjourned to a subsequent date for further hearing. Thus, the jurisdiction under Order IX Rule 7 CPC is essentially remedial in nature and enables a Defendant, who had initially remained absent and against whom *ex parte* proceedings had been directed, to re-enter the



proceedings before the hearing has concluded, provided sufficient cause is shown for the earlier non-appearance. Order IX Rule 7 of the CPC reads as under:

“7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.—Where the Court has adjourned the hearing of the suit, *ex parte*, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.”

15. The statutory scheme, however, draws a clear distinction between a proceeding which is continuing *ex parte* and one in which the hearing itself has already concluded. Order IX Rule 7 CPC operates in the former situation. Once the evidence has been concluded, arguments have been heard and nothing remains to be done except the pronouncement of judgment, the hearing of the suit comes to an end and the stage contemplated under Order IX Rule 7 CPC no longer survives.

16. The distinction, therefore, is between a matter which has been “adjourned for hearing” and a matter in which the “hearing has concluded” and the matter has merely been kept for pronouncement of judgment. In the former situation, the Defendant may, subject to the requirements of the Rule, invoke Order IX Rule 7 CPC by appearing at or before the next date of hearing and showing good cause for the previous non-appearance. In the latter situation, however, there is no further hearing of the suit to which the Defendant can seek entry under Order IX Rule 7 CPC.

17. An adjournment for the purposes of pronouncement of judgment is, therefore, fundamentally distinct from an adjournment



for hearing of the suit. The expression “Where the Court has adjourned the hearing of the suit, *ex parte*”, occurring in Order IX Rule 7 CPC, cannot be construed to include every adjournment occurring after a party has been proceeded *ex parte*. The adjournment contemplated by the Rule must be an adjournment of the hearing itself. Where the hearing has concluded and the matter is adjourned merely for pronouncement of judgment, there remains nothing further to be heard in the suit and, consequently, Order IX Rule 7 CPC has no application.

18. The remedies available under Order IX are, thus, dependent upon the procedural stage reached in the proceedings. Prior to the conclusion of the hearing, a Defendant who has been proceeded *ex parte* may appear and seek to participate in the proceedings by invoking Order IX Rule 7 CPC and demonstrating good cause for the previous non-appearance. However, once an *ex parte* decree has been passed, the CPC provides a separate and distinct remedy under Order IX Rule 13 CPC for setting aside such decree, subject to the fulfilment of the conditions stipulated therein.

19. Order IX Rule 7 CPC and Order IX Rule 13 CPC, therefore, operate in distinct fields and at different procedural stages. While Order IX Rule 7 CPC is concerned with restoring the Defendant's participation during the pendency of the hearing of the suit, Order IX Rule 13 CPC comes into operation after an *ex parte* decree has been passed. The statutory scheme does not contemplate an intermediate stage, after the conclusion of the hearing but before the pronouncement of judgment, at which stage an application under Order IX Rule 7 CPC can be maintained.

20. The legal position in this regard stands authoritatively settled by



the Hon'ble Supreme Court in *Arjun Singh (supra)*. The Hon'ble Supreme Court, while examining the scheme of Order IX Rule 7, held that once the hearing of the suit has been completed, the Code contemplates no intervening stage between completion of hearing and pronouncement of judgment at which an application under Order IX Rule 7 can be maintained. The Court specifically observed that, after completion of hearing, the matter stands at the stage of pronouncement of judgment and the remedy under Order IX Rule 7 is no longer available. The relevant finding of the Hon'ble Supreme Court reads as under:-

“18. So far as the case before us is concerned the order under appeal cannot be sustained even on the basis that the finding recorded in disposing of an application under O. IX Rule 7 would, operate as *res judicata* when the same question of fact is raised in a subsequent application to set aside an *ex parte* decree under Order IX, Rule 13. This is because it is not disputed that in order to operate as *res judicata*, the court dealing with the first matter must have had jurisdiction and competency to entertain and decide the issue. Adverting to the facts of the present appeal, this would primarily turn upon the proper construction of the terms of Order IX. Rule 7. The opening words of that rule are, as already seen, Where the Court has adjourned the hearing of the suit *ex parte*. Now, what do these words mean? Obviously they assume that there is to be a hearing on the date to which the suit stands adjourned. If the entirety of the "hearing" of the suit has been completed and the Court being competent to pronounce the judgment then and there, adjourns the suit merely for the purpose of pronouncing judgment under Order XX. Rule 1, there is clearly no adjournment of "the hearing" of the suit, for there is nothing more to be heard in the suit. It was precisely this idea that was expressed by the learned Civil Judge when he stated that having regard to the stage which the suit had reached the only proceeding in which the appellant could participate was to hear the judgment pronounced and that on the terms of Rules 6 and 7 he would permit him to do that. If, therefore the hearing Was completed and the suit was not "adjourned for hearing", Order IX. Rule 7 could have no application and the matter would stand at the stage of Order IX. Rule 6 to be followed up by the passing of an *ex parte* decree making Rule 13 the only provision in order IX applicable. If this were the correct position, it would automatically follow that the learned Civil Judge would have no jurisdiction to entertain the application dated May 31, 1958 purporting to be under Order IX. Rule 7, or pass any order



thereon on the merits. This in its turn would lead to the result that the application under Order IX, Rule 13 was not only Competent but had to be heard on the merits without reference to the findings contained in the previous order.”

(emphasis supplied)

21. The aforesaid principle was thereafter reiterated by the Hon'ble Supreme Court in ***Rasiklal Manikchand Dhariwal (supra)*** whereby the Hon'ble Supreme Court held that once the hearing of the suit is concluded and the suit is closed for judgment, Order IX Rule 7 has no application. The Court further clarified that the adjournment of a matter for purposes of pronouncement of judgment is not an adjournment of the hearing of the suit within the contemplation of Order IX Rule 7. The relevant finding of the Hon'ble Supreme Court reads as under:-

“41. The contention, at the first blush, appears to be attractive but has no substance at all. In the first place, once the hearing of the suit is concluded, and the suit is closed for judgment, Order 9 Rule 7 of the Code has no application at all. The very language of Order 9 Rule 7 makes this clear. This provision presupposes the suit having been adjourned for hearing. The courts, time out of number, have said that adjournment for the purposes of pronouncing judgment is no adjournment of the "hearing of the suit". On 17-3-2005, the trial court in the present case did four things, namely, (1) closed the evidence of the plaintiff as was requested by the plaintiff; (ii) ordered the suit to proceed ex parte as the defendants failed to appear on that date; (il) heard the arguments of the advocate for the plaintiff; and (iv) kept the matter for pronouncement of judgment on 28-3-2005. In view of the above, Order 9 Rule 7 of the Code has no application at all and it is for this reason that the application made by the defendants under this provision was rejected by the trial court.

42. Secondly, once the suit is closed for pronouncement of judgment, there is no question of further proceedings in the suit. Merely because the defendants continued to make application after application and the trial court heard those applications, it cannot be said that such appearance by the defendants is covered by the expression "appeared on the day fixed for his appearance" occurring in Order 9 Rule 7 of the Code and thereby entitling them to address the court on the merits of the case.”

(emphasis supplied)

22. The distinction is, therefore, between a matter which has been adjourned for hearing and a matter in which the hearing itself has



concluded and the matter has merely been kept for pronouncement of judgment. In the former situation, an application under Order IX Rule 7 may be maintainable subject to the requirements of the Rule. In the latter, the stage contemplated by Order IX Rule 7 has already passed.

23. The statutory scheme, when read in conjunction with the aforesaid decisions, thus envisages distinct stages. First, where a Defendant fails to appear and the Court directs the matter to proceed *ex parte* under Order IX Rule 6 CPC. Secondly, where the *ex parte* proceedings are still continuing and the hearing of the suit has been adjourned for hearing, the Defendant may invoke Order IX Rule 7 CPC by appearing at or before such hearing and assigning good cause for the previous non-appearance. Thirdly, where the hearing has concluded, and the matter has been reserved for pronouncement of judgment, the jurisdiction under Order IX Rule 7 CPC is no longer available. Upon the passing of an *ex parte* decree, the Defendant may avail such remedies as are available under law.

24. The maintainability of an application under Order IX Rule 7 CPC is, therefore, not merely dependent upon whether the Defendant has shown sufficient cause for the previous non-appearance. The threshold requirement is that the application itself must be filed at a stage contemplated by the Rule. Unless the hearing of the suit remains pending and the matter has been adjourned for hearing, the jurisdiction under Order IX Rule 7 CPC cannot be invoked. Consequently, before examining whether sufficient cause has been made out, the Court must first determine whether it retains the jurisdiction to entertain an application under the said provision.

25. It is in the aforesaid statutory and legal framework that the facts of the present case are required to be examined.



26. The order-sheet dated 21.08.2023 leaves little scope for doubt as to the stage at which the matter stood when the application under Order IX Rule 7 came to be filed. The order records that written arguments had already been filed, final arguments had been heard and the matter was directed to be put up for judgment on 15.09.2023. Thus, by 21.08.2023, the hearing of the matter stood concluded.

27. The application under Order IX Rule 7 was thereafter filed on 25.08.2023. The application was, therefore, not filed at a stage when the hearing of the matter was still pending. It was filed after final arguments had been heard and after the matter had been expressly reserved for pronouncement of judgment.

28. The learned Trial Court, while passing the Impugned Order, has principally considered whether the Respondent had shown sufficient cause for her previous non-appearance. The Impugned Order records that the Respondent had engaged an Advocate, that the Advocate had allegedly failed to defend her case or inform her about the progress of the proceedings and that the Respondent had herself earlier approached the Hon'ble Supreme Court for transfer of the proceedings. On that basis, the learned Trial Court proceeded to exercise discretion in her favour.

29. The difficulty, however, is not with the manner in which the learned Trial Court appreciated the explanation furnished by the Respondent. The difficulty lies at a more anterior stage. Before examining whether sufficient cause had been shown, the learned Trial Court was required to consider whether an application under Order IX Rule 7 was maintainable at all at the stage at which it had been filed.

30. Once the hearing had concluded and the matter had been reserved for judgment, the jurisdiction under Order IX Rule 7 was no



longer available. The question of whether the Respondent had sufficient cause for her previous non-appearance consequently did not arise for consideration under that provision.

31. In this regard, the reliance placed by learned counsel for the Respondent upon *Lal Devi (supra)* does not advance her case. In *Lal Devi*, the Hon'ble Supreme Court was concerned with the power of the High Court, while exercising appellate jurisdiction against an *ex-parte* decree, to set aside such decree in the interests of justice. The Hon'ble Supreme Court itself noticed that the learned District Judge could not entertain an application under Order IX Rule 7, but held that this did not prevent the High Court, in an appeal against the *ex-parte* decree, from setting aside the decree.

32. The power of the High Court, in an appeal against a decree cannot be equated with the jurisdiction of the learned Trial Court to entertain an application under Order IX Rule 7 after the hearing of the matter had concluded. The two situations operate at different stages and under different jurisdictional parameters. Admittedly, the order under challenge is not the final decree.

33. It is, therefore, not necessary for this Court to enter into the merits of the explanation furnished by the Respondent for her previous non-appearance. The issue before this Court is whether the learned Trial Court could have exercised jurisdiction under Order IX Rule 7 on 06.09.2025 in respect of an application which had been filed after final arguments had been heard and the matter had been reserved for pronouncement of judgment.

34. In view of the aforesaid position, this Court is of the view that the learned Trial Court fell in error in entertaining and allowing the application under Order IX Rule 7 CPC after reserving the matter for



pronouncement of Judgement. The Impugned Order, therefore, cannot be sustained.

35. In view thereof, the present Petition is required to be allowed.

36. Accordingly, the Impugned Order dated 06.09.2025 is set aside. The application filed by the Respondent under Order IX Rule 7 read with Section 151 CPC shall stand dismissed as not maintainable at that stage.

37. The present Petition, along with all pending application(s), if any, stands disposed of.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 19, 2026/nd/va

Signature Not Verified

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