IN THE HIGH COURT OF JHARKHAND AT RANCHI
Misc. Appeal No.534 of 2025

Mahindra @ Mahindra Financial Services Ltd. thorough its authorized representative/Chief Manager, Defence Legal, Shreesh Mishra son of Shree Raghav Prasad Mishra, having its office situated At S K Puri, near Children Park, Boring Road, P.O. Budha Colony, P.S. Krishna Puri, District Patna and resident of B-245, Sector B,. Sainik Vihar, Kurnraghat, Khorabar URF Sooba Bazar, P.O. Kurnraghat, P.S. AIIMS, District Gorakhpur (Uttar Pradesh)

.... …. Appellant

Versus

1. Sunita Prasad, wife of Late Sushil Prasad
2. Ashutosh Prasad, son of Late Sushil Prasad
3. Kaushik Kumar, son of Late Sushil Prasad
4. Niranjan Prasad, son of Late Goverdhan Mahto
5. Geeta Devi, wife of Shree Niranjan Prasad
   All resident of Hospital Toli, Bundu, P.O. & P.S. Bundu, District Ranchi
6. Prakash Biruli, son of Sadhucharan Biruli, resident of Village Asura, P.O. & PS. Jinkpani, District Singhbum (West)
7. Rajkumar Mahto, son of Sewa Ram Mahto, resident of Telwadih, P.O. & P.S. Sonahatu, District Ranchi .... Respondents

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr. Rajeev Kumar Sinha, Advocate
Mr. Vishnu Kumar Mahto, Advocate
For the Respondents : Mr. Pratik Sen, Advocate

Order No.02 / Dated : 15.12.2025

Instant appeal is filed under Order XLIII Rule (1)(d) of the Code of Civil Procedure against the order dated 12.08.2025 passed in MACT Case No.53 of 2024 by the Presiding Officer, MACT, Ranchi whereby whereunder application under Order IX Rule 13 of the CPC for setting aside the award dated 26.06.2024 has been rejected.

2. Appellant is the original finance company which had financed the purchase of offending vehicle i.e. tractor bearing registration no.JH 06E 4312.

3. The accident claim case was filed against the owner and insurer of the tractor. Originally, it was filed impleading the driver and the owner of the tractor. Later on, vide order dated 10.01.2024, the appellant- Company was impleaded as a party.

4. Notices were issued to the appellant-Company and on its non-appearance, an ex-parte order was drawn and final award has been passed

ex-parte, whereby and whereunder liability has been fixed to pay the compensation amount on the Company.

5. Aggrieved by the order, appellant-Company moved the trial Court under Order IX Rule 13 of the CPC which was dismissed against which the instant appeal has been filed.

6. It is argued by the learned counsel on behalf of the appellant that after issuance of the notice, the case was fixed for appearance of the appellant on 04.04.2024. On the said date, appellant could not appear as communication had been made with Patna office, with regard to above motor accident claim case, but formal appearance could not be entered and consequently, ex-parte award was passed. It is argued that the learned trial Court has not assigned any specific reason for dismissing the petition filed under Order IX Rule 13 of the CPC. There was sufficient cause for non-appearance and only on lapse of 03 consecutive dates, the award was passed. It is contended that relevant documents were not furnished along with the notice and therefore, three dates elapsed for collecting necessary papers for entering into appearance. Reliance in this regard has been placed on ***G.P. Srivastava Vs. R.K. Raizada & Others*, (2000) 3 SCC 54**, wherein it is held that word "sufficient cause" under Order IX Rule 13 should be construed liberally.

7. It is also contended that the appellant has a good case as the vehicle which was financed originally by the appellant- Company on default of payment of loan amount, was put on auction sale, was sold to respondent no.7 and therefore, the offending vehicle was not under its control or ownership.

8. It is argued by Mr. Pratik Sen, the learned counsel on behalf of the appellant that the efficacious remedy under Section 96(2) of the CPC is to file an appeal before this Court, but deliberately, a petition under Order XLIII (1)(d) of the CPC has been filed only to avoid depositing the statutory amount in preferring the appeal.

9. There is difference between the provision under Section 96(2) of the CPC and Order IX Rule 13 of the CPC in as much as the appellate Court can examine the case on merit as well as on law by re-appreciating the evidence.

However, the scope under Order IX Rule 13 of the CPC is a limited one and an ex-parte decree/order can be set aside on two grounds only. Firstly, the summon was not duly served on defendants and secondly, where the defendant was prevented by sufficient cause from appearing when suit was called out.

10. In the present case, the notices were issued on 10th January, 2024, notices were served on 9th February, 2024 and the ex-parte order was passed on 26th June, 2024 by giving three adjournments.

11. Considering the overall facts and circumstances of the case and the grounds as taken by the appellant, this Court is of the view that the appellant has explained sufficient cause as appearing in Order IX Rule 13 of the CPC for non-appearance. Consequently, the impugned order is set aside.

Miscellaneous Appeal is allowed.

Interlocutory Application, if any, is disposed of.

(Gautam Kumar Choudhary, J.)

Anit

Uploaded
17.12.2025