

HIGH COURT FOR THE STATE OF TELANGANA

MAIN CASE: C.R.P.No.1193 of 2018

PROCEEDING SHEET

Sl. No.	DATE	ORDER	OFFICE NOTE
	30.06.2025	<u>SKS, J</u> <u>I.A.No.2 of 2025</u> This application is filed seeking to set aside the order dated 04.02.2025 passed by this Court in C.R.P.No.1193 of 2018. In the main case, the petitioner herein is respondent No.3, the respondent Nos.1 to 3 herein are revision petitioners, and the respondent Nos.4 to 11 are respondents/defendants. Heard learned counsel for the petitioner and learned counsel for the respondents. Learned counsel for the petitioner submitted that the respondents 1 to 3 herein, filed revision petition challenging the dismissal of I.A.No.533 of 2016 in O.S.No.746 of 2010 which was filed praying to set aside the <i>ex parte</i> preliminary decree passed in partition suit initiated by the petitioner herein and her sisters who are respondent Nos.10 and 11. It was stated that during the pendency of suit, respondent Nos.1 to 3 herein had compromised with respondent Nos.10 and 11 by paying them a sum of Rs.5 lakhs	

		each. However, they initiated only a partial payment of Rs.1 lakh, assuring that the remaining amount would also be paid. Nonetheless, they failed to honour their commitment, which resulted in failure of compromise with the petitioner. He further submitted that despite having knowledge of the suit and having been served with summons, the respondent Nos.1 to 3 herein failed to appear before the trial Court or file a written statement. Consequently, all defendants, including the respondent Nos.1 to 3 herein, were set <i>ex parte</i>, and a preliminary decree was passed on 26.10.2015. He contended that I.A.No.533 of 2016 seeking to set aside the <i>ex parte</i> decree was filed with a delay of 134 days without any sufficient cause being shown to justify condonation under the Limitation Act, due to which the trial Court rightly dismissed the same. He lamented that although a vakalatnama and vacate stay petition were filed on behalf of the petitioner herein, there was no representation for the petitioner on 04.02.2025 as the said petition and vakalatnama were returned due to technical reasons, and in view of non appearance, this Court allowed the CRP <i>ex parte</i>.	
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		He pointed out that respondent Nos.1 to 3 did not provide convincing reasons for the delay caused in filing I.A.No.533 of 2016. He asserted that petitioner herein only came to know of the <i>ex parte</i> order, upon enquiring about the case status. Therefore, he advocated that the petitioner has strong and valid grounds in his support and, if the <i>ex parte</i> order remains, she would suffer irreparable loss and injustice. Hence, he prayed the Court to set aside the order dated 04.02.2025 passed in C.R.P.No.1193 of 2018 and reopen the said revision petition. On the other hand, the learned counsel for the respondents submitted that there is no illegality in the order passed by this Court on 04.02.2025, and this Court rightly allowed CRP. With regard to delay in filing petition under Order IX Rule 9 of CPC seeking to set aside the <i>ex parte</i> decree and to condone the delay of 134 days, he clarified that the delay was computed from the date of the decree in the suit, and although the trial Court recorded it as a 134 days delay, the petition was in fact filed under the correct provision, i.e., Order IX Rule 13 of CPC. He further submitted that there is no illegality in the computation of the delay and averred that the matter	
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		was compromised between some of the parties, and certain plaintiffs had even executed registered sale deeds in favour of the respondents pursuant to such compromise. Therefore, he prayed the Court to dismiss this application, stating that there are no merits in it. In support of the submissions made by the learned counsel for the respondents with regard to scope of provisions under CPC in the facts of this case, he placed reliance upon the judgment of the Hon'ble Supreme Court in Arjun Singh v. Mohindra Kumar and Others¹, wherein in paragraph Nos.16 and 17, it is held as follows: “16. The scope of a proceeding under O.IX Rule 7 and its place in the scheme of the provisions of the Code relating to the trial of suits was the subject of consideration in Sangram Singh v. Election Tribunal. Dealing with the meaning of the words “The Court may proceed exparte” in O. IX. Rule 6(1)(a) Bose, J. speaking for the Court said: “When the defendant has been served and has been afforded an opportunity of appearing, then, if he does not appear, the Court may proceed in his absence. But, be it noted, the Court is not directed to make an ex parte order. Of course the fact that it is	
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¹ 1963 SCC OnLine SC 43

		proceeding ex parte will be recorded in the minutes of its proceedings but that is merely a statement of the fact and is not an order made against the defendant in the sense of an ex parte decree or other ex parte order which the court is authorised to make. All that Rule 6(1)(a) does is to remove a bar and no more. It merely authorises the Court to do that which it could not have done without this authority, namely to proceed in the absence of one of the parties.” Dealing next with the scheme of the Code, the learned Judge pointed out that the manner in which the Court could thereafter proceed i.e., after Rule 6(1)(a) was passed would depend upon the purpose for which the suit stood adjourned, and proceeded: “If it is for final hearing, an ex parte decree can be passed, and if it is passed, then O. IX, Rule 13 comes into play and before the decree is set aside the Court is required to make an order to set it aside. Contrast this with Rule 7 which does not require the setting aside of what is commonly, though erroneously, known as ‘the ex parte order, No order is contemplated by the Code and therefore no order to set aside, the order is contemplated either.” (Italics ours). and referring to the effect of the rejection of application made under O. IX Rule 7,	
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		he added: “If a party does appear on the day to which the hearing of the suit is adjourned, he cannot be stopped from participating in the proceedings simply because he did not appear on the first or some other hearing. But though he has the right to appear at an adjourned hearing, he has no right to set back the hands of the clock. Order 9 Rule 7 makes that clear. Therefore, unless he can show good cause, he must accept all that has gone before and be content to proceed from the stage at which he comes in.” That being the effect of the proceedings, the question next arises what is the nature of the order if it can be called an order or the nature of the adjudication which the Court makes under O. IX. Rule 7? In its essence it is directed to ensure the orderly conduct of the proceedings by penalising improper dilatoriness calculated merely to prolong the litigation. It does not put an end to the litigation nor does it involve the determination of any issue in controversy in the suit. Besides, it is obvious that the proceeding is of a very summary nature and this is evident from the fact that as contrasted with O. IX, Rule 9 or O. IX. Rule 13, no Appeal is provided against action of the Court under O. IX. Rule 7. “refusing to setback the Clock”. It is, therefore, manifest that the Code proceeds upon the view not imparting any finality to the determination of any issues of fact on which the court's action under	
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		that provision is based. In this connection reference may be made to a decision of a Division Bench of the Madras High Court in <i>Sankaralinga v. Ratnasabhapat</i>i [21 Mad 324] . The question arose on an appeal to the High Court by the defendants against whom an <i>ex parte</i> decree had been passed on March 30, 1895. Previous thereto they had put in petitions supported by affidavits under Section 101 of the Civil procedure Code of 1882 corresponding to Order IX. Rule 7, to set aside “an <i>ex parte</i> order,” accept their written statements, and proceed with the suit on the merits. The ground alleged for the relief sought was that they were not duly served with summons. This application was rejected by the Court. Thereafter, after an <i>ex parte</i> decree was passed, they again filed another application under Section 108 under the then code, corresponding to the present Order IX Rule 13. The ground put forward was again the same, namely that the summons was not properly served. The District Judge having dismissed the application under Section 108 (Order IX. Rule 13), the defendants preferred an appeal to the High Court. On behalf of the plaintiffs-respondents the contention was raised by Mr Bhashyam Ayyangar — learned counsel that the application to set aside the <i>ex parte</i> decided under Section 108 was incompetent because the same question had already been decreed against the defendant when he filed the application under Section 101. The Court composed of Subramania lyre and	
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		Benson, JJ. said, “the Contention at first sight may seem to be” reasonable, but having regard to the very wide words “in any case” used ins. 108 we are unable to hold that the defendant was; not entitled to make an application under ‘section 108’. There have been other decisions in which a similar view has been held and though the provisions of the Code corresponding to Order IX. Rule 7 and Order IX. Rule 13 have been in force for over a century from 1859, there has not been a single case in which the plea of res judicata such as has been urged in the appeal before us has been upheld. On the other hand, we might point out that an exactly similar objection of res judicata was expressly raised and repelled in <i>Bhaoo Patel v. Naroo</i> [10 CPLR 45] in a decision rendered in 1896 in which reliance was placed on a case reported in 8 Cal. 272. 17. In the circumstances we consider that a decision or direction in an interlocutory proceeding of the type provided for by O. IX. Rule 7, is not of the kind which can operate as res judicata so as to bar the hearing on the merits of an application under Order IX. Rule 13. The latter is a specific statutory remedy provided by the Code for the setting aside of ex parte decrees, and it is not without significance that under Order XL. III. Rule 1 (d) an appeal lies not against orders setting aside a decree passed exparte but against orders rejecting such an application, unmistakeably pointing to the policy of the Code being that subject	
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		to securing due diligence on the part of the parties to the suit, the Code as far as possible makes provision for decisions in suits after a hearing afforded; to the parties.” In the light of the submissions made by both the learned counsel and a perusal of the material available on record, it is evident that this Court had earlier allowed the Civil Revision Petition, condoning the delay of 134 days. I.A. No.2 of 2025 has been filed by the petitioner on the ground that, although he received notice and filed a vakalatnama, the same was returned on technical grounds. As a result, he was unable to appear before the Court on the date of hearing. The petitioner further contends that the delay was not correctly computed. According to him, the delay should be reckoned from the date of his knowledge of the decree, and not from the date of its passing. The suit was decreed on 26.10.2015. Therefore, applying the legal principle laid down by the Hon’ble Supreme Court in Arjun Singh (cited supra) and subsequent judgments, it is well settled that an application under Order IX Rule 13 CPC is maintainable notwithstanding the earlier rejection under Order IX Rule 7 CPC. Moreover, the period of	
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		limitation under Order IX Rule 13 CPC is to be calculated from the date the applicant acquired knowledge of the decree, if the decree was passed ex parte without notice. In the present case, the delay of 134 days is accordingly within the permissible period when computed from the date of knowledge, and not from the dismissal of the earlier application under Order IX Rule 7 CPC. Accordingly, this Interlocutory Application is dismissed confirming the earlier order dated 04.02.2025 passed in C.R.P. No.1193 of 2018. SKS,J SAI	
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