



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Civil Miscellaneous Appeal No. 2689/2026
CNR: RJHC010879752026 | URN: CMA / 6702U / 2026

Smt. Baljeet Kaur W/o Sh. Harjeet Singh, Aged About 70 Years,
20 Md-A, Presently Chak 13 Knd, Tehsil Rawla, District Sri
Ganganagar Raj.

-----Appellant

Versus

1. Smt. Godavari W/o Late Sh. Baburam, 23 As, Presently Ward No.21, Gharsana, District Sri Ganganagar Raj.
2. Deepraj S/o Sh. Baburam, Village Jasoor, Tehsil Nurpur, District Kangra Himachal Pradesh
3. Smt. Chandrakanta D/o Sh. Baburam, W/o Shri Shivji R/o Indaura, Tehsil Nurpur, District Kangra Himachal Pradesh
4. Smt. Chandravati D/o Sh. Baburam, W/o Shri Shyamlal R/o Village Jasoor, Tehsil Nurpur, District Kangra Himachal Pradesh
5. Kaur Singh S/o Sh. Wazir Singh, 16 Md, Tehsil Gharsana, District Sri Ganganagar
6. Bakhtwar Singh S/o Sh. Wazir Singh, 16 Md, Tehsil Gharsana, District Sri Ganganagar
7. Karnail Singh S/o Sh. Wazir Singh, 16 Md, Tehsil Gharsana, District Sri Ganganagar
8. The Sub-Registrar, Gharsana, District Sri Ganganagar Raj.
9. The Tehsildar (Revenue), Gharsana, District Sri Ganganagar
10. The District Collector, Sri Ganganagar

-----Respondents

For Appellant(s) : Mr. Pankaj Sharma
For Respondent(s) : Mr. Sohan Lal Jain

HON'BLE MR. JUSTICE SANJEET PUROHIT

Judgment

- | | | |
|---|---|---------------|
| 1. Date of conclusion of arguments | : | 17.09.2026 |
| 2. Date on which judgment was reserved | : | 17.09.2026 |
| 3. Whether the full judgment or only the operative part is pronounced | : | Full Judgment |
| 4. Date of pronouncement | : | 06.10.2026 |



Reportable

1. Present Civil Misc. Appeal has been filed under Order XLIII Rule 1(d) read with Section 104 and Section 151 CPC by appellant - defendant No.7 against order dated 05.08.2026 passed by learned Additional District & Sessions Judge, Gharsana, District Sri Ganganagar ("*learned Trial Court*") in Civil Misc. Case No.06/2025 (*Baljeet Kaur v. Godavari Devi*), whereby the application preferred by appellant under Order IX Rule 13 CPC seeking setting aside of *ex-parte* judgment and decree dated 29.01.2025, passed in Civil Suit No.189/2018, was rejected.

2. Respondent No. 1, the sole plaintiff in the suit, bearing Civil Suit No.189/2018, titled *Godavari Widow of Baburam v. Deepraj & Ors.*, is duly represented before this Court by learned counsel Mr. Sohhan Lal Jain. Learned counsel for the appellant waived service upon co-defendants, being respondents No.2 to 7 herein.

3. The facts germane for our present purposes are that in the year 2013, respondent No.1 - plaintiff (Smt. Godavari) instituted a suit for declaration and permanent injunction in respect of agricultural land, admeasuring 25 bighas (6.325 hectares), situated in Murabba No.26, Patthar No.03/47, Killa Nos.1 to 25, Chak 20 MD-A, Tehsil Gharsana ("*suit land*").

3.1 Plaintiff pleaded that the suit land had originally been permanently allotted to her deceased husband, Baburam, as a Pong Dam displaced person and that, upon his demise, plaintiff along with defendants No.1 to 3 (respondents no.2 to 4 herein) succeeded to the land as his Class-I legal heirs. It was alleged that defendants No.1 to 3 fraudulently got her name deleted from the



revenue records and transferred the suit land in favour of defendants No.4 to 6 (respondents No.5 to 7 herein) vide registered sale deed dated 04.08.1998 (executed on 16.03.1998) and that defendants No.4 to 6 thereafter transferred the land in favour of present appellant - defendant No.7 vide registered sale deed dated 14.05.2004. On these grounds, plaintiff prayed that both the aforesaid registered sale deeds dated 04.08.1998 and 14.05.2004 be declared null, void and ineffective as against her rights in the suit land and further that defendants be restrained from interfering with her possession and enjoyment.

3.2 Present appellant - defendant No.7 entered appearance and filed written statement, alleging that she was *bona fide* purchaser for valuable consideration, having purchased the land after inspecting the revenue records and satisfying herself regarding the title and possession of her vendors and that she was in actual and continuous physical possession of the suit land and therefore, maintained that aforesaid registered sale deeds dated 04.08.1998 and 14.05.2004 were valid and lawful.

3.3 On the basis of rival pleadings, learned Trial Court framed eight issues, *inter alia* casting the burden of establishing that registered sale deeds in question were illegal, null, and void upon plaintiff-respondent No. 1, while the burden of proving issues No.3, 4, 5, 6 and 7, including those relating to cause of action, limitation and plaintiff's status as a Class-I heir, was placed upon defendants. Subsequent to the framing of issues, the suit remained pending at the stage of plaintiff's evidence since the year 2018.



3.4 During the pendency of the suit, Shri Dharampal Godara, Advocate, who had been engaged by appellant to conduct her defence, passed away. On 19.07.2024, when the matter was called on for hearing, neither the appellant, nor her counsel, nor any of the co-defendants appeared, whereupon learned Trial Court directed the suit to proceed *ex-parte* against defendants No.1-7.

3.5 Upon subsequently coming to know of the demise of her counsel and of order dated 19.07.2024 directing the suit to proceed *ex-parte* against her, appellant engaged Shri Gurtej Singh, Advocate, and preferred an application under Order IX Rule 7 CPC seeking recall of said order dated 19.07.2024, on the ground that she is an aged lady of about 70 years residing in a distant rural chak, who remained unaware of her counsel's death, which accounted for her absence when the suit was called on for hearing on 19.07.2024. Said application was listed on 28.10.2024 for filing of reply; however, on said date, the counsel engaged by appellant could not remain present, whereupon learned Trial Court dismissed the application seeking setting aside of *ex-parte* proceedings for non-prosecution, without adjudicating the same on merits.

3.6 Thereafter, plaintiff-respondent No.1 examined herself as the sole plaintiff witness and produced documents in support of the claim, which testimony remained un-cross-examined and the documents remained unchallenged. The issues in respect of which the burden of proof was cast upon defendants were decided against them on the ground that no evidence had been led on their behalf. Accordingly, learned Trial Court proceeded to



pronounce *ex-parte* judgment and decree dated 29.01.2025 in favour of plaintiff-respondent No.1, declaring aforesaid sale deeds dated 04.08.1998 and 14.05.2004 as illegal, void and inoperative as against the rights of plaintiff-respondent No. 1 (taken to be whole of 6.325 hectares) and granted permanent injunction against defendants.

3.7 Thereafter, within a period of 9 days from the passing of *ex-parte* decree, appellant preferred an application under Order IX Rule 13 read with Section 151 CPC, seeking setting aside of said *ex-parte* decree dated 29.01.2025. A similar application was preferred by defendants No.4 to 6 (respondents No.5 to 7), however, on grounds distinct from that of appellant. Learned Trial Court, however, by impugned order dated 05.08.2026, rejected said applications, observing in relation to appellant's application that appellant's earlier application under Order IX Rule 7 of the Code had already been dismissed in default for non-appearance, that the appellant had full knowledge of *ex-parte* proceedings and that she had, therefore, failed to act diligently and consequently, no sufficient cause was made out for setting aside *ex-parte* decree.

3.8 Aggrieved by said order dated 05.08.2026, rejecting her application for setting aside *ex-parte* judgment and decree dated 29.01.2025, appellant has approached this Court by way of present appeal.

4. Challenging impugned order dated 05.08.2026, learned counsel appearing on behalf of the appellant submitted that learned Trial Court failed to appreciate the facts and circumstances



of the case in their correct perspective and did not correctly apply the settled principles governing exercise of discretion under Order IX Rule 13 CPC for setting aside an *ex-parte* decree.

4.1 Learned counsel submitted that the expression "sufficient cause" as occurring in Order IX Rule 13 CPC is required to be construed liberally and with a justice-oriented approach so as to advance substantial justice between the parties, particularly where the absence is neither mala fide nor intentional. According to learned counsel, present is not a case where appellant had abandoned the proceedings or remained indifferent to the suit; she had entered appearance, filed her written statement and contested the suit through her engaged counsel for several years. Her absence on 19.07.2024, i.e., the date on which learned Trial Court proceeded *ex-parte* against her, according to learned counsel, was occasioned by the unfortunate demise of her conducting advocate, Shri Dharampal Godara, and was thus neither deliberate nor intentional.

4.2 Learned counsel further submitted that the appellant is an aged lady of about 70 years residing in a distant rural area and had thus remained unaware of the demise of her counsel and the consequent developments in the proceedings. According to learned counsel, a litigant who had entrusted the conduct of her case to counsel ought not to be made to suffer for circumstances beyond her control.

4.3 Learned counsel submitted that, upon learning of the demise of her counsel and the *ex-parte* proceedings, appellant promptly engaged another counsel and preferred an application under Order





IX Rule 7 CPC on 21.10.2024 seeking recall of order dated 19.07.2024. She was advised that her personal attendance was not required on every date of hearing; however, as the counsel engaged could not appear on the date fixed for filing reply, the same was dismissed for non-prosecution on 28.10.2024.

4.4 Learned counsel further submitted that the relevant inquiry under Order IX Rule 13 CPC is whether the defendant was prevented by sufficient cause from appearing when the suit was called on for hearing on the date on which the proceedings were ordered to proceed *ex-parte*. In the present case, that date was 19.07.2024. Learned Trial Court, according to learned counsel, therefore fell into error in drawing an inference of negligence / lack of diligence against appellant from the subsequent dismissal for non-prosecution of her application under Order IX Rule 7 CPC on 28.10.2024, particularly when said application had not even been adjudicated on merits.

4.5 Learned counsel also submitted that appellant had approached the Court without delay after the passing of the *ex-parte* decree, filing the application under Order IX Rule 13 CPC on 07.02.2025, within nine days of the decree dated 29.01.2025, which shows promptness and continued intention on the part of appellant to contest the suit on merits.

4.6 Learned counsel further submitted that *ex-parte* proceedings caused grave prejudice to appellant, inasmuch as her registered sale deed dated 14.05.2004 was invalidated without plaintiff's testimony being subjected to cross-examination and without the appellant being afforded an opportunity to lead evidence on issues



No.3 to 7, the burden whereof lay upon the defendants. It was further submitted that respondent No.1/plaintiff had earlier executed a sworn compromise acknowledging the sale in favour of appellant and receipt of consideration thereunder, and had expressly agreed not to litigate against the appellant. According to learned counsel, solely on account of the appellant having been proceeded against *ex-parte*, she was deprived of opportunity to confront the plaintiff with said document and place the same on record, thereby causing grave prejudice and resulting in a serious miscarriage of justice.

4.7 In support of aforesaid submissions, learned counsel for the appellant relied upon the following judgments of the Hon'ble Supreme Court: -

- I. ***G.P. Srivastava v. R.K. Raizada & Ors.*, (2000) 3 SCC 54;**
- II. ***A. Murugesan v. Smt. Jamuna Rani*, (2019) 20 SCC 803;**
- III. ***Parimal v. Veena @ Bharti*, (2011) 3 SCC 545;**
- IV. ***Srei International Finance Ltd. v. Fairgrowth Financial Services Ltd.*, (2005) 13 SCC 95;**
- V. ***Ram Nath Sao v. Gobardhan Sao*, (2002) 3 SCC 195;**
- VI. ***State of Bihar v. Kameshwar Prasad Singh*, (2000) 9 SCC 94;**
- VII. ***Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd.*, (2002) 3 SCC 156;** and
- VIII. ***Rafiq & Anr. v. Munshilal & Anr.*, (1981) 2 SCC 788.**

5. Learned counsel appearing for respondent No.1 supported impugned order dated 05.08.2026 and submitted that appellant had failed to establish sufficient cause for her non-appearance on





19.07.2024. It was submitted that appellant had been duly served with summons in the year 2013 and had also entered appearance in the matter. Despite having availed several opportunities for cross-examination of plaintiff, she failed to appear on 19.07.2024, when the suit was directed to proceed *ex-parte*.

5.1 Learned counsel contended that although an application under Order IX Rule 7 CPC was preferred on 21.10.2024 through newly engaged counsel, however, her counsel remained absent even on 28.10.2024, resulting in dismissal of said application for non-prosecution. No steps were thereafter taken either for restoration of said application or for bringing the alleged circumstances of her absence to the notice of learned Trial Court, and appellant remained inactive until the *ex-parte* judgment and decree came to be passed on 29.01.2025. Such conduct, according to learned counsel, demonstrated lack of diligence on the part of appellant.

5.2 It was further submitted that appellant's application did not disclose sufficient particulars regarding the alleged demise of her counsel, including the precise date thereof or the date on which she acquired knowledge of the same. A vague assertion of want of knowledge, according to learned counsel, could not discharge the burden of establishing sufficient cause.

5.3 It was further submitted that the plea of illness and incapacity raised by appellant was wholly unsubstantiated by any medical certificate or other material documents. According to learned counsel, a bald assertion of illness without documentary



proof cannot constitute "sufficient cause" within the meaning of Order IX Rule 13 CPC.

5.4 Learned counsel also submitted that the *ex-parte* decree had attained finality insofar as the co-defendants/vendors of the appellant were concerned. It was pointed out that the application under Order IX Rule 13 CPC preferred by co-defendant Kaur Singh and others had been dismissed and no challenge thereto had been pursued. Since the appellant claimed title through the very sale transaction which formed the subject matter of the suit and the decree, it was contended that the decree could not be reopened at the instance of the appellant alone.

5.5 In support of aforesaid submissions, learned counsel for respondent No.1 relied upon the following judgments of the Hon'ble Supreme Court: -

I. ***Kanchhu v. Prakash Chand & Ors., (2025) INSC 542;***

II. ***Arjun Singh v. Mohindra Kumar & Ors., AIR 1964 SC 993;*** and

III. ***Sangram Singh v. Election Tribunal, Kotah, AIR 1955 SC 425.***

6. Heard learned counsel for the parties and perused the material available on record.

7. Before embarking upon the determination of the controversy at hand, it is clarified that, in the present appeal, the inquiry of this Court is directed against impugned order dated 05.08.2026 only insofar as it relates to the rejection of the application filed by appellant under Order XI Rule 13 seeking setting aside of *ex-parte* judgment and decree dated 29.01.2025.



7.1 The controversy at hand concerns the provisions of Order IX Rule 13 which provide for setting aside of *ex-parte* decree passed against defendants. Order IX Rule 13, insofar as relevant for our present purposes, is reproduced hereinbelow for ready reference:

"13. Setting aside decree ex parte against defendants

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..."

7.2 A bare reading of the provision reveals that an *ex-parte* decree may be set aside under two distinct circumstances:

1. Where the summons was not duly served upon the defendant; or
2. Where, despite due service, defendant was prevented by "*sufficient cause*" from appearing when the suit was called on for hearing.

In the present case, there is no dispute that appellant had been served with summons, had entered appearance through counsel, and had filed a detailed written statement. The controversy, therefore, falls for consideration under the second limb of the provision, namely, whether the appellant was prevented by sufficient cause from appearing when the suit was called on for hearing.

7.3 The expression "*sufficient cause*" occurring in Order IX Rule 13 CPC has received consideration in several decisions of the





Hon'ble Supreme Court. In **Parimal** (supra), while considering the scope of the expression, the Hon'ble Supreme Court emphasised that the discretion under Order IX Rule 13 has to be exercised bearing in mind the object of doing substantial justice between the parties and that technicalities of law should not come in the way of doing so. The Court observed: -

"13. "Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously...

...

15. While deciding whether there is a sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it...

16. In order to determine the application under Order IX, Rule 13 CPC, the test has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a strait-jacket formula of universal application."

(emphasis supplied)



7.4 In ***Srei International*** (supra), where the Special Court had adopted an unduly rigid and technical approach in rejecting an application for setting aside an *ex-parte* decree concerning recovery, the Hon'ble Supreme Court disapproved of such approach and held:

"2. Having heard the learned counsel for the parties, we are satisfied that the approach adopted by the Special Court in rejecting the application for setting aside the *ex-parte* decree moved by the appellant has been too rigid. **It is well settled that, ordinarily, a litigant should not be denied a hearing on merits unless something akin to gross negligence or misconduct on his part in contesting the proceedings is made out...**"

(emphasis supplied)

7.5 In ***Ram Nath Sao*** (supra), although the expression "*sufficient cause*" fell for consideration in the context of an application for setting aside abatement and condonation of delay, the Hon'ble Supreme Court, while observing that the expression must be liberally construed so as to advance substantial justice, enunciated that the approach must be guided by the need to balance the competing rights of the parties - namely, the party in whose favour a valuable right has accrued, and the defaulting party who may suffer irreparable injury if a hyper-technical view is taken. It was held: -

"12. Thus it becomes plain that the expression "*sufficient cause*" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "*sufficient cause*" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed



with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bone fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. **However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the list terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."**

(emphasis supplied)

7.6 It is also relevant, in this context, to refer to the observations of the Hon'ble Supreme Court in **Rafiq & Anr.** (supra), wherein while considering the consequences of the default of an advocate upon the rights of the litigant whom he represents, the Hon'ble Supreme Court noticed the realities of the adversarial system and observed that where a party has selected an advocate, briefed him and done everything within his power to effectively participate in the proceedings, such a litigant cannot ordinarily be made to suffer for the inaction, omission or misdemeanour of his agent. The relevant observations are reproduced hereinbelow: -

"The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a





rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe he is better informed on this matter. Ignorance in this behalf is our bliss. **Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted.** Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order..."

(emphasis supplied)

7.7 It is also relevant to inquire into the point of time to which the explanation of "sufficient cause" must relate. In **G.P. Srivastava** (supra), the Hon'ble Supreme Court settled that the statutory inquiry under Order IX Rule 13 CPC must be strictly



directed towards the date on which the absence was made the ground for proceeding *ex-parte*. The Apex Court held:

"7. Under Order 9, Rule 13, C.P.C. an *ex parte* decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any 'sufficient cause' from appearing when the suit was called on for hearing. Unless 'sufficient cause' is shown for non-appearance of the defendant in the case on the date of hearing, the Court has no power to set aside an *ex parte* decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the Court to do complete justice between the parties particularly when no negligence or inaction is imputable to erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as elastic expression for which no hard and fast guidelines can be prescribed. The Courts have wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. **The 'sufficient cause' for non-appearance refers to the date on which the absence was made a ground for proceeding *ex-parte* and cannot be stretched to rely upon other circumstances anterior in time. If sufficient cause' is made out for non-appearance of the defendant on the date fixed for hearing when *ex parte* proceedings initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier.** In a case where defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not *mala fide* or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the *lis* decided on merits."

(emphasis supplied)

7.8 This principle was reaffirmed in **A. Murugesan** (supra), wherein the Hon'ble Supreme Court, relying on **G.P. Srivastava** (supra), held that the trial court fell into error in taking into consideration the past conduct of the defendant instead of confining its consideration to whether sufficient cause had been



established for absence on the date the suit was called on for hearing. The Hon'ble Supreme Court observed: -

"11. From a perusal of the order of the Trial Court, it is clear that the Trial Court has taken into consideration the past conduct of the Appellant-Defendant in the suit, instead of confining the consideration as to whether the Appellant has shown sufficient cause or not for not appearing in the matter on 16.03.2009. It is fairly well settled that when an application is filed for setting aside ex-parte decree Under Order IX Rule 13 of Code of Civil Procedure, the only aspect which is required to be considered is whether any sufficient cause is shown for absence in the matter when the matter was called. Without recording the specific finding, on the plea of the Appellant that there was sufficient cause, the Trial Court has committed error in rejecting the application Under Order IX Rule 13 of Code of Civil Procedure. Even the appellate and the revisional court have not considered the matter in proper perspective and rejected the claim of the Appellant. The judgment in a case of G.P. Srivastava (supra) supports the case of the Appellant. In the aforesaid judgment, the very issue was fallen for consideration before this Court."

7.9 Upon a cumulative reading of the authorities discussed hereinabove, the following principles governing the exercise of judicial discretion under Order IX Rule 13 CPC emerge: -

1. The primary objective underlying the provision is the need to do substantial justice between the parties. Procedural law is handmaid to justice, and an unduly rigid or technical approach towards the same cannot be permitted to defeat the adjudication of rights of parties on merits. Consequently, the expression "*sufficient cause*" must receive liberal and justice-oriented construction.
2. The expression "*sufficient cause*" is elastic and cannot be confined within any strait-jacket formula. The inquiry necessarily depends upon facts and circumstances of each case and must take into account whether defendant had





honestly and sincerely intended to appear when the matter was called for hearing. Absence arising from circumstances beyond defendant's control and where negligence, inaction or want of *bona fides* cannot be imputed, would constitute the kind of circumstance which may warrant exercise of discretion under the provision.

3. Under our adversarial system, proceedings are ordinarily entrusted to and conducted by appointed legal counsel, where routine and day-to-day personal attendance of the litigant is neither contemplated nor meaningful. Once a party has engaged an advocate and done everything reasonably within its power, it cannot ordinarily be made to suffer for the default, omission or misdemeanour of the advocate.

4. The inquiry under the second limb of Order IX Rule 13 CPC is in reference to the date on which the matter was called on for hearing and the absence was made the basis for proceeding *ex-parte*. If sufficient cause is demonstrated for non-appearance on that date, the inquiry cannot ordinarily be expanded so as to permit the Court to defeat the application by relying upon circumstances / conduct prior to it.

7.10 Aforesaid principles must be appreciated within the foundational ethos of our civil jurisprudence that permeate and define the provisions of our Code of Civil Procedure. It is trite that procedural law is intended to facilitate adjudication and not to punish litigants over hyper-technicalities. As observed by the Hon'ble Supreme Court in **Sangram Singh** (supra): -



"13. Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it."

7.11 The provisions of Order IX Rule 13 underscore the significance attached to adjudication of a suit on merits after affording a proper and effective opportunity of hearing to the parties concerned, thereby giving effect to one of the foundational principles of judicial adjudication – the doctrine of *audi alteram partem*. At the cost of repetition, it must be emphasized that the provision vests the Court with sufficient discretion to set aside an *ex-parte* decree even in a situation where the defendant had been duly served, but was prevented by sufficient cause from appearing when the matter was called for hearing.

7.12 The significance attached to such opportunity is further reflected in the appellate scheme embodied in Order XLIII Rule 1(d) of the Code. Said provision provides for appeal only against an order rejecting an application for setting aside an *ex-parte* decree; it does not provide any corresponding statutory appeal against order allowing an application under Order IX Rule 13 CPC. While an order allowing such an application may be challenged before this Court under Article 227 of the Constitution; however, the scope of the supervisory jurisdiction exercised thereunder is well-settled to be narrow and confined to parameters of patent perversity, jurisdictional error, or manifest illegality, whereas in exercise of the appellate jurisdiction under Order XLIII Rule 1(d),



the Court is competent to examine the controversy across questions of facts and law.

7.13 This asymmetry in the statutory scheme is significant and holds the key to the underlying wisdom of the legislature. It is precisely because law prioritizes adjudication of substantive rights on merits that the Code provides an appellate remedy where such course is refused. An order rejecting an application under Order IX Rule 13 shuts the right of the defendant to contest the suit on merits and thereby permits the rights to be determined by reason of procedural default. Conversely, where the application is allowed, the only consequence is that the matter is restored for determination and adjudication after hearing both sides, which furthers rather than frustrates our ethos of judicial adjudication and explains why the legislature chose not to provide an ordinary statutory appeal against an order allowing such an application. It therefore follows that although procedural finality is important for ensuring orderly adjudication, however, it ought not to be permitted to operate at the cost of foreclosing an adjudication on merits where the statutory requirements for restoration of the opportunity to contest are otherwise satisfied.

8. Coming to the factual matrix at hand, on 19.07.2024, when the matter was called for hearing, owing to the absence of appellant's counsel before learned Trial Court and non-appearance of other co-defendants, learned Trial Court directed the suit to proceed *ex-parte* against defendants. It is the case of appellant that she had duly engaged an advocate to represent her interests in the suit; however, during the pendency of the proceedings, said





counsel unfortunately passed away and the appellant, being an aged and ailing lady residing in a distant rural area, remained unaware of the demise of her counsel and the developments in the case.

8.1 This Court finds that it is neither uncommon nor beyond credibility in our social context that an aged litigant residing in a remote rural chak may lack the means or resources to have become aware of the death of her counsel or to keep herself informed of the daily proceedings in the matter, particularly when she rests assured that her engaged advocate is attending to the procedural and legal nitty-gritties of the case. Under such circumstances, in the considered opinion of this Court, the explanation furnished by appellant for her non-representation on 19.07.2024 is genuine and *bona fide*.

8.2 It is borne out from the record that, upon subsequently becoming aware of the demise of her counsel and *ex-parte* proceedings against her, appellant engaged another counsel and preferred an application under Order IX Rule 7 CPC seeking recall of order dated 19.07.2024. However, on 28.10.2024, when the matter was listed for filing of reply to said application, the newly engaged counsel did not remain present before the Court and learned Trial Court dismissed the application for non-prosecution, without adjudicating the same on merits.

8.3 As observed hereinabove, in our adversarial system, it is usual for litigants to engage counsel for due representation of their cause before the Court. Once a litigant has duly entrusted the conduct of the proceedings to counsel, her personal presence



on each routine date is neither ordinarily required nor meaningful. In the present case, after the demise of her earlier counsel, appellant had engaged another counsel and had been advised that her day-to-day presence was not necessary; however, despite the same, she remained unrepresented for reasons best known to the counsel. It is not even the case of the respondents that learned counsel had pleaded no instructions from the appellant or that the absence of the counsel was on the instructions of the appellant. In such circumstances, where the absence before the Court is not attributable to any negligence or lack of *bona fides* on the part of the appellant, it would amount to complete travesty of justice if she is penalized for the default or negligence of her counsel. The principle enunciated by the Hon'ble Supreme Court in **Rafiq & Anr.** (*supra*) squarely bears upon this aspect.

8.4 It is equally pertinent to observe that learned Trial Court proceeded with unwarranted haste in dealing with the interlocutory application. On 28.10.2024, the application under Order IX Rule 7 CPC was listed merely for filing of reply and not for adjudication on merits. However, learned Trial Court straightway proceeded to dismiss the application for default on account of non-prosecution, rather than adjudicating the same on merits or adjourning the matter.

8.5 Learned counsel for the respondents has relied upon the judgment of the Hon'ble Supreme Court in **Kanchhu** (*supra*) to contend that the conduct of appellant demonstrates want of diligence. In the considered opinion of this Court, the reliance is misplaced. In **Kanchhu** (*supra*), defendants had remained absent



even prior to being proceeded *ex-parte*, had repeatedly sought adjournments without furnishing satisfactory cause and had thereafter failed to furnish a cogent explanation for their continued non-participation. The refusal to interfere therein was thus founded upon the cumulative circumstances reflecting sustained inaction and absence of sufficient explanation.

The factual position in the present case is materially different. The record reflects that appellant remained vigilant towards her rights throughout the proceedings. Upon service of summons, she entered appearance, filed a separate written statement contesting the suit on merits, and actively participated in the litigation over several years. Her non-appearance on 19.07.2024 was caused by the demise of her conducting advocate, and immediately upon learning of the *ex-parte* proceedings, she took steps to seek recall. This sequence of events is indicative of a litigant who had a sincere intention to contest the *lis*, and not one who acted with indifference or abandoned her defence.

8.6 Learned counsel for the respondents has also relied upon **Arjun Singh** (*supra*) and has placed emphasis upon the dismissal of appellant's application under Order IX Rule 7 CPC. However, **Arjun Singh** (*supra*) does not lay down that an adjudication upon an application under Order IX Rule 7 CPC precludes a party from availing the statutory remedy under Order IX Rule 13 CPC. In any event, in the present case, the application under Order IX Rule 7 CPC was dismissed for non-prosecution and there was no adjudication on merits of the cause shown by the appellant for her



absence on 19.07.2024. Said order, therefore, cannot be treated as conclusive against the appellant in present proceedings.

8.7 A perusal of the impugned order dated 05.08.2026 shows that what principally weighed with the learned Trial Court in rejecting the application under Order IX Rule 13 CPC was the earlier dismissal of the application under Order IX Rule 7 CPC and the fact that the appellant had subsequently acquired knowledge of the *ex-parte* proceedings. In the considered opinion of this Court, neither circumstance, in the facts of the present case, furnishes a valid ground to decline the relief under Order IX Rule 13 CPC. The dismissal of the application under Order IX Rule 7 CPC was for non-prosecution and not on merits, while the appellant, upon acquiring knowledge of the *ex-parte* proceedings, had taken steps to seek their recall. Her subsequent failure to remain represented before the learned Trial Court is attributable to her counsel and cannot, in the circumstances noticed above, be treated as evidence of negligence or lack of *bona fides* on her part.

8.8 This Court also cannot lose sight of the fact that, following dismissal of the application under Order IX Rule 7 CPC on 28.10.2024, learned Trial Court proceeded with undue haste to conclude the trial. The suit had remained pending at the stage of plaintiff's evidence since 2018; yet, after the proceedings were directed to continue *ex-parte*, the trial was concluded and the *ex-parte* judgment and decree came to be passed on 29.01.2025. This approach resulted in serious prejudice to the appellant, who had claimed herself to be *bona fide* purchaser under registered



sale deed dated 14.05.2004 and claimed continuous physical possession of the suit land. Plaintiff's sole testimony as PW-1 remained entirely untested by cross-examination and the documents produced by her were exhibited without challenge. Further, Issues No. 3 to 7, the burden whereof was cast upon the defendants, came to be decided against them solely on the ground that no evidence had been led.

8.9 The prejudice is further compounded by the fact that appellant was deprived of the opportunity to place on record the sworn compromise/affidavit allegedly executed by plaintiff-respondent no. 1 herself, wherein the plaintiff is stated to have acknowledged the sale in favour of the appellant, accepted the consideration and agreed not to pursue litigation against her. In these circumstances, denial of appellant's opportunity to contest has resulted in her substantive rights in immovable property being affected without an effective opportunity of hearing and adjudication on merits.

8.10 The objection that the decree has attained finality against co-defendants - Kaur Singh and Ors., and is indivisible is also devoid of merit. Appellant is an independent, subsequent purchaser holding title under a registered sale deed dated 14.05.2004, claiming continuous, actual physical possession of the suit land. She contested the suit by raising independent defences, and therefore, her right to seek setting aside of the *ex-parte* decree cannot be defeated merely on account of the failure of her vendors to pursue their remedies.



9. In light of the authorities discussed hereinabove, the underlying principle is that substantial justice must prevail over procedural technicalities. Appellant did not abandon the proceedings; she contested the suit for years and established that her absence on 19.07.2024 was occasioned by the demise of her conducting counsel. Furthermore, she approached the court under Order IX Rule 13 CPC with utmost promptitude within 9 days of the *ex-parte* decree. Such conduct reflects vigilance rather than negligence. Any inconvenience occasioned to the opposite party can be adequately compensated by costs, but the doors of justice cannot be permanently shut upon an innocent litigant. Impugned order dated 05.08.2026, therefore, cannot be sustained and deserves to be set aside.

10. Accordingly, present Civil Miscellaneous Appeal is **allowed** in the following terms: -

(i) Impugned order dated 05.08.2026 passed by learned Additional District & Sessions Judge, Gharsana, District Sri Ganganagar, in Civil Misc. Case No. 06/2025 is quashed and set aside to the extent it rejects the application filed by appellant under Order IX Rule 13 CPC.

(ii) Application filed by appellant under Order IX Rule 13 read with Section 151 CPC is allowed.

(iii) Consequently, *ex-parte* judgment and decree dated 29.01.2025 passed in Civil Suit No. 189/2018 (*Godavari v. Deepraj & Ors.*) is set aside qua the appellant (defendant No. 7).



(iv) Civil Suit No. 189/2018 is restored to its original number and file. Considering that the suit was instituted in the year 2013, learned Trial Court is directed to expedite the trial and dispose of the suit strictly on merits, without granting unnecessary adjournments to either party, preferably within a period of six months from the date of receipt of a certified copy of this order.

(v) Order dated 28.10.2024, whereby the application filed by appellant under Order IX Rule 7 was dismissed for non-prosecution, is also set aside, and learned Trial Court is directed to decide said application on merits.

11. Stay application and any other pending application(s) stand disposed of.

(SANJEET PUROHIT),J

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