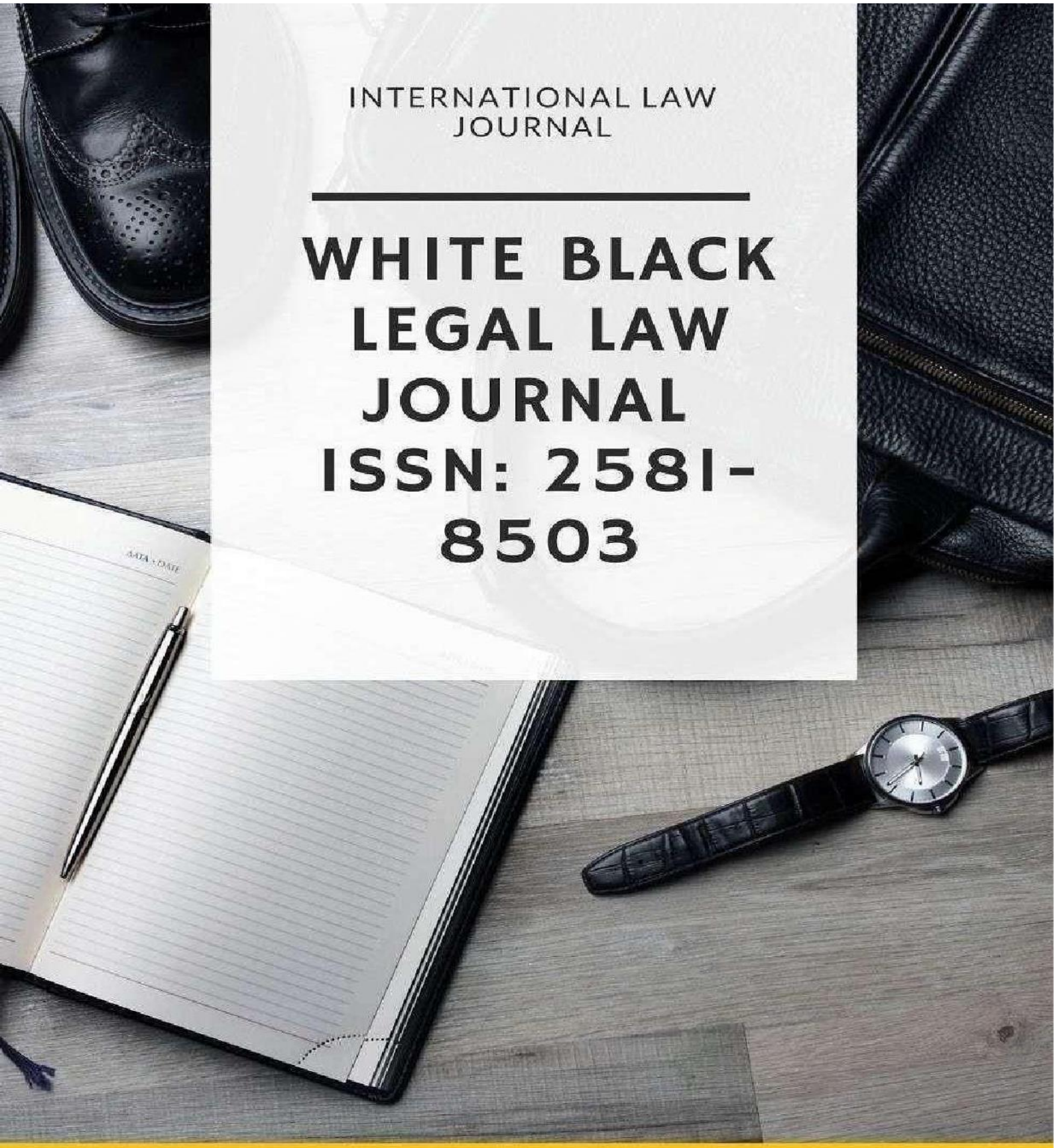


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EX PARTE. REMEDIES UNDER THE CODE OF CIVIL PROCEDURE, 1908

AUTHORED BY - SOORIYA.S

Abstract

An ex parte decree is a decree made against a person who was not present. The Code of Civil Procedure 1908 gives that person ways to undo the decision. This paper outlines the law on when a court can proceed without one party and on the options that follow: an application under Order IX Rule 13, an appeal under Section 96(2), review under Order XLVII, and, in rare cases, a suit on fraud. It argues that the courts have decided a plan. The appeal and the Rule 13 application are options that can be used together; the Explanation to Rule 13 stops the application once an appeal is decided on any reason other than withdrawal; and revision under Section 115 is not allowed against a refusal because an appeal is available under Order XLIII Rule 1(d). Supreme Court decisions up to April 2026 maintain a strict standard of good reason and reject strict arguments about delays. The paper ends with suggestions for changes in service of notices, delays and the reach of the Explanation.

1. Introduction

An ex parte decree brings two values into conflict: the finality of judgments and the idea that no one should be judged without being heard (audi alteram partem). The Code settles this by letting the court move forward without one party and then giving the party a set of ways to undo the result.

This paper asks four questions. First, when can a court legally move forward without one party? Make a decision? Second, what options does the party have? Third, how do these options work together? Which one stops others? Fourth, what rules limit these options?

The method is based on texts. It reads the law (Order IX, Order XLI, Order XLIII and Order XLVII; Sections 96, 104, 114 and 115 of the Code; Articles 116, 123 and 124 of the Limitation Act, 1963) along with Supreme Court decisions from 1964 to 2026. Sources are listed in Section 13, where authorities I could not fully access are marked for checking.

The focus is on cases in India. Laws that include Order IX Rule 13, like the Hindu Marriage Act, 1955, are only mentioned where the Supreme Court has used the rule, as in Parimal v. Veena @ Bharti, a divorce case.

2. Concept and Meaning of an Ex Parte Decree

An ex parte decree is a decision made against a party who did not take part in the hearing, a defendant who did not show up or defend. The Code does not define the term. It uses it in Order IX, Section 96(2). Order XLIII Rule 1(d) for a decision made without the defendant's presence. The name depends on the defendant's absence when the decision is made, not on whether the court looked at evidence. The Supreme Court has considered a decision made after taking the plaintiff's evidence without the defendant being present as an ex parte decision that Order IX Rule 13 can reach.[1] In Tea Auction Ltd v. Grace Hill Tea Industry, an admission decision that was ex parte in nature was also handled under Rule 13.[2]

Three types of decisions are easy to mix up:

Decree	Triggered by	Main remedy
Ex parte decree	Defendant absent when the suit is called, or fails to defend	Application under Order IX Rule 13; appeal under Section 96(2)
Consent decree	Agreement of the parties recorded by the court	No appeal (Section 96(3)); lack of valid consent is raised before the recording court (Order XXIII Rule 3A)
Dismissal for plaintiff's default	Plaintiff absent (Order IX Rule 8)	Restoration under Order IX Rule 9

Two things follow. An ex parte decree is valid. Can be carried out until it is canceled. The options for the defendant are of two kinds: those that challenge the absence (Order IX Rule 13) and those that challenge the decision itself (appeal and review).

3. Statutory Framework

The law is in the Code's rules on notices, default and appeal. One article of the Limitation Act. The table shows each rule and what it does.

Provision	What it does
Order V	Governs issue and service of summons; due service is the foundation of any ex parte decree

[1]LiveLaw: decree on plaintiff's evidence is ex parte. https://www.livelaw.in/amp/top-stories/decree-passed-on-plaintiffs-evidence-without-defendants-appearance-at-trial-is-ex-parte-decree-sc-142586
[2]Tea Auction Ltd v. Grace Hill Tea Industry. https://www.legitquest.com/case/tea-auction-ltd-v-grace-hill-tea-industry/2A56D

Order VIII Rule 10	Lets the court pronounce judgment, or make another order, when no written statement is filed in time
Order IX Rule 6	Allows the court to proceed ex parte when the defendant is absent, and summons were duly served
Order IX Rule 7	Lets a defendant who appears at or before an ex parte hearing show good cause for earlier non-appearance and be heard
Order IX Rule 11	Where one of several defendants appears, and others do not, the suit goes on, and judgment is pronounced against those absent
Order IX Rule 13	Application to set aside an ex parte decree for non-service or sufficient cause; two provisos and an Explanation
Order IX Rule 14	No decree is set aside unless notice has been served on the opposite party
Order XVII Rules 2 and 3	Let the court dispose of the suit in an Order IX mode when parties fail to appear on an adjourned date, or decide the suit when a party fails to produce evidence despite time granted
Section 96(2)	An appeal lies from an original decree passed ex parte
Section 104 and Order XLIII Rule 1(d)	Appeal against an order refusing to set aside an ex parte decree
Section 114 and Order XLVII	Review
Section 115	Revision; unavailable where an appeal lies (Section 115(2))
Section 151	Inherent power to make orders needed for justice or against abuse of process
Article 123, Limitation Act, 1963	Thirty days to apply to set aside an ex parte decree

Rule 13 has four parts worth looking at. The main part gives two reasons: the notice was not proper. The defendant could not be there because of a good reason. The first condition lets the court cancel the decision against defendants too when it cannot be cancelled against one alone.[3] The second condition, added in 1976, stops cancellation because of a mistake in sending the notice when the defendant knew the date and time to be there. The Explanation, also added in

[3]Law Commission of India report. https://www.advocatekhoj.com/library/lawreports/civilprocedure1908/93.php

1976, stops the application once an appeal against the ex parte decision has been settled on any ground other than withdrawal.

4. When an Ex Parte Decree Is Passed

Sending the notice is the entry to an ex parte decree. Order IX Rule 6 covers three situations when the plaintiff is there, and the defendant is not:

1. Notice properly sent: the court may hear the case without the defendant.
2. Notice not properly sent: the court must not go forward without the defendant. Must send another notice.
3. Notice sent. Not in time: the court must delay the hearing.

Later problems ask if the notice was properly served. Courts use assumptions about sending. In Parimal v. Veena @ Bharti (2011), the Supreme Court looked at the assumption of sending by mail under Section 114 of the Evidence Act, 1872 and Section 27 of the General Clauses Act, 1897.[4] The wife in that divorce case refused to accept the notice. The Court restored the ex parte decision that the High Court had cancelled. The assumption can be proven wrong. The person who wants to prove it must do so, as the Delhi High Court said in Pushpa Fabrics Pvt Ltd v. Naveen Kochhar, based on Gujarat Electricity Board v. Atmaram Sungomal Poshani.[5]

Other rules lead to the place. A defendant who does not file an answer on time may face a decision under Order VIII Rule 10, and a defendant who is not there on a postponed date may face Order XVII Rule 2. Whether the decision counts as ex parte and so falls under Rule 13 depends on what happened at the hearing, so the cases are best read based on their facts.

Order IX Rule 7 works before the decision. If the court has suspended the hearing without the defendant, and the defendant shows up at or before that hearing and gives a reason for not being there earlier, the defendant may be heard on terms. The Supreme Court looked at the relationship between Rules 7 and 13 in Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993; this point should be checked in the judgment before it is used.

5. Remedy One: Application under Order IX Rule 13

Rule 13 is the option because it allows looking at facts outside the trial record, such as why the defendant was not there.

[4]CaseMine analysis of Order IX Rule 13. https://www.casemine.com/in/column/analysis-of-order-9-rule-13-cpc/view

[5]Kailash Ram, "Ex-Parte Decree And Sufficient Cause For Non-Appearance", LiveLaw, 13 Jun 2021. https://www.livelaw.in/columns/order-ix-rule-13-civil-procedure-code-1908-ex-parte-decree-175642

5.1 Forum and terms

The defendant applies to the court that made the decision. Order IX Rule 14 requires the party to be told before any decision is cancelled. The court may cancel it on terms about costs, payment into court or otherwise, which protects the plaintiff who has already won a decision.

5.2 Ground one: summons not duly served

If the notice was not properly sent, the decision cannot be in place because Rule 6 allowed the court to go forward with proper service. The second condition limits this ground: a mistake in sending is not enough when the defendant knew the date and time to be there. The Himachal Pradesh High Court used the condition in Devi Dass v. M/s Ginni Global Pvt Ltd (2025).[6]

5.3 Ground two: prevented by cause

The person who is being accused must prove that there was a reason for not being there when the case was called. In the case of Parimal, the Supreme Court explained that a good reason is something that a careful person would consider valid. The person must not have been careless, have intentions or just not do anything.[7] In the case of Arjun Singh v. Mohindra Kumar, the Court said that good reason and good cause are different in how much proof is needed. The way this is looked at is not too strict, but not completely open either. In G.P. Srivastava v. R.K. Raizada (2000) 3 SCC 54, the Court said that without a reason, the court cannot change the decision.[8]

Common reasons given are being sick, getting the date wrong or trusting a lawyer. The last one doesn't get sympathy when the story doesn't make sense. In K. Ramasamy v. R. Nallammal, 2025 INSC 310, the Supreme Court cancelled a High Court decision that accepted a delay of 1,312 days, saying that the reason the lawyer lost the papers was not true.[9]

5.4 Decisions that cannot be split

When a decision cannot be cancelled against one person, the court can cancel it against all or some of the others, even those who didn't ask. A secondary source says that Mahesh Yadav v.

[6]Verdictum: Devi Dass v. Ginni Global (HP High Court, 2025). https://www.verdictum.in/court-updates/high-courts/himachal-high-court/devi-dass-v-ms-ginni-global-pvt-ltd-and-anr-neutral-citation2025hhc20743-1583603
[7]Kailash Ram, "Ex-Parte Decree And Sufficient Cause For Non-Appearance", LiveLaw, 13 Jun 2021. https://www.livelaw.in/columns/order-ix-rule-13-civil-procedure-code-1908-ex-parte-decree-175642
[8]CaseMine analysis of Order IX Rule 13. https://www.casemine.com/in/column/analysis-of-order-9-rule-13-cpc/view
[9]CaseCiter note on K. Ramasamy. https://www.caseciter.com/k-ramasamy-vs-r-nallammal-2025-insc-310-delay-condonation-setting-aside-ex-parte-decree/

Rajeshwar Singh (2009) 2 SCC 205 is the Supreme Court's explanation of this part.[10]

5.5 Delay and the main issue are different

An application made after thirty days must also explain the delay (Section 8). The Supreme Court keeps these two things separate. In C. Prabhakar Rao v. Sama Mahipal Reddy, 2025 INSC 311, the Court said that the process to cancel the decision and the process to accept the delay are different, so winning on the delay doesn't decide the Rule 13 case.[11]

5.6 Result

An order that says no to the application can be taken to court under Order XLIII Rule 1(d); an order that says yes cannot be taken to court.[12] If the application is accepted, the decision is. The case goes back to the beginning.

6. Way to fix it: Appeal under Section 96(2)

Section 96(2) gives the first chance to appeal from a decision made without the person being there, and it is a right given by law that a Rule 13 application cannot stop. The Supreme Court said this in Bhanu Kumar Jain v. Archana Kumar, (2005) 1 SCC 787 (three judges, 17 December 2004): the right to appeal comes from law and is not lost because the Rule 13 application didn't work.[13]

6.1 What the appeal checks

The appeal looks at the decision based on the records: whether the claim as shown is correct in fact and law, and if the defendant hasn't already lost a Rule 13 application, whether the decision to go on without it was correct. Rule 13 asks a question: why the defendant wasn't there and can use evidence that is not in the records. In Deepesh Maheswari v. Renu Maheswari, 2026 LiveLaw (SC) 317 (1 April 2026) the Supreme Court said that the two steps are different and

[10]Article on Order IX Rule 13 landmark judgments. https://www.thelawadvice.com/articles/order-ix-rule-13-cpc-setting-aside-an-ex-parte-decree-%E2%80%93-grounds-procedure-limitation-landmark-judgments-draft-application

[11]CaseMine commentary on C. Prabhakar Rao. https://www.casemine.com/commentary/in/distinguishing-delay-condonation-from-setting-aside-an-ex-parte-decree/view

[12]Koushik Mutually Aided Coop. Housing Society v. Ameena Begum, 2023 INSC 1065, paragraph 15 (order of 1 Dec 2023). https://main.sci.gov.in/supremecourt/2021/8060/8060_2021_13_41_48736_Judgement_01-Dec-2023.pdf

[13]Kailash Ram, "Ex-Parte Decree And Sufficient Cause For Non-Appearance", LiveLaw, 13 Jun 2021. https://www.livelaw.in/columns/order-ix-rule-13-civil-procedure-code-1908-ex-parte-decree-175642

that Rule 13 covers a range.[14]

6.2 Limits

Two limits are important. First, if a Rule 13 application was refused and that decision was not changed in a court appeal under Order XLIII Rule 1(d), the same point can't be brought up again in the appeal. Second, the note with Rule 13 stops the application once the appeal is decided on any ground other than dropping the case, because the trial court's decision becomes part of the appeal decision. The Court said this in Bhanu Kumar Jain, paragraph 26 as quoted in Koushik, paragraph 14.[15]

6.3 Time

Article 116 of the Limitation Act 1963 gives ninety days for an appeal to a High Court and thirty days for an appeal to any court. A person who first used Rule 13 and then appealed can use the time spent on Rule 13: in Bhivchandra Shankar V. Balu Gangaram More (2019) the Supreme Court said that time spent on the Rule 13 application can be a good reason under Section 5 of the Limitation Act for being late in the appeal.[16]

7. Other ways to fix it

Rule 13. The appeal covers most cases. Four more ways are there, each very limited.

7.1 Review

In Koushik, the Supreme Court named review before the court as the third way to change an ex parte decision besides Rule 13 and the appeal (paragraph 12).[17] Review under Section 114 and Order XLVII Rule 1 is not a start. It needs something important that couldn't have been shown before, a mistake or error that is clear from the records, or another good reason, and the application must be made within thirty days of the decision (Article 124). It works when the records themselves show the mistake.

[14]LiveLaw: Deepesh Maheswari v. Renu Maheswari, 2 Apr 2026. https://www.livelaw.in/supreme-court/order-ix-rule-13-cpc-application-not-barred-by-dismissal-of-appeal-against-ex-parte-decree-supreme-court-528676
[15]Koushik Mutually Aided Coop. Housing Society v. Ameena Begum, 2023 INSC 1065, paragraph 14, quoting Bhanu Kumar Jain, paragraph 26 (order of 1 Dec 2023). https://main.sci.gov.in/supremecourt/2021/8060/8060_2021_13_41_48736_Judgement_01-Dec-2023.pdf
[16]Kailash Ram, "Ex-Parte Decree And Sufficient Cause For Non-Appearance", LiveLaw, 13 Jun 2021. https://www.livelaw.in/columns/order-ix-rule-13-civil-procedure-code-1908-ex-parte-decree-175642
[17]Koushik Mutually Aided Coop. Housing Society v. Ameena Begum, 2023 INSC 1065, paragraph 12 (order of 1 Dec 2023). https://main.sci.gov.in/supremecourt/2021/8060/8060_2021_13_41_48736_Judgement_01-Dec-2023.pdf

7.2 Revision

Review under Section 115 is not the way. Section 115(2) stops review against a decision or order that can be appealed. An order refusing a Rule 13 application can be appealed under Order XLIII Rule 1(d). In Koushik, the Court cancelled a High Court decision made through review for that reason and let the person file an appeal. It added that a review cannot be used to avoid an appeal and that review may only be allowed if there is no way to appeal (paragraphs 16 and 17).

7.3 Case based on fraud

In Bhanu Kumar Jain, the Court listed, besides review and the two ways, a case to cancel an ex parte decision because of fraud (paragraph 26 quoted in Koushik paragraph 14). This way is narrow. Fraud must be explained with details. Proven and it does not replace Rule 13 when the real problem is not being told or not being there.

7.4 Power under Section 151

Section 151 keeps the court's power to do what is fair and stop misuse of its process. It doesn't change the way Rule 13 and the appeal work, so courts use it only when the law doesn't give another way.

7.5 Before the decision: Order IX Rule 7

The way that works before a decision is Rule 7 described in Section 4. It is cheaper than Rule 13 because the person just shows up and explains why they were not there, so a person who learns about the case in time should use it.

8. Time limits

Thirty days is the time limit for a Rule 13 application. It starts from the date of the decision unless the notice was not given properly. Article 123 of the Limitation Act 1963 starts the time from the date of the decision. If the notice was not given properly, the date is when the person found out about the decision. Its note says that giving notice in a way is not the same as proper notice.[18]

Remedy	Period	Runs from
Application under Order IX	30 days (Article 123)	Date of decree; if summons not

[18]Indian Kanoon text on Article 123. https://future.indiankanoon.org/doc/32938/

Rule 13		duly served, date of knowledge of the decree
First appeal to the High Court	90 days (Article 116)	Date of decree
First appeal to another court	30 days (Article 116)	Date of decree
Review	30 days (Article 124)	Date of decree

The other time limits are based on the Act as I know it and should be checked against the version.

Section 5 of the Limitation Act applies to a Rule 13 application. A late application is heard if the person shows a good reason for the delay. Recent decisions show how courts handle this:

- **Dwarika Prasad v. Prithvi Raj Singh (SC 20 December 2024).** The application came five months after the decision. The Court said that a separate Section 5 application is not needed when the Rule 13 application itself explains the delay, following Bhagmal v. Kunwar Lal (2010).[19]
- **Koushik (2023 INSC 1065).** A 1999 decision was challenged in 2016 with a 5,767-day delay. The Supreme Court did not decide the delay; it said that the High Court's review was not allowed, cancelled its decision and let the person file an appeal under Order XLIII Rule 1(d).[20]
- **K. Ramasamy v. R. Nallammal (2025 INSC 310).** A delay of 1,312 days was not accepted because the reason was not true.
- **C. Prabhakar Rao v. Sama Mahipal Reddy (2025 INSC 311).** Accepting a delay and cancelling the decision are steps.
- **Allahabad High Court (reported by LiveLaw).** The court must decide on time limits before cancelling an ex parte decision, and not doing so is a mistake in power.[21]

The main lesson is to apply within thirty days. If later, the application should say when and how the person found out and explain the delay in detail, with a Section 5 application as a backup.

[19]LiveLaw: Dwarika Prasad v. Prithvi Raj Singh, 23 Dec 2024. https://www.livelaw.in/supreme-court/not-necessary-to-file-separate-application-for-delay-condonation-along-with-application-to-set-aside-ex-parte-decree-supreme-court-279174
[20]Koushik Mutually Aided Coop. Housing Society v. Ameena Begum, 2023 INSC 1065 (order of 1 Dec 2023). https://main.sci.gov.in/supremecourt/2021/8060/8060_2021_13_41_48736_Judgement_01-Dec-2023.pdf
[21]LiveLaw: Allahabad High Court on deciding limitation first. https://www.livelaw.in/high-court/allahabad-high-court/allahabad-high-court-orderix-rule13-cpc-court-decide-limitation-setting-aside-ex-parte-decree-549679

9. How courts have understood

The case law has three parts: what a good reason means, how the ways to fix it work and how delays are handled. The table lists the cases in the order they happened.

Case	Citation or date	Principle
Arjun Singh v. Mohindra Kumar	AIR 1964 SC 993	Good cause and sufficient cause differ only in the degree of proof needed; also discusses Rules 7 and 13
Rani Choudhury v. Lt. Col. Suraj Jit Choudhury	AIR 1982 SC 1397	Recognises that a defendant may apply under Rule 13 and also appeal under Section 96
G.P. Srivastava v. R.K. Raizada	(2000) 3 SCC 54	Without sufficient cause the court has no power to set the decree aside
Bhanu Kumar Jain v. Archana Kumar	(2005) 1 SCC 787	Appeal and Rule 13 are concurrent; dismissal of the appeal bars Rule 13 by merger; the converse does not hold
Mahabir Singh v. Subhash	SC, 12 Oct 2007	Article 123 allows thirty days
Mahesh Yadav v. Rajeshwar Singh	(2009) 2 SCC 205	Non-severable decrees; reported by a secondary source
Parimal v. Veena @ Bharti	(2011) 3 SCC 545	Meaning of sufficient cause; presumption of service; refusal of summons defeats the application
Bhivchandra Shankar More v. Balu Gangaram More	SC, 7 May 2019	Appeal survives dismissal of Rule 13 application; time spent on Rule 13 is sufficient cause under Section 5
Koushik Mutually Aided Coop. Housing Society v. Ameena Begum	2023 INSC 1065	Three remedies; revision not maintainable where Order XLIII Rule 1(d) appeal lies
Dwarika Prasad v. Prithvi Raj Singh	SC, 20 Dec 2024	No separate Section 5 application when the Rule 13 application explains the delay
K. Ramasamy v. R. Nallammal	2025 INSC 310	1,312-day delay not condoned; explanation found false
C. Prabhakar Rao v. Sama	2025 INSC 311	Condonation of delay and setting aside

Mahipal Reddy		the decree are separate inquiries
Deepesh Maheswari v. Renu Maheswari	2026 LiveLaw (SC) 317, 1 Apr 2026	Rule 13 not barred where a minor was never impleaded; wider jurisdiction than appeal

On sufficient cause, the Court asks whether the defendant acted with reasonable care and good faith, and it wants evidence rather than assertion. On remedies, the Court has moved from permitting both routes (Rani Choudhury) to explaining their relationship through merger (Bhanu Kumar Jain) and to closing the revision route (Koushik). On delay, it relaxes form as in Dwarika Prasad but not substance, as in K. Ramasamy.

10. Interplay and Election of Remedies

The appeal and the Rule 13 application can run together. The order in which they are decided decides what survives. The Supreme Court said in Koushik (paragraph 13) that a dismissed appeal closes Rule 13, and a rejected Rule 13 application leaves the appeal open. The table sets out the positions.

Position	Consequence	Authority
Appeal and Rule 13 application both pending	Both may proceed; no statutory bar	Bhanu Kumar Jain; Koushik
Appeal dismissed on any ground other than withdrawal	Rule 13 barred; the trial decree has merged in the appellate decree	Explanation to Rule 13; Bhanu Kumar Jain
Appeal withdrawn	Rule 13 remains open	Explanation to Rule 13
Rule 13 application dismissed	First appeal under Section 96(2) remains; the point decided under Rule 13 cannot be re-argued in it	Bhanu Kumar Jain; Bhivchandra Shankar More
Rule 13 application dismissed	Appeal lies under Order XLIII Rule 1(d); revision does not	Koushik
Rule 13 allowed while appeal pending	Decree set aside; the appeal loses its object	Bombay High Court headnote[22]
Appellant was a minor never	Rule 13 not barred on those	Deepesh Maheswari

[22]SupremeToday: Bombay High Court headnote. https://supremetoday.ai/doc/judgement/00400008622

impleaded; another party's appeal failed	facts	(2026)

The Explanation rests on merger. Once the appellate court decides the decree it affirms or reverses is the one and the trial court has no discretion left to set aside its own earlier decree. A Madhya Pradesh High Court order of July 2025 applied this reasoning.[23]

Deepesh Maheswari tests the edges of this logic. It allowed the application even though an earlier appeal had failed because the applicant was a minor who was never impleaded and could not be expected to respond to notice. The decision reads best as confined to those facts: disability, joinder, and a succession certificate under the Indian Succession Act, 1925. As a rule, it would sit uneasily with the Explanation.

11. Critical Analysis

The remedies are well designed. Four pressure points remain. The assessment and suggestions in this section are my analysis.

Delay is the battleground. Reported disputes turn on delay rather than absence: 5,767 days in Koushik and 1,312 days in K. Ramasamy. Execution often runs while the application is pending, so the defendant gains time, and the plaintiff cannot realise the decree. Rule 13 already allows terms as to costs and payment into court, a tool courts can use often to deter tactical delay.

Service of summons carries the structure. The gate depends on presumptions about registered post and refusal. Reliable time-stamped proof of service would cut the Rule 13 applications based on non-service. Shorten the inquiry when they are filed. Since the 2002 amendments, Order V has recognised courier and electronic modes of service; the exact rules should be checked in the Code before this point is relied on.

Deadlines for written statements. The 2002 amendment set a limit of 90 days for a written statement under Order VIII Rule 1. As I recall, the Supreme Court read it as directory in Kailash v. Nanhku (2005). As mandatory for commercial suits in SCG Contracts India Pvt Ltd v. K.S. Chamankar Infrastructure Pvt Ltd (2019). Both points are from memory. Need verification. Strict deadlines raise the number of Order VIII Rule 10 judgments, which makes the Rule 13 safety valve more important.

[23] Madhya Pradesh High Court, SA 352/2014, 15 Jul 2025. https://mphc.gov.in/upload/gwalior/MPHCGWL/2014/SA/352/SA_352_2014_FinalOrder_15-07-2025.pdf

Reach of the Explanation. Deepesh Maheswari shows the bar may need an edge. A legislative note could confirm that it applies to the party whose appeal was decided.

Suggestions:

1. Make it uniform that a Rule 13 application carries its explanation of delay as Dwarika Prasad permits, so no separate Section 5 application is needed.
2. Fix a time for deciding Rule 13 applications; in Deepesh, the Court asked for a decision preferably within one year.
3. Make costs or a deposit the term when the application is filed after thirty days.
4. Adopt tracked, time-stamped service as the default proof.
5. Clarify the Explanation for appellants who were not party to the appeal.

12. Conclusion

The law of ex parte decrees under the Code is settled in structure. Contested at the margins. A court may proceed ex parte on due service and default. The defendant may then apply under Order IX Rule 13, appeal under Section 96(2), seek review in cases or sue on fraud. The appeal and the Rule 13 application can run in parallel. A decided appeal closes Rule 13 through the Explanation, and the doctrine of merger and revision is unavailable against a refusal because an appeal lies. Courts read cause liberally yet demand credible evidence, and they relax form on delay while rejecting false explanations.

Two questions remain open: how far the Explanation reaches after Deepesh Maheswari and how to speed up decisions on delay. Better proof of service and uniform terms for applications would help with both.

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13. References

Statutes

- Code of Civil Procedure, 1908: Sections 96, 104, 114, 115, 151; Order V; Order VIII Rules 1 and 10; Order IX Rules 6, 7, 11, 13, 14; Order XVII Rules 2 and 3; Order XLI; Order XLIII Rule 1(d); Order XLVII.
- Limitation Act, 1963: Section 5; Articles 116, 123, 124.
- Evidence Act, 1872, Section 114 (now the Bharatiya Sakshya Adhiniyam, 2023); General Clauses Act, 1897, Section 27.

Sources opened in full

- Koushik Mutually Aided Coop. Housing Society v. Ameena Begum, order of 1 Dec 2023
- LiveLaw: Deepesh Maheswari v. Renu Maheswari, 2 Apr 2026
- LiveLaw: Dwarika Prasad v. Prithvi Raj Singh, 23 Dec 2024
- LiveLaw column by Kailash Ram: Ex-Parte Decree And Sufficient Cause For Non-Appearance, 13 Jun 2021

Sources seen only as search results

These supported specific statements but were not opened in full. Check each against the official report before citing it.

- CaseMine analysis of Order IX Rule 13
- CaseMine commentary on C. Prabhakar Rao
- CaseCiter note on K. Ramasamy
- Law Commission of India report
- Verdictum: Devi Dass v. Ginni Global (HP High Court, 2025)
- LiveLaw: decree on plaintiff's evidence is ex parte
- Tea Auction Ltd v. Grace Hill Tea Industry
- LiveLaw: Allahabad High Court on deciding limitation first
- SupremeToday: Bombay High Court headnote
- Madhya Pradesh High Court, SA 352/2014, 15 Jul 2025
- Indian Kanoon text on Article 123
- Article on Order IX Rule 13 landmark judgments

Stated from memory, to be verified

The 1976 dates for the second proviso and the Explanation; the periods under Articles 116 and 124; the holding of Arjun Singh on Rules 7 and 13; the details of Rani Choudhury and Mahabir Singh; Order V provisions on courier and electronic service; Kailash v. Nanhku (2005); and SCG Contracts India Pvt Ltd v. K.S. Chamankar Infrastructure Pvt Ltd (2019).

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