

# C.P.C. : Order - 9

1. Rule-13 : As the suit has been restored on payment on compensatory cost to petitioners, it is not a fit case for interference. | **49 DLR(AD) 150**
2. Rule-13: With Sec.-5 of the Limitation Act: That the application under order-9 rule-13 of the code of the Civil Procedure was not barred by limitation in the facts of this case as limitation is to be counted from the date of knowledge of defendant No:-8 under Article-164 of the Limitation Act as the summons was not duly server upon her. ... .. | **2 ADC 486, 1931 Pat 204, 10 Pat 516, 12 Pat(LT)493, 13 MLR 360, 10 MLR(AD) 350, 10 MLR 117, 9 MLR(AD) 158, 57 DLR 234, 36 BLD 476**
3. Rule-13 : Ex-pate Decree by Subpressing of Summons: Decree fraudulently obtained is nullity .. ... .. the decree was obtained and when such fraud and deceit is established a decree has no existence in the eye of law and it must be set aside. | **32 DLR(AD) 167, 10 BLD(AD) 44**
4. Exparte proceeding can be ordered only when there is absence on the day fixed. | **16 DLR(SC) 115**
5. Rule-9 : In Execution: It is now settled law that the provision of O-9 R-9 does not apply to execution proceedings. | **13 DLR 713**
6. Rule-13 : Defendant not entitled to a notice of the date of next hearing when the decree had been set aside at his instance. | **17 DLR 310, 2 ADC 143**
7. Rule-13 : Plaintiff not to suffer for his pleader's default: Pleader or pleader's clerk **not informed** the client in time-- Dismissal of the suit- Client not being timely informed constitutes sufficient cause, Under this order and rule. | **18 DLR 481, 30 DLR 331, 58 DLR 277, 6 BLD(HCD) 152, 28 DLR(SC) 57, 28 DLR(AD) 158, 17 DLR(SC) 487, PLD 1963 56**
8. Rule-13 : In Pre-emption: No application for setting aside an exparte order under rule -13 will lie in the pre-emption case unless the application is a co-sharer in respect of the property. | **26 DLR 359, 8 BLC 155**  
  
| Contradictory: **8 BLC 144**
9. Rule-13 : With Sec- 151 of C.P.C.: Lawyer engaged in HC -- Sufficient cause for setting aside exparte decree. | **34 DLR 142**
10. Rule-13 : Service summons not duly served -- good ground for setting aside exparte decree. | **35 DLR(AD) 163, 6 DLR 153, 13 MLR 48, 9 BLC 411, 10 BLC(AD) 153, 47 DLR 307, 4 BLD(AD) 83, 5 BLD(HCD) 126, 10 BLD(HCD) 151, 3 XP 12, 4 XP(AD) 21**
11. Rule-1-14 : After preliminary decree a suit cannot be dismissed for default. | **1924 PC 198, 29 CWN 391**
12. Plaintiff must prove his case though exparte. | **39 CLJ 279, 1924 Cal 806, 81 IC 867, 48 DLR 208**
13. Rule-2 : When process fee is timely filed, suit cannot be dismissed for **non-service**. | **4 Lah.L.J. 71, 1922 Lah 63, 67 IC 945**
14. Rule-4 : Plaintiff may bring fresh suit of apply for restoration. | **96 IC 187, 1926 ALL 678**
15. Rule-8 : When the sole plaintiff dies: Suit dismissed for non-appearance of plaintiff owing to the fact of death not being known to the court, the court has inherent power U/S-151 of C.P.C. to rectify the mistake. | **25 ALL 331, 41 IC 151 PC**
16. Rule-9 : On dismissal of suit under **rule-8**, the plaintiff's remedy is -- (i) to apply review U/S-114 of the C.P.C. (ii) to apply under rule-9 within 30 days. | **2 CWN 318, 13 DLR 115** -- Contradictory: **1 PAT LJ 547, 46 Bom 839**

17. Rule-9: Application Under O-9 R-9 must be disposed of on evidence. | *22 CWN 671, 42 IC 649, 1925 Mad 774*
18. Rule-13: Court may set aside exparte decree under inherent power. | *1950 Pat 497, 1951 Nag 216, 1953 Bom 109* -->-->: Contradictory: Court cannot set aside exparte decree U/S-151. | *2 LNJ 548, 62 CLJ 268, 34 CWN 222, 54 CWN 110, 48 CWN 415, 39 CWN 894*
19. Rule-13: As against an exparte decree aggrieved party has three remedies -- (i) he make either make an application under R-9 or R-13, (ii) he may appeal from the decree, (iii) or apply for a review of the judgment. | *1929 Cal 322, 8 BLC 411, 12 BLD(AD) 1*
20. Rule-9:Pre-emption: The Rule-9 will applicable to restoration of **pre-emption** case dismissed for default. | *13 MLR(AD) 19, 59 DLR(AD) 212*
21. Rule-13 :Illness of Petitioner: Suit dismissed-- The examination of Doctor and M.C. must be needed to restore the main case. | *8 BLC(AD) 160, 10 BLD(AD) 242*
22. Rule-13: The petitioner must have prove that he was **prevented by sufficient cause** from appearing when suit was hearing -- Not restored. | *9 BLC(AD) 254, 9 BLC 411, 50 DLR 174, 1 ADC 107*
23. Rule-13: When **negligence occurred** by the defendant, the defendant is not entitled to the relief prayed for .. ... .. . | *62 DLR 449*
24. Rule-6: In order to succeed in his case, **contested or otherwise**, the plaintiff must **prove his own case** -- the weakness of the defendant's case is no of ground for passing a decree in favor of the plaintiff. | *48 DLR 208*
25. Rule-2,3,4: After restoration of a suit to it's original file and number a **fresh notice** upon the defendant is absolutely necessary in equity and as of right for preventing injustice. | *49 DLR 402*
26. Rule-13: When an exparte decree is challenged on ground of being obtained by **fraud**, and some element of fraud and collusion are found on record, the court is not to sustain such fraudulent decree even if an application seeking the setting aside of the exparte decree is barred by the **limitation** . | *50 DLR(AD) 205, 36 BLD(AD) 1*
27. Rule-6, 6(1)(a): When defendant does not appear when suit is called on for hearing, then if it is proved that the summons was duly served, the court may proceed exparte. | *39 DLR 11, 67 DLR(AD) 266*
28. Rule-13: Absence of a witness can be no ground for non-appearance of a party-- setting aside exparte decree and restoration of the suit. | *7BLD(HCD) 398, AIR 1943(Mad) 38, AIR 1961(All) 96*
29. Rule-13 :Condonation of Delay: Separate Application: When the separate application for condonation of delay is necessary to set aside exparte decree-- Mere absence of a formal application is no bar to grant the relief shout for when in the application for restoration of the relevant suit all the facts leading to the delay are duly stated as are required to stated in an application for condonation of delay. | *8 BLD(HCD) 331, 9 BLD(HCD) 331*
30. Rule-13:With section-151 of C.P.C.: The Civil court no so powerless that in exercise of its inherent powers it cannot entertain an application for setting aside exparte decree which is alleged to have been obtained **practicing fraud** upon the court itself. Application under Sec-151 of C.P.C in such circumstances is clearly maintainable in law. | *12 BLD(AD) 245*
31. Rule-13: Setting aside an exparte decree after **transfer of the suit** from the original court to the transferee court -- not informed about the proceedings -- Sufficient cause. | *12 BLD(HCD) 221*
32. Rule-13 :Irregularity of Service of Summons: No court shall set aside exparte decree merely on the ground that there has been an irregularity in the service of the summons, if it is satisfied that the defendant had notice of the **date of hearing and have sufficient time** to appear and answer the plaintiff's claim. | *18 MLR(HCD) 1*
33. Rule-13: Third party has no locus standi to set aside exparte decree. | *2 LNJ(HCD) 237*
34. Rule-13: It is a **Cardinal Principle** of administration of justice that no result of any judicial proceeding should be allowed to received judicial approval from any court of law whenever it is obtained by practicing **fraud** upon the court. | *2 ADC 761*

35. Rule-13: Defendant **refused to accept summon**, summon served by hanging on the fence of the hut, it is good service -- no ground to setting aside exparte decree. | *1 XP(AD) 22*
36. Rule-13: sec-6 of the Arthorin Adalat Ain furnishing set aside exparte decree. | *2 XP(AD) 124*
37. Rule-13: **Summon** duly served upon **non-contesting defendant**, summon on upon the heirs of deceased non-contesting defendant are not at all necessary -- the petition is barred by limitation. | *1 ALR 135*
38. Rule-13: When an exparte order is passed and if the defendant exercises his liberty to file an application for setting aside the exparte decree, the court is duty bound to set aside the same subject to the court's satisfaction on any of the two factors namely, (i) no-receipt of summons and (ii) the circumstances or factors which prevented the defendant to appear to the court. | *5 ALR(HCD) 326*
39. Rule-13(A): civil courts have been empowered to directly restore an expate suit fulfill three condition namely: (i) approaching the court by filing an application upon swearing affidavit, (ii) within a time limit of thirty days, (iii) with a payment of a cost of maximum three thousand taka. | *5 ALR(HCD) 326*
40. Rule-9(A): It is mandatory to inform the defendant about the court's order of restoration of the suit. | *5 ALR(HCD) 326*
41. Rule-13: Onus of Proof: Summon was Duly Served: The whole onus is upon the plaintiff to prove that summon was duly served. If he cannot, the exparte decree will be set aside. | *23 BLT(HCD) 201*
42. Rule-9: If a party has a reasonable claim for restoring the suit and he has sufficient cause for non-appearance in the suit and as well as he was ready to pay the cost then it incumbent duty upon the court to give his chance. | *35 BLD(HCD) 69*
43. Rule-13 with Sec-5 of Limitation Act. : When fraud and deceit is established, **a decree has no existence in the eye of Law and must be set aside**. Such inquiry is permissible within the scope of the rule. | *9 ALR 107*
44. Rule-4 with Sec-5 of Limitation Act: Limitation is allowed in Rule-4 ..... | *AIR 2001 DEL 79*
45. Rule-4: Special court such as **Labor Court** not being a civil court cannot take recourse to and apply the provision under O-9 R-4 of this code for restoration of any proceeding it in term of the said order and rule if the proceeding before it is dismissed for default. But it can certainly, in a just and appropriate case, interfere with its own order of dismissal for default is following provisions of the said law is substance to prevent any miscarriage of justice. | *4 LM(AD) 101*
46. Rule-4: Where the court requires the personal appearance of the party... .. The non-appearance of a party on the date of fixed, the court can fix appropriate order for the interest of justice. If fails to appear in person without lawful authority the court may also pronounce judgment against such part. The court may also make such order in relation to the suit as it thinks fit. | *23 BLC(AD) 89, AIR 1931PC 175, AIR 1959 102*

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