



# Appearance Of Parties And Consequences Of Non-Appearance (Order IX) As Per The Code Of Civil Procedure, 1908

**Author 1:** Kevin Rajendra Shah

**Author 2:** Mahesh Chandrakant Sangle

**Subject:** Code of Civil Procedure

**College:** Subhash Desai College of Law, Borivali West, Mumbai

**University:** University of Mumbai

## **Abstract:**

The procedural requirements for parties appearance in civil action and the repercussions of their nonattendance are outlined in Order IX of the Code of Civil Procedure, 1908 (CPC). The laws governing attendance, the consequences of non-attendance and the possible remedies such as suit restoration and ex-parte decision annulment—are all examined in this research.

The study highlights the need to strike a balance between following the law and pursuing justice, drawing on court interpretations.

It comes to the conclusion that Order IX promotes justice in the legal system by guaranteeing equitable proceedings and prohibiting procedural abuse.

## **Keywords:**

- 1) Order IX CPC
- 2) Party Appearance
- 3) Non-Attendance
- 4) Ex-Parte Decree
- 5) Suit Restoration
- 6) Summons Service

- 7) Sufficient Cause
- 8) Civil Litigation

### **Introduction:**

As a general rule of law, every proceeding must, to the greatest extent feasible, take place in front of the parties. The Code of Civil Procedure's Order IX establishes the rules governing parties' appearance and the repercussions for their non-appearance.

In India, civil disputes are resolved according to a structured framework provided by the Code of Civil Procedure, 1908 (CPC). The duties of parties to appear in court and the consequences of nonattendance are particularly covered under Order IX.

In order to preserve justice and avoid capricious results, these clauses seek to guarantee that, if possible, processes take place in front of all parties.

This paper examines the procedural mechanisms of Order IX, their judicial application, and their role in maintaining fairness while enforcing compliance with court processes.

### **The appearance of parties to the suit:**

According to Rule 1 of Order IX of the Code of Civil Procedure, the parties to the matter must appear in court on the day specified in the summons, either in person or through their attorneys. Either the defendant or the plaintiff. Rule 12 of Order IX gives the court the authority to conduct the following when someone is summoned to appear in person but fails to do so and fails to provide a good reason for their absence.

1. If the plaintiff does not appear, dismiss the suit.
2. If the defendant does not appear, pass an ex-parte order.

### **I. Non-appearance of both parties to the suit:**

Under Rule 3 of Order IX, the court has the authority to dismiss a lawsuit if neither the plaintiff nor the defendant show up when it is scheduled for hearing. According to Rule 4, the dismissal of the litigation under this rule does not preclude the filing of a new suit on the same cause of action. If the plaintiff can convince the court that there was a good reason for his absence, he may also request that the dismissal be overturned. The court may revoke the dismissal order and set aside a day for the suit's hearing if it is satisfied with the reason for non-appearance.

## II. The appearance of the plaintiff:

An ex-parte order may be issued against the defendant if the plaintiff is the only one who shows up and the defendant is not. However, the plaintiff must demonstrate that the defendant received the summons. If service of the summons is proved, then only the court can proceed for an ex-parte against the defendant and the court may pass a decree in favour of the plaintiff. As was decided in the \*Sangram Singh VS Election Tribunal judgment, this clause only applies to the initial hearing and not to subsequent hearings of the case. It is the court's responsibility to ensure justice is served even when the defendant is not present while issuing an ex-parte order. The Supreme Court ruled in \*\*Maya Devi VS Lalta Prasad that the court's responsibility is to make sure the plaintiff's claims are supported by evidence and that the court's petitions are merited.

When there are multiple defendants in the case and any of them show up, this ex parte order provision cannot be applied.

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\*Sangram Singh VS Election Tribunal, AIR 1955 SC 425

\*\*Maya Devi VS Lalta Prasad, 2015 5 SCC 588

## III. Appearance of defendant:

The rules 7-11 of Order IX contain the laws that deal with the defendant's appearance alone. There are two possible outcomes when the defendant shows up but the plaintiff does not:

1. The plaintiff's claim, in whole or in part, is not acknowledged by the defendant.
2. The plaintiff's claim is acknowledged by the defendant.

The court will order the litigation to be dismissed if the defendant rejects the plaintiff's claim. However, the court has the authority to issue a decree against the defendant based on the defendant's total or partial admission of the plaintiff's claim, and the suit will be dismissed for the remaining claims.

According to Beaumont, C.J. in the case of \*Sham Dasani VS Central Bank of India, dismissing the plaintiff's complaint without hearing him is a serious matter that should not be done unless the court is certain that doing so is necessary in the interest of justice.

## Do the same provision applies to the non-appearance of the plaintiff due to death?

The court lacks the authority to dismiss the lawsuit when the plaintiff fails to show up due to death. According to the ruling in the case of \*\*P.M.M. Pillayathiri Amma VS K. Lakshmi Amma, even if such an order is issued, it will be deemed null and void.

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\*Sham Dasani VS Central Bank of India, 2003 4 SCC 120

\*\* P.M.M. Pillayathiri Amma VS K. Lakshmi Amma, AIR 1967 Ker 135

#### **IV. Application to set aside the dismissal:**

The plaintiff may file an application to overturn the dismissal order if the claim was dismissed due to his non-appearance. The court may set aside the order dismissing the suit and set a date for its continuation if it finds that the reason for non-appearance is a sufficient cause.

#### **Sufficient cause:**

The primary consideration for determining the plaintiff's sufficient reason of non-appearance is whether or not the plaintiff actually attempted to show up on the day of the hearing. The court must revisit the case after the plaintiff provides adequate justification for his non-appearance. As decided in the case of \*P.K.P.R.M. Raman Chettyar vs. K.A.P. Arunachalam Chettyar, the court has the authority to set aside the dismissal or not in the absence of adequate cause. Each case's unique facts and circumstances determine whether there is sufficient cause.

The Bombay High Court noted in the case of \*\*Chhotalal VS Ambala Hargovan that if a party is late and their suit is dismissed because they did not show up, they have the right to have it reinstated with costs paid.

#### **V. When summon is not served:**

Order IX's Rules 2 through 5 specify what happens in the event that the defendant is not served with a summons.

Giving a party a fair chance to make his argument is one of the core principles of procedural law. And in order to do this, he must be notified about the legal action taken against him.

As a result, serving the defendant with a summons is required and a conditional precedent. According to the ruling in \*\*\*Begum Para VS Luiza Matilda Fernandez, a decree cannot be issued against him if the summons is not served or if it does not provide him enough time to effectively state his case.

According to Rule 2 of Order IX, the lawsuit may be dismissed if the plaintiff does not reimburse the defendant for the costs incurred in serving the summons. However, if the defendant shows up for the hearing in person or through his pleader, no dismissal can be made even in the event of such a failure.

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\* P.K.P.R.M. Raman Chettyar VS K.A.P. Arunachalam Chettyar, AIR 1936 Mad 976

\*\*Chhotalal VS Ambala Hargovan, AIR 1925 Bom 117

\*\*\* Begum Para VS Luiza Matilda Fernandez, AIR 1984 SC 123

The court may dismiss the lawsuit against the defendant or defendants if the summons is returned undelivered and the plaintiff does not request a new summons within seven days of the defendant or defendants returning the summons. The court may order the issuance of a new summons to the defendant for service if it cannot be demonstrated that the original summons was not properly served. The court may postpone the hearing to a later date and give the defendant notice if it is established that the summons was served but the time allotted in the summons is insufficient for him to respond on the day that has been set.

## **VI. Ex-parte Decree:**

An ex-parte decree may be issued if the defendant fails to appear on the day of the hearing scheduled in the summons. When the plaintiff shows up in court on the day of the hearing and the defendant does not, even if the summons has been properly served, the ex-parte order is issued. The court has the authority to hear the case ex parte and issue an ex parte ruling against the defendant.

A valid ex-parte decree is not void; rather, it may be just voidable unless it is revoked for a legitimate reason. As decided in the case of \*Panduranga Ramchandra VS Shantibai Ramchandra, an ex-parte decree has all the force of a legitimate decree and can be executed similarly to a bi-parte decision.

## **VII. Remedies against an Ex-parte decree:**

The following remedies are available to a defendant who has been the subject of an ex-parte decree:

- 1) He may request that the court set aside the ex-parte ruling it issued under Rule 13 of Order IX.
- 2) If there is no appeal, he may request modification under Section 115 of the Code or file an appeal against that order under Section 96(2) of the Code.
- 3) In accordance with Order 47 Rule 1, he may request a review.
- 4) A suit on the ground of fraud can be filed.

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\*Panduranga Ramchandra VS Shantibai Ramchandra, AIR 1989 SC 2240

### VIII. Setting aside an Ex-parte decree:

The defendant may file an application to have an ex-parte decree set aside. The court that issued the decree may receive an application to set it aside. Ex-parte decrees must be set aside according to specific guidelines, and only the ex-parte decree itself may be overturned if the defendant provides the court with a good reason. A 30-day statute of limitations applies when attempting to have an ex-parte decree set aside.

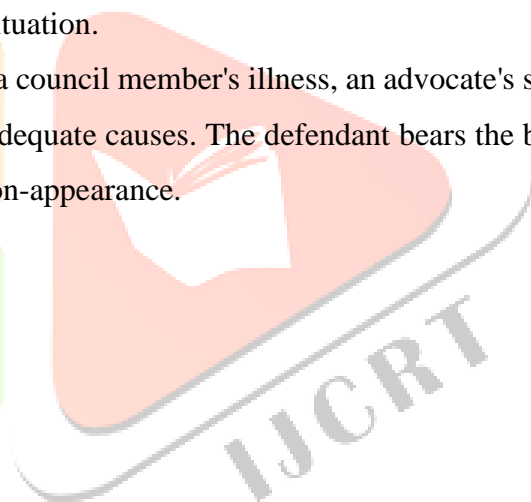
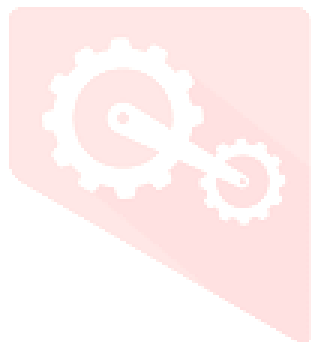
#### The grounds on which an ex-parte decree can be set aside are:

- 1) When the summons has not been duly served.
- 2) Due to any "sufficient cause", he could not appear on the day of the hearing.

#### Sufficient Cause:

There is no definition for the term "sufficient reason," but according to the ruling in the \*UCO Bank v. Iyengar Consultancy case, it is a matter that is decided based on the particular facts and circumstances of each case. Whether the party genuinely and honestly meant to attend the hearing and made every effort to do so is the standard that needs to be used in this situation.

A number of situations, including a late train arrival, a council member's illness, an advocate's strike, the passing of a party member, etc., have been deemed adequate causes. The defendant bears the burden of demonstrating that there was a good reason for the non-appearance.



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\* UCO Bank VS Iyengar Consultancy, 1994 2 SCC 399

**Conclusion:**

The party's presence or absence affects the case and whether it is dismissed, continued at the next hearing, or results in an ex-parte decree.

The court has the authority to dismiss the lawsuit if none of the parties show up.

Only when both parties show up in court does the suit proceed to the following hearing.

The court may issue an ex-parte decree against the defendant if the plaintiff shows up for the hearing but the defendant does not show up. When the plaintiff fails to attend, the lawsuit may be dismissed if the defendant disputes the plaintiff's claim. If the defendant acknowledges any claim, the court may issue an order against him based on his admission.

If there is a good explanation for a party's absence, any suit that is dismissed or an ex-parte order that is issued can also be overturned. The court may set aside the dismissal order or an ex-parte order if it is satisfied with the explanation for the absence.

Throughout all of these processes, the court must remember that no injustice occurs when dismissal or ex-parte orders are issued.

**Reference:**

- 1) Code of Civil Procedure, 1908
- 2) Sangram Singh VS Election Tribunal, AIR 1955 SC 425
- 3) Maya Devi VS Lalta Prasad, 2015 5 SCC 588
- 4) Sham Dasani VS Central Bank of India, 2003 4 SCC 120
- 5) P.M.M. Pillayathiri Amma VS K. Lakshmi Amma, AIR 1967 Ker 135
- 6) P.K.P.R.M. Raman Chettyar VS K.A.P. Arunachalam Chettyar, AIR 1936 Mad 976
- 7) Chhotalal VS Ambala Hargovan, AIR 1925 Bom 117
- 8) Begum Para VS Luiza Matilda Fernandez, AIR 1984 SC 123
- 9) Panduranga Ramchandra VS Shantibai Ramchandra, AIR 1989 SC 2240
- 10) UCO Bank VS Iyengar Consultancy, 1994 2 SCC 399