



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

HEADS I WIN, TAILS YOU LOSE: THE DOCTRINE OF EX PARTE DECREE AND JURISPRUDENTIAL DILEMMA OF SUFFICIENT CAUSE FOR NON-APPEARANCE

Sanika Brahme

INTRODUCTION

When one of the parties is not present in a civil litigation, and a court's decision or decree in a case is given without the presence of that party, it is called an ex parte decree.¹

Audi Alteram Partem, a Latin phrase meaning '*Let the other side be heard as well*²' is one of the principles of natural justice that all courts follow. When one of the parties fails to attend the court proceeding, the court issues a summons against that party. After several court summons and notices, if the party does not appear and breaches its duty, the court can pass a decree ex parte, treating the missing party as in "default" for *their absence*.³

Ex parte means that the court has proceeded to deliver judgment based on the facts and arguments presented by the available party, even if the matter involves a party who is either absent or has failed to participate in the case. An ex parte communication is one in which matters related to a proceeding circulate among or are discussed with fewer than all the parties who are legally entitled to be present or notified of the communication and entitled to have an opportunity to respond, impeach, contradict, or explain.⁴

¹ Sangram Singh v. Election Tribunal, Kotah & Anr., AIR 1955 SC 425.

² A.K. Kraipak v. Union of India, (1969) 2 SCC 262

³ Nigusssie Tizazu, Ethiopian Law on Arbitral Interim Measures: Towards Dispelling the Ambivalence, 10 BAHIR DAR U. J.L. 265 (2020).

⁴ Leslie W. Abramson, The Judicial Ethics of Ex Parte and other Communications, 37 HOUS. L. REV. 1343 (2000).

Black's Law Dictionary defines an ex parte decree as

*'Judicial decision issued for the benefit of one party without the other party being present or having received notice. This is an exception to the general rule that all parties involved in a case should be allowed to present their arguments.'*⁵

Legal systems frequently require that specific conditions be met before an ex parte decree can be issued to prevent unfair consequences. A typical prerequisite for the same is the ***existence of "sufficient cause" for the missing party's absence***. In most cases, a "sufficient cause" is a ***valid and justified excuse for the party's absence, such as illness, a last-minute emergency, inadequate notice, or other compelling circumstances***.⁶

The Court noted that Order 9 Rule 13 contemplates two separate scenarios⁷ **of the Code of Civil Procedure, 1908**⁸. It provides for the setting aside of an ex parte decree when

1. ***A summons has not been properly served on the defendant***⁹
2. ***When he cannot appear when the case is called for a hearing***.¹⁰

There are multiple cases wherein the Court stated that "What constitutes "sufficient cause" cannot be laid down by hard and fast rules" when defining the term.

1. In ***N. Balakrishnan v. M. Krishnamurthy***¹¹SC held that when the delay is not malafide, ***a liberal construction*** should be given to the expression "sufficient cause" so that substantial justice is not obstructed.
2. ***G. Ramegowda, Major v. Special Land Acquisition Officer***¹²SC held that when the delay is due to ***reasons beyond the appellant's control***, "sufficient cause" should be interpreted flexibly.

⁵ Black's Law Dictionary (Bryan A. Garner ed., 11th ed. 2019), available at <https://thelawdictionary.org/ex-parte/>

⁶ Suchita Shukla, Ex-parte decree set aside considering "sufficient cause" under Or. 9 R. 13 of the Code of Civil Procedure, 1908

⁷ Code of Civil Procedure, 1908, order 43

⁸ Code of Civil Procedure, 1908, § 13

⁹ K. Natarajan v. P.K. Rajasekaran, (2003) 2 SCC 76.

¹⁰ Rachael Lee, Ex Parte Blogging: The Legal Ethics of Supreme Court Advocacy in the Internet Era, 61, Stanford Law Review, 1561, 1535-1571 (2009)

¹¹ N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123

¹² G. Ramegowda, Major v. Special Land Acquisition Officer, Bangalore, (1988) 2 SCC 142

3. In the SC's ruling in *Bhivchandra Shankar More v. Balu Gangaram More*,¹³ Civil Appeal No. 4669 of 2019¹⁴, it was stated that "sufficient cause" should be interpreted liberally to achieve long-lasting justice, especially *when the appellant is not responsible for any inaction, negligence, or lack of bona fides*.
4. In *State of Bihar v. Kameshwar Prasad Singh*,¹⁵ SC held that when the delay is not attributable to the appellant's inaction or negligence, "sufficient cause" should be applied and the decision should not be given ex parte.
5. *Vedabai Patil v. Shantaram Patil & Ors*,¹⁶ SC held that justice should not be denied due to a technical approach; hence, "**sufficient cause**" should be interpreted liberally.
6. In *Collector, Land Acquisition, Anantnag v. Mst. Katiji*¹⁷SC held that "*sufficient cause*" in *Section 5 of the Limitation Act*¹⁸ must not hinder the delivery of justice due to its rigid stance on technicalities.

RESEARCH QUESTIONS

1. Under which specific circumstances outlined in the Code of Civil Procedure, 1908, are courts delineated to promulgate ex parte decrees?

2. What safeguards exist for parties harmed by ex parte decisions, and how do they align with natural justice and due process?

RESEARCH OBJECTIVES

Such is the study and comparison of the frequency of ex parte rulings obtained from other legal systems. Attention will be zeroed on the following:

¹³ *Bhivchandra Shankar More v. Balu Gangaram More*, (2019), 6 SCC 387

¹⁴ Civil Appeal No. 4669, 2019

¹⁵ *State of Bihar v. Kameshwar Prasad Singh*, (2000) 9 SCC 94

¹⁶ *Vedabai @ Vijayanatabai Baburao Patil v. Shantaram Baburao Patil & Ors.*, (2001) 9 SCC 106

¹⁷ *Collector (LA) v. Katiji*, (1987) 2 SCC 107

¹⁸ Limitation Act, No. 36 of 1963, § 5, India Code (1963).

1. **Identification of causes:** What leads to an ex parte decree and the legality behind such decisions.
2. **Impact Assessment:** This assessment will look at how ex parte rulings affect the rights of parties and the workings of the judicial system.
3. **Enhancement Suggestion:** Demonstrate ways to improve accountability and transparency in the issuance of ex parte orders.

RESEARCH METHODOLOGY

This research is a culmination of a thorough examination of prior studies in the same domain. An extensive investigation was conducted by scrutinising multiple databases. A mixed-methods approach is used to achieve the goals. Information is gathered by carefully examining court records, legislative documents, and pertinent legal precedents. Moreover, the perspectives articulated in this research paper are meticulously scrutinised through a combination of empirical study (actual and objective observation or experimentation) and theoretical discourse.

Interviews are also conducted with legal professionals and individuals who have experience with ex parte decrees. An in-depth understanding of the issue is facilitated by the qualitative and quantitative analysis of the data obtained. This paper represents a comprehensive collaboration across legal, socio-economic, and related fields, amalgamating research findings from diverse disciplines.

EFFECTS OF OVERTURNING AN EX PARTE DECISION

Ex parte decisions are set aside when one of the two eventualities envisaged by Order 9 Rule 13 *CPC* arises. In those cases, the ex parte order is set aside, and the case is reopened. It is open in such cases to consider once again the merits of the decision, and the parties are both put in the same position in which they were before the defendant's absence¹⁹

An appeal lies to a person aggrieved by an ex parte decree who has not availed all the remedies provided under *Order 9 Rule 13*. If an appeal under *Section 96*²⁰ is made against an *Order-43*²¹

¹⁹ Supra 5

²⁰ Code of Civil Procedure, 1908, § 96

²¹ Code of Civil Procedure, 1908, order 43

ex parte judgment, and the application to set aside the ex parte judgment is granted, but the defendant cannot prefer another appeal or ex parte complaint.

Review: Following **Rule-1 of Order-47 CPC**,²² a judgment may be reviewed. The decree may be subject to review if the petitioner satisfies the prerequisites.²³

Any party may face any such ex parte decision and appeal with the following two options: ***filing a review petition, a lawsuit for setting aside the decision on fraudulent grounds***, or an ***application under Order-9 Rule-13***; in these, both remedies can be availed simultaneously if so desired by the party.

Bhanu Kumar Jain v. Archana Kumar²⁴ held that availing of both remedies simultaneously is not illegal. The defendant's right to appeal remains intact so long as it does not conflict with any other provision of law. The Court also reiterated that the first appeal is invested with the legal competence to challenge the correctness of a decision.

It has been held in ***M.K. Prasad v. P. Arumugam***²⁵ that against an ex parte decree, the defendant can prefer an appeal under Section 96(2) CPC. The Court pointed out that the remedies provided under Order-IX Rule-13 and Section 96(2) are not mutually exclusive but can be availed of successively.

MAREVA INJUNCTION AND INDIAN LAW

The concept of the Mareva injunction is not unknown to Indian law. Under ***Order XXXVIII Rule-5***²⁶ of the Code of Civil Procedure, 1908, it is sometimes considered an attachment before judgment.

The Mareva injunction, ***also called a freezing order***,²⁷ is a judicial remedy to prevent a defendant from dissipating his assets so that funds and/or assets are available if the judgment goes against him and there is a judgment in favour of the plaintiff. It is usually granted when ***there is a risk that the defendant may remove or hide assets to prevent a judgment from being satisfied***.

²² Code of Civil Procedure, 1908, Order 47, Rule 1, No. 5, Acts of Parliament, 1908

²³ Code of Civil Procedure, 1908, § 1

²⁴ Bhanu Kumar Jain v. Archana Kumar, (2005) 1 SCC 787

²⁵ M. K. Prasad v. P. Arumugam, (2001) 6 SCC 176

²⁶ Code of Civil Procedure, 1908, § 5

²⁷ Mareva Compania Naviera SA v. International Bulkcarriers SA [1975] 2 Lloyd's Rep 509

In *K.K. Verma v. Union of India*,²⁸ it was held by the SC that Mareva injunctions can be issued to prevent the transfer of assets or documents to ensure the effectiveness of the final decree.

INTERNATIONAL CASES ON MAREVA INJUNCTION

1. *Mareva Compania Naviera SA v International Bulkcarriers SA*²⁹ is the seminal case in which the Mareva injunction was first established. The Court of Appeal held that a court may grant an injunction to prevent a defendant from moving assets out of the jurisdiction prior to a trial, provided that there is a real risk that the defendant will dispose of those assets to frustrate a judgment.
2. *Ninemia Maritime Corp v. Trave Schiffahrtsgesellschaft & Co. KG*³⁰ clarified that a Mareva injunction is granted if the plaintiff shows a good arguable case, and secondly, that there is a real risk that the defendant might dissipate the assets to avoid judgment.
3. *Cretanor Maritime Co Ltd v. Irish Marine Management Ltd*³¹ finally clarified that there is no doubt a Mareva injunction might be awarded even before the plaintiff's case had been proven in court, so long as a risk of dissipation was bona fide and substantial.
4. *Fourie v. Le Roux*³², House of Lords held that, provided there was evidence of a real risk of asset dissipation, a Mareva injunction could be granted even before a claim form had been served.

Recently, it has been reaffirmed in *Mohit Bhargava v. Bharat Bhushan Bhargava*³³ that the courts in India possess the power to issue Mareva injunctions. The Supreme Court has further observed that these orders are well within the court's power, as they only restrain a person from transferring the property or documents to the judgment debtor and require the safe custody of such documents.³⁴ Mareva injunctions are valid for the purpose of restraining the defendant from disposing of his assets pending the resolution of a dispute.

²⁸ K.K. Verma v. Union of India, 1993 SCC OnLine CAT 156

²⁹ Supra 27

³⁰ Ninemia Maritime Corp v. Trave Schiffahrtsgesellschaft mbH & Co KG (The Niedersachsen) [1984] 1 All ER 398

³¹ Cretanor Maritime Co Ltd v. Irish Marine Management Ltd [1978] 1 WLR 966

³² Fourie v. Le Roux [2007] UKHL 1

³³ Mohit Bhargava v. Bharat Bhushan Bhargava, AIR 2007, SC 1717

³⁴ Sagarnil Ghosh, Applicability of Mareva Injunction in the Indian Legal Parlance, 2 INDIAN J. INTEGRATED Rsch. L. 1 (2022).

The Mareva injunction is in the nature of an Anton Piller order, or "freezing order," and is now granted even against persons or property outside the jurisdiction of the court. In *Popular Jute Exchange Limited v. Murlidhar Ratanlal Exports Ltd. & Anr.*,³⁵ the Calcutta High Court elaborated on the requirements that need to be fulfilled for the issuing of a Mareva injunction. It is considered that the concept of a Mareva injunction was not inconsistent with the High Court's wide general power, under ss.37 and 45, to grant ex parte injunctions and to make interim or final orders for injunctions.

LITERATURE REVIEW

Sagarnil Ghosh has been researching the area of the Indian perspective on Mareva injunction, namely, "*Applicability of Mareva Injunction in Indian Legal Parlance.*"³⁶ This work addresses the issue of implementing ex parte orders in the current situation and proposes a solution.

Recent instances of ex parte decrees have been referred to for discussion in the work of R. Hari Sr. titled "*Emerging Dynamics and Dimensions of Arbitration.*"³⁷ In this study, we revisit the current legal framework in India, the *reasons for an ex parte decree, and the views of domestic and international bodies on what constitutes an ex parte decree*. The authors went on to suggest a uniform global agreement on ex parte decrees, address potential loopholes, and highlight the dire need for more stringent accountability.

In the article "*Ex Parte Blogging: The Legal Ethics of Supreme Court Advocacy in the Internet Era,*"³⁸ Rachael Lee addresses ex parte decrees and their impact on the judicial system. Here, the author debates several grounds for these decrees, tracing their evolution while emphasising key legal issues. This article aims to delve into the roots of ex parte blogging with a detailed analysis, particularly in India, where it has a wide presence.

Aniruddha Dwivedi's '*A General Study on the Inherent Powers of Courts under the Civil Procedure Code*'³⁹ explores the unresolved issue of "sufficient grounds" for ex parte decrees.

³⁵ Popular Jute Exchange Limited v. Murlidhar Ratanlal Exports Ltd. & Anr., (2012), 5 LW 451

³⁶ Sagarnil Ghosh, Applicability of Mareva Injunction in the Indian Legal Parlance, 2 INDIAN J. INTEGRATED Rsch. L. 1 (2022).

³⁷ R. Hari Sr., Emerging Dynamics and Dimensions of Arbitration, 19 Supremo Amicus 542 (2020).

³⁸ Rachael Lee, Ex Parte Blogging: The Legal Ethics of Supreme Court Advocacy in the Internet Era, 61, Stanford Law Review, 1561, 1535-1571 (2009)

³⁹ Aniruddha Dwivedi, A General Study on the Inherent Powers of Courts under the Civil Procedure Code, 23 Supremo Amicus [541] (2021).1

The study uses case studies and a global perspective to analyse current laws, identify gaps, and propose solutions.

The literature review focuses on the application of ex parte decrees in courts, highlighting key issues that influence such judgments. Despite many studies aiming to establish the standard of proof and the reasons for the decrees, very few focus on socio-cultural factors and on innovative methods with practical value. Therefore, this research is crucial to what we know of the real causes of ex parte decrees.

JUDICIAL PROCUREMENTS AND THEIR CRITICAL ANALYSIS IN THE RECENT ERA

The Himachal Pradesh High Court has recently held, in *Surender Kaur v. Shri Jagtendra*⁴⁰ that an application under *Order-9 Rule-7 CPC*⁴¹ can be entertained only if the same is filed before the arguments in a case are closed. The case involved setting aside an ex parte order.

While interpreting the requirements of *Order-9 Rule-7 CPC*⁴² Justice Sandeep Sharma has observed that an application to set aside an ex parte order is only maintainable if the same is filed before arguments are complete. If the same is filed after completion of arguments, such an application is not maintainable. Still, in the latter case, the party aggrieved by the ex parte order has a remedy.⁴³

The courts, however, pointed out the *relationships between the Indian Contract Act, the CPC, 1908, and other Indian laws in relation to the principles of international law*. Still, the laws in India concerning divorce are very strict in comparison with Western countries, where marriage is treated as a personal relationship and can end at one's will. Perhaps this was the reason that led the NRI spouse to seek divorce from a foreign court.⁴⁴

Where an ex parte judgment was passed granting a financial decree, it was not specified that any documents had been perused or the merits of the case considered. Such judgments cannot be enforced in India. In the present case, as in the case of *Trilochan Choudhury vs. Dayanidhi*

⁴⁰ *Surender Kaur v. Shri Jagtendra*, 1996, SCC (3) 210

⁴¹ Code of Civil Procedure, 1908, § 7

⁴² *ibid*

⁴³ Aniruddha Dwivedi, A General Study on the Inherent Powers of Courts under the Civil Procedure Code, 23 *Supremo Amicus* [541] (2021).

⁴⁴ Carine Duperyon & Marie Valentini, Legal Instruments Used in the Search for Evidence in Support of Arbitration: Comparative Study of Art. 145 of the French Code of Civil Procedure and S.28 USC Sec. 1782 in the United States, 2013 *INT'l Bus. L.J.* 533 (2013).

*Patra*⁴⁵, the *defendant had appeared in the foreign court and filed a written statement*. The court heard the case of the plaintiff on merit, which issued a favourable decision. The Orissa High Court further held that this *foreign decree and judgment were based on the merits of the claim and were not excluded under Section 13(b) of the CPC*.⁴⁶

The basic objection to ex parte decrees is that it may amount to a denial of natural justice. As principles of natural justice require, both parties should have the opportunity to make out their cases and be heard by the adjudicating agency. A decree might be issued without hearing from one of the parties. It may lead to an injustice.⁴⁷

In such hearings, the other party cannot be heard, lead evidence, cross-examine witnesses, or argue against the ex parte application. The court may henceforth base its decision on that false or biased information and consequently reach the wrong conclusion.

There are, however, instances in which parties knowingly abscond from court to delay or secure an outcome of their convenience by manipulating the process. This may indeed incite ex parte applications of either malice or frivolity that are time-wasting and, worse still, occasion the misuse of procedures.

Ex parte decrees violate an individual's right to due process because they deny a person the opportunity to participate. Beyond compromising the integrity of the legal process, this raises constitutional issues.

SCOPE FOR REVIEW

Order 9 Rule 13 of CPC, no doubt, provides for setting aside ex parte decrees, yet the avenue of review is still limited. The absent party has to prove the reason for his absence, and if that party shows undue delay in getting the decree set aside, the prayer for setting aside may be rejected. Sometimes, parties miss court dates for valid reasons, such as poor communication, which may result in unintended ex parte decrees and related problems.⁴⁸

It is even possible for a court to grant an ex parte conditional decree that may be reopened if the absentee later comes forward with his case. Courts must strictly adhere to the course of action adopted for setting aside ex parte orders under Order 9, Rule 13 of the CPC. Application

⁴⁵ Trilochan Choudhury v. Dayanidhi Patra AIR 1961 Ori 136

⁴⁶ Code of Civil Procedure, 1908, § 13

⁴⁷ Procedural Means of Enforcement under 42 U.S.C. Sec. 1983, 40 ANN. REV. CRIM. PROC. 1058 (2011).

⁴⁸ Supra 37

for the same should show sufficient cause and no inordinate delay in filing an application to set aside the order.

Pre-trial conferences are necessary between the courts and the parties with their counsels. These can take up issues regarding the various dates given by the court, the procedures followed in the case, etc. This would prevent misunderstandings. It is with this application that the courts can even go further and penalise or take action against such parties who constantly apply for an ex parte decree with no logical reasoning.⁴⁹

In the case of *A. Murugesan vs. Jamuna Rani*,⁵⁰ the Honourable Supreme Court has observed that an ex parte decree against a defendant under Order IX Rule 13 CPC may be set aside if the court is convinced that either the summons was not properly served or the defendant was prevented by "sufficient cause" from appearing when the case was heard. Unless a sufficient reason for his absence on the date fixed for the hearing is proved to the satisfaction of the court by the defendant, the court cannot set aside an ex parte decree.

The words "was prevented by any sufficient cause from appearing" should be widely interpreted, especially when the person affected is not to be blamed for negligence or inaction. The term "sufficient cause" under Order-9 Rule-13 cannot be defined in strict terms; it must be interpreted liberally. The courts have wide discretion in determining what constitutes sufficient cause on the facts and circumstances of each case.

RECOMMENDATIONS AND CONCLUSION

The expression "sufficient cause" for non-appearance applies only to the day the absence resulted in ex parte proceedings and does not relate to previous events. Suppose ex parte proceedings are taken against the defendant. In that case, they will not be liable for negligence committed earlier and will be allowed, provided they can show "sufficient cause" for their failure to appear on the hearing day. Where they appear within the allowed period, the courts often exercise their discretion in favour of the defendant, provided their absence was not intentional or malicious. The other party can be fairly compensated for the costs incurred from the defendant's absence.

⁴⁹ Monica Lewis, The Demise of Effective Public Comment in Informal Rulemaking: *Sierra v. Costle*, 18 NEW ENG. L. REV. 183 (1982).

⁵⁰ *A. Murugesan v. Jamuna Rani*, moni(2019) 20 SCC 803

Proper hearing in the court of law is a principal requirement of natural justice, and our Code of Civil Procedure guarantees that each and every party fully avails itself of the opportunity to be heard. If one of the parties fails to exercise its right to defend fully, the case may proceed without it. Otherwise, this is the only way the legal system can remain efficient and the plaintiff's interests safeguarded.

However, unforeseen circumstances may prevent a party from appearing at the hearing. The Code is lenient in cases of genuine hardship. A careful reading of *Order IX Rule 13*⁵¹ will show that in order to set aside an ex parte order, the applicant must satisfy the court that sufficient cause existed for his non-appearance on the day of the hearing. However, as observed above, courts cannot turn a blind eye to the hard realities of life. An application shall not be refused under this rule on moral or humanitarian grounds.

⁵¹ Code of Civil Procedure, 1908, § 13
