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**“APPEARANCE AND NON-APPEARANCE OF PARTIES: EFFECT ON SUIT
UNDER CIVIL PROCEEDINGS”**

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ABSTRACT

Both the plaintiff and defendant to the suit are expected to appear in court, either in person or by way of their pleaders, on the date that had been stipulated in the summons by the court. However, there is a high possibility that one or both the parties to the suit may not turn up in court on the stipulated date. In this respect, it is highly possible that neither the plaintiff or defendant may appear in court on the date that had been stipulated in the summons by the court or that only the plaintiff or only the defendant turns up on such date. Rules 3, 6 and 8 of Order IX of the Civil Procedure Code, 1908 pertains to the same. It is also quite possible that one or two out of the several plaintiffs to the suit do not appear in court on the stipulated date or that one or two out of the several defendants to the suit do not turn up on such date. Rules 10 and 11 of Order IX of the Civil Procedure Code, 1908 pertains to the same. Whatever the scenario, the court has only two options before it: proceed with the suit ex parte, or dismiss the suit or part of the suit according to their discretion as well as provisions of Order IX of the Civil Procedure Code, 1908. A detailed interpretation of the effect of such appearance and non-appearance of parties on the proceedings of a civil suit as well as an elaborate analysis of the provisions of the Civil Procedure Code, 1908 pertaining to the same, particularly Order IX, will be carried out throughout the course of this paper.

INTRODUCTION

Both parties to a civil suit, i.e., the plaintiff and defendant, should be given equal chance to plead their case before the court.¹ The main reason why it is said that court proceedings should ideally not take place in the absence of either of the parties to the suit is that such a scenario would be disadvantageous to the party who had not been present.² However, it is quite possible that one or both the parties to the suit do not turn up on the stipulated date.³ In furtherance to this, Order IX of the Code of Civil Procedure, 1908 contains provisions pertaining to the appearance as well as non-appearance of parties to the suit.⁴ Furthermore, these provisions also elaborate on the consequences of such appearance and non-appearance.⁵

APPEARANCE OF PARTIES

Both the plaintiff and defendant are expected to appear in court either in person or by way of their pleaders on the date that had been stipulated in the summons, which had been issued by the court to the defendant in the suit.⁶ The suit will thereafter be heard in court as long as the hearing of the suit has not been adjourned to another date by the court. This is done so as to provide an opportunity to the defendant to refute the claims that had been made by the plaintiff.⁷ If either of the parties to a suit, who had been summoned by the court, fails to appear in court on the stipulated date or to show an adequate reason for his or her failure to appear in court, then he or she will have to face the consequence of non-appearance as prescribed in Order IX of the Code.⁸

In the case of *Jagraj Singh v. Birpal Kaur*⁹, the husband filed an appeal against an interim order that had been passed against him by the High Court. Since the husband did not reside in India at that time, a summon was sent to his address in Italy. A second summon was also sent later on. However, the husband failed to appear in court. The case was then adjourned twice to

¹C. K. Takwani, Civil Procedure with Limitation Act, 1963 (8th Edition, 2017).

²Id.

³M. P. Jain, The Code of Civil Procedure (3rd Edition 2012).

⁴Id.

⁵Abhavya Rabra, Appearance and Non-Appearance of the Parties, *Journal on Contemporary Issues of Law* 328, 328 - 334 (2018).

⁶Dr. S. R. Myneni, Code of Civil Procedure and Limitation Act (1st Edition, 2012)

⁷Rule 1 of Order IX of the Code of Civil Procedure, 1908.

⁸Rule 12 of Order IX of the Code of Civil Procedure, 1908.

⁹(2007) 2 SCC 564.

suitable dates to ensure the presence of the appellant during the hearing. However, the husband failed to appear both times. As the wife was present in court, the appeal was dismissed.

NON-APPEARANCE OF PARTIES

On the date that had been prescribed by the court in the summons issued, it is possible that neither the plaintiff nor the defendant appears or that only one of the parties to the suit appears.¹⁰

WHEN NEITHER PLAINTIFF NOR DEFENDANT APPEARS

When neither party to the suit appears in court on the date stipulated in the summons, the court has the discretion to dismiss the suit.¹¹ The dismissal of the suit, however, will not amount to a decree and hence no appeal can usually be filed against it. The plaintiff can, however, file another suit for the same cause of action or apply in court under Rule 4 of Order IX of the Code for setting aside the dismissal order. If the court feels that adequate reason had been present for the non-appearance of the party on the stipulated date, then the dismissal of the suit will be set aside, and another date for the hearing of the suit will be prescribed by the court.¹²

WHEN ONLY PLAINTIFF APPEARS

If only the plaintiff appears in court on the stipulated date, then the court may proceed with the hearing of the suit *ex parte* in the absence of the defendant, if it can be proved by the plaintiff that summons had been properly served to the defendant.¹³ If summons had not been properly served to the defendant, then the court may issue a second summons to the defendant, and if the summons had been properly served to the defendant but had not left him or her with adequate time to appear in court on the stipulated date, then the court will adjourn the proceeding of the suit to another suitable date. If it is proved that it was due to mistake on the part of the plaintiff that the summons had not been properly served to the defendant, then the court will instruct the plaintiff to pay the cost that resulted due to adjournment of the suit to another date.¹⁴ If there is more than one plaintiff for a particular suit and few of them do not

¹⁰Sir Dinshaw Fardunji Mulla, The Code of Civil Procedure (17th Edition, 2018).

¹¹Supra 3.

¹²Rule 3 of Order IX of the Code of Civil Procedure, 1908.

¹³Supra 6.

¹⁴Rule 6 of Order IX of the Code of Civil Procedure, 1908.

appear in court on the stipulated date, then the court at its discretion may allow the suit to be heard as if all the plaintiffs had been present.¹⁵

In the case of *Kulendra Kishore Roy v. Rai Kishori Shaha*¹⁶, the court ordered the plaintiff to appear in person during the next hearing of the case. Thereafter, the case was transferred to another court. The plaintiff failed to appear in court on the prescribed day. The court did not take any action with respect to the absence of the plaintiff. It was later held that as there was more than one plaintiff in this case, Rule 10 of Order IX of the Code of Civil Procedure, 1908 would apply. Hence, the continuation of the case as if all the plaintiffs had been present was deemed to be correct.

WHEN ONLY DEFENDANT APPEARS

If the defendant, who had not appeared in court on the previous stipulated date, appears during the next hearing and provides sufficient cause for his non-appearance, then the court may set aside any *ex parte* decree that may have been passed in his or her absence.¹⁷ If the defendant appears in court on the date stipulated in the summons and the plaintiff does not appear in court, then the court may dismiss the suit. This will be true as long as the defendant does not allow the claim that had been made by the plaintiff or any part of it. In case of such admission, the court will pass a decree against the defendant or dismiss that part of the suit that has been admitted to be true by the defendant.¹⁸

In the case of *Calcutta Port Trust v. Shalimar Tar Product Ltd.*¹⁹, an appeal had been filed against the decision of the High Court. In the previous case, the plaintiff had not been present for the hearing of the case, and the case was dismissed as a result. However, in the present case, it was held by the court that even though the plaintiff had not been present, Rule 8 of Order IX of the Code of Civil Procedure of 1908 would apply as the defendant had admitted a part of the claim that had been made by the plaintiff. The court was, therefore of the opinion that the case could not be dismissed completely.

If there is more than one plaintiff for a particular civil suit and few of them do not appear in court on the stipulated date, then the court at its discretion may allow the suit to be heard as if all the plaintiffs had been present.²⁰ If there is more than one defendant for a particular civil

¹⁵Rule 10 of Order IX of the Code of Civil Procedure, 1908.

¹⁶AIR 1921 Cal 176.

¹⁷Rule 7 of Order IX of the Code of Civil Procedure, 1908.

¹⁸Rule 8 of Order IX of the Code of Civil Procedure, 1908.

¹⁹AIR 1991 SC 684.

²⁰Rule 10 of Order IX of the Code of Civil Procedure, 1908.

suit and few of them do not appear in court on the stipulated date, then the court at its discretion may take any decision as it sees fit in relation to the defendants who were not present.²¹ If a suit was dismissed by the court as per Rule 8 of Order IX of the Code, the plaintiff could not bring another suit for the same cause of action. He or she can, however, apply for the setting aside of the dismissal. If the court decides to set aside the dismissal, another date for the hearing of the suit will be prescribed by the court.²²

In the case of *Smt. Lachi Tewari and Ors. v. Director of Land Records and Ors.*²³, the case was dismissed by the court due to the absence of the plaintiff during the hearing of the case. However, the court, later on, deemed the cause of failure to appear given by the plaintiff to be sufficient and therefore set aside the order for dismissal that it had earlier passed.

CONCLUSION

Both parties to the suit, i.e., the plaintiff and defendant, are expected to appear in court, either in person or by way of their pleaders, on the date that had been stipulated in the summons issued by the court to the defendant.²⁴ However, it is highly possible that one or both the parties to the suit do not turn up on the date that had been stipulated by the court.²⁵ In this regard, it is quite possible that neither the plaintiff nor the defendant appears or that only the plaintiff or only the defendant appears.²⁶ It is also possible that one out of several plaintiffs does not appear or that one out of several defendants does not appear.²⁷ Whatever be the scenario, the court may either proceed with the hearing of the suit *ex parte* or dismiss the suit altogether as per their discretion as well as according to the provisions of Order IX of the Civil Procedure Code, 1908.²⁸

²¹Rule 11 of Order IX of the Code of Civil Procedure, 1908.

²²Rule 9 of Order IX of the Code of Civil Procedure, 1908.

²³AIR 1984 SC 41.

²⁴2, P. K. Majumdar, Majumdar's Commentary on the Code of Civil Procedure (6th Edition, 2010).

²⁵Id.

²⁶3, Sir John Woodroffe and Ameer Ali, Sir John Woodroffe and Ameer Ali's Commentary on the Code of Civil Procedure, 1908 (7th Edition, 2018).

²⁷Id.

²⁸Supra 1.