

Civil Procedure Code, 1908 (V of 1908), Order 5 Rule 1, Order 9 Rule 1, Order 9 Rule 6 - After the amendment in Order 5 Rule 1, the Court can issue summons to the defendants to appear and answer the claim within 30 days from the date of service of summons on that defendants - Proviso to the said Rule enables the Court to extend the time by 90 days for reasons to be recorded - Amended Rule 1 of Order 5 of the Code of Civil Procedure, makes it clear that the defendant would have a minimum of 30 days for filing a written statement of his defence in a suit - Therefore, it follows that the Court cannot proceed ex parte within 30 days from the date of service of summons and pass an ex parte decree - Any such ex parte decree would be in breach of the mandatory requirements of Order 5 Rule 1 of the Code of Civil Procedure - No doubt Order 9 Rule 1 of the Code, requires the parties to appear before the Court on the day fixed in the summons, but it does not authorise the Court to proceed ex parte within the time allowed under Order 5 Rule 1 of the Code of Civil Procedure - Under Clause (c) of Sub Rule (1) of Rule 6, the Court is required to postpone the hearing of the suit to a future date, if it is proved that the summons were served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons - Therefore, when the Court finds that some more time was left for the defendant to appear and answer the summons, as per Rule 1 of Order 5, the Court has to necessarily await or direct issuance of fresh summons under Clause (c) of Sub Rule (1) of Rule 6 of Order 9 of the Code of Civil Procedure - Any contrary interpretation would lead to rendering the provisions of Rule 1 of Order 5 otiose - Civil Court shall not proceed to pass ex parte Judgment within 30 days from the date of service of Summons in Suit - Amended Rule 1 of Order 5 makes it clear that, defendant would have a minimum 30 days to file Written Statement. Proviso enables Court to extend time till 90 days - Ex parte decree passed within 30 days of summons would be in breach of mandatory requirement of Order 5, Rule 1, C.P.C. - Ex parte Decree, set aside - Once the Code mandates that the defendant shall have a minimum of 30 days for filing his statement of defence, it automatically implies that an ex parte decree shall not be passed within those 30 days.

[2021 SCeJ 913 \(Mad.\)](#)