

CPC S. 96(2) - Merely because the defendant pursued the remedy under Order IX Rule 13 CPC, it does not prohibit the defendant from filing the appeal if his application under Order IX Rule 13 CPC is dismissed.

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## **Right of appeal under Section 96(2) [cpc](#) is a statutory right.**

**Civil Procedure Code 1908 (V of 1908), Order 9 Rule 13**, Section 96(2) - (i) Whether the time spent in the proceedings taken to set aside the ex-parte decree constitute “sufficient cause” within the meaning of Section 5 of the Indian [limitation](#) Act, 1908 so as to condone the delay in preferring an appeal against the ex-parte decree on merits? (ii) When an application filed under Order IX Rule 13 [CPC](#) has been dismissed on merits, whether regular appeal under Section 96(2) CPC is barred? - A conjoint reading of Order IX Rule 13 CPC and Section 96(2) CPC indicates that the defendant who suffered an ex-parte decree has two remedies:- (i) either to file an application under Order IX Rule 13 CPC to set aside the ex-parte decree to satisfy the court that summons were not duly served or those served, he was prevented by “sufficient cause” from appearing in the court when the suit was called for hearing; (ii) to file a regular appeal from the original decree to the first appellate court and challenge the ex-parte decree on merits - Scope of Order IX Rule 13 CPC and Section 96(2) CPC are entirely different - In an application filed under Order IX Rule 13 CPC, the Court has to see whether the summons were duly served or not or whether the defendant was prevented by any “sufficient cause” from appearing when the suit was called for hearing - If the Court is satisfied that the defendant was not duly served or that he was prevented for “sufficient cause”, the court may set aside the ex- parte decree and restore the suit to its original position - In terms of Section 96(2) CPC, the appeal lies from an original decree passed ex-parte - In the regular appeal filed under Section 96(2) CPC, the appellate court has wide [jurisdiction](#) to go into the merits of the decree - The scope of enquiry under two provisions is entirely different. Merely because the defendant pursued the remedy under Order IX Rule 13 CPC, it does not prohibit the defendant from [filing](#) the appeal if his application under Order IX Rule 13 CPC is dismissed - [limitation act](#), **Section 5**.

### **[2019 SCeJ 3008](#)**

Tags: [CPC](#), [CPC O.9](#), [cpc s. 96](#), [CPC S. 96\(2\)](#), [limitation act S. 5](#)