

**(1958) 02 CAL CK 0013**  
**In the Calcutta High Court**  
**Case No : Civil Rule No. 2973 of 1957**

Dabendra Nath Bhattacharya

APPELLANT

Vs

Amalendu Bhattacharjee

RESPONDENT

**Date of Decision :** 20-02-1958

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

**Citation :** AIR 1959 Cal 173 : 62 CWN 503

**Hon'ble Judges :** S.N. Guha Ray, J;K.C. Das Gupta, J

**Bench :** Division Bench

**Advocate :** Bhabesh Chandra Mitter and Kartick Chandra De, for the Appellant;  
Ashutosh Ganguli, for the Respondent

## Judgement

1. The petitioner was the defendant in a suit brought by the opposite party for recovery of a sum of Rs. 3562/8/-. On the 4th August 1956, the court below passed an order fixing the 3rd December 1956 for the hearing of the suit. On the 3rd December 1956, an application appears to have been filed by the defendant praying for an adjournment of the case on the ground that his lawyer was ill. This prayer was refused. The learned Judge remarked: "As the lawyer reportedly fell ill on the 1st December, there was enough time to engage another lawyer by this time. Parties must be ready at once." Later the same day, when the case was called on for hearing, the defendant was absent on call and the case was taken up for ex parte hearing and was decreed ex parte. On the 18th December 1956, an application under Order 9, Rule 13 of the CPC was made praying that the ex parte decree may be set aside as the applicant had been prevented by sufficient cause, namely, illness of his lawyer, from appearing in court on the 3rd December 1956. Evidence was given by the lawyer himself that he was actually lying seriously ill on the 3rd December; that in fact he had fallen ill in court on the 1st December and ran a high temperature for four or five days and came to court actually after eleven days. The answer to the question, whether this constituted sufficient cause for the defendant's failure to appear in court when the case was called on for hearing on the 3rd December 1956, depends on

whether it was reasonably practicable for the defendant to engage another lawyer in place of Chunilal Chakravarty by the time when the case was called on for hearing. I would ordinarily think it very difficult for such arrangements to be made by engaging a new lawyer in place of the old lawyer within a day or two when the first lawyer falls suddenly ill. Even if the case be very simple as urged before us by the learned Advocate for the opposite party, one has to remember quite apart from the difficulty of a party being able to make proper arrangements for payment of fees which the new lawyer will reasonably demand, that the lawyer who is approached to take up a case with such short notice will want to be supplied with all papers and will also require some time to study the relevant law on the point. It is not fair to think that a lawyer must always be so well-versed in all branches of law as to be able to argue a matter without previous study or preparation. It is not only fair to the lawyer but fair to the parties and fair to the court that a lawyer should be allowed reasonable opportunity to prepare himself. We find, however, that the trial court as well as the court of appeal below thought that there was no sufficient cause. The appellate court even went to a consideration of the case on its merits. It seems to me wholly unfair to consider merits in the case when only one party has been heard. In our opinion, the courts below acted with material irregularity in the exercise of jurisdiction in refusing to take notice of the actual position that it is not possible to make arrangements for a new lawyer to accept charge of a case in place of an old lawyer within one or two days.

2. We, therefore, make this Rule absolute, set aside the orders passed by the courts below and order that the application under Order 9, rule 13 of the CPC be allowed, the ex parte decree be set aside and the suit restored for hearing and disposal in accordance with law. The parties will bear their own costs in this Court.