

D/L- 6
16/04/2025
Ct. No.-6
Aritra

C.O. 1037 of 2025

**Sekh Roup Ali
Vs.
Nasreen Khatoon**

Ms. Sohini Bhattacharya
...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated February 10, 2025 passed by the learned Civil Judge (Jr. Div.), 5th Court, Howrah in Title Suit No.1319 of 2022.

By the order impugned, the order fixing the suit for *ex parte* hearing was vacated and the written statement was accepted subject to payment of cost.

The learned advocate appearing for the petitioner submits that the opposite party herein is trying to delay the hearing of the suit and for such reason the suit should proceed *ex parte* against the defendants.

Order 9 Rule 7 of the Code of Civil Procedure states that where the Court has adjourned the hearing of the suit *ex parte* and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day, fixed for his appearance.

The opposite party herein filed an application praying for vacating the order fixing the suit for *ex parte* hearing. It has been specifically stated in the said application that the defendant has not received any summons in connection with the Title Suit No.1319 of 2022, but only after receiving the summons of the Misc. Case No.193 of 2023 he got the knowledge of the aforesaid title suit and, thereafter appeared in the said suit by filing a vakalatnama. It has been further stated in the said application that due to non-availability of some relevant documents the defendant could not file the written statement within the stipulated time and for which the suit was fixed in the *ex parte* board.

After going through the application filed by the opposite party herein for vacating the order of *ex parte* hearing, this Court is of the considered view that the opposite party has assigned good cause for his previous non-appearance and for not filing the written statement within the stipulated time limit.

The learned Trial Judge was thus right in vacating the order of *ex parte* hearing and accepting the written statement subject to payment of cost.

That apart, a contested hearing with regard to a dispute pertaining to an immovable property shall serve the interest of justice.

For all the reason as aforesaid, this Court is not inclined to interfere with the order impugned.

Accordingly, CO 1037 of 2025 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)