

11.6.2026  
Ct. no. 6  
S/L.22  
Samarpita

**IN THE HIGH COURT AT CALCUTTA**  
CIVIL REVISIONAL JURISDICTION  
(Appellate Side)

**C.O. 544 of 2026**

**Farid Khan & Anr.**

**-Vs-**

**Firoz Khan & Ors.**

Mr. Amit Baran Dash,  
Ms. Ankana Sarkar  
...for the petitioners.

Mr. Arijit Chatterjee,  
Ms. Pronita Paramanya Naskar  
... for the Opposite Parties

1. This revisional application is directed against an order dated January 29, 2026 passed by the learned Civil Judge (Senior Division), 2<sup>nd</sup> Court at Contai, in Title Suit No. 240 of 2022, whereby, the petitioners' application under Order IX Rule 7 of the Code of Civil Procedure, 1908 has been rejected and the suit has been directed to proceed *ex-parte*.
2. Title Suit No. 240 of 2022 has been instituted by the opposite party praying *inter alia* for a decree of declaration and cancellation of a deed of conveyance executed by the opposite party in favour of the petitioner on March 8, 2022. An alternative prayer for decree of money has also been made.
3. In the said suit, the petitioners entered appearance on February 22, 2023 and prayed

for time to file written statement. Such prayer was allowed. On the next date fixed i.e. July 1, 2023, time was again prayed for filing written statement which was allowed. On the subsequent date i.e. December 7, 2023 a fresh vakalatnama was filed on behalf of the petitioners and prayer for time file written statement was again made. The order dated December 07, 2023 records that prayer for time was *“allowed as they have already appeared on 22.2.2023, as per order no. 5. Hence, the suit will run ex-parte against dfnd. Nos. 1 to 5.”* By the said order the suit was posted for *ex-parte* hearing on November 11, 2024. The suit proceeded *ex-parte* thereafter.

4. On April 2, 2025, the petitioners filed an application praying for taking the suit off the *ex-parte* board upon vacating the order directing the suit to be proceeded with *ex-parte*, alongwith another application for putting up with the records. Such application was heard by the learned Trial Court and has been rejected by the order dated January 29, 2026.
5. Feeling aggrieved thereby, the petitioners have approached this Court by filing the present revisional application.

6. Mr. Amit Baran Dash, learned advocate appearing for the petitioners vehemently contends that when the order dated December 7, 2023 had allowed the petitioners' prayer for filing written statement, the Court could not have proceeded with the suit *ex-parte*.

7. It is further submitted that the petitioners have filed an application merely after a few days after the date on which the suit was set *ex-parte* showing good grounds for the petitioners' non-appearance on the earlier occasions. He relies on a judgement of the Hon'ble Supreme Court in the case of **Arjun Singh -Vs- Mohindra Kumar & Ors.** reported at **AIR 1964 SC 993** and asserts that if the defendant appears on the adjourned date and satisfies the Court that the defendant had good reasons for non-appearance on the earlier occasions then in such case, the Court would not be powerless to set the clock back.

8. Mr. Arijit Chatterjee, learned advocate appearing for the opposite party submits that the petitioners' application seeking the case to be taken off of the *ex-parte* board is merely a ploy to protract the present litigation. He submits that the petitioners' opportunity to

file written statement was closed the moment the suit was set *ex-parte*.

**9.** It is further submitted that the application filed by the petitioner praying for taking the suit down from the *ex-parte* board does not show any cause that could have satisfied the Court to vacate the order of fixing the suit for ex-parte hearing.

**10.** Mr. Arijit Chatterjee, learned advocate relies on a judgement of the Hon'ble Supreme Court in the case of **Parimal -Vs- Veena alias Bharti** reported at **(2011) 3 SCC 545** to demonstrate how the expression "sufficient cause" should be construed and interpreted.

11. Heard learned advocates appearing for the respective parties and considered the material on record.

12. A meaningful reading of the order dated December 7, 2023, does not suggest that the suit was not set *ex-parte* on the said date itself. The use of the expression "*allowed*" after the words "*Prayer*" at the first blush might indicate that the petitioners' prayer for filing written statement was allowed on that date but the words which follow the ultimate order on the prayer indicate a contrary trend.

13. In any view of the matter, there is nothing on record to show that either on the

said date, or on any date prior to April 2, 2025, the petitioners made any attempt to file written statement even if the petitioners' case is accepted at face value.

14. Furthermore it is clearly not the petitioners' case in the application filed before the learned Trial Court seeking recall of the order fixing the suit for *ex-parte* hearing, that the petitioners were misled by the use of the expression "*Prayer is allowed*" in the order dated December 7, 2023, as argued by Mr. Dash.

15. The application merely says that the petitioners could not contact their learned advocate since because of their engagement in work.

16. Such an explanation in the application by itself without anything more does not inspire confidence of the Court to set the clock one and a half years back from the date when the said application was filed.

17. The judgement of the Hon'ble Supreme Court in the case of **Arjun Singh**(Supra) is a salutary authority for cases where Court can set aside or recall orders fixing a suit for *ex-parte* hearing and set the clock back. However, in the present case the said judgement does not come to the aid of the

petitioners since the petitioners have failed to make out a satisfactory case.

18. Although, the reason given by the learned Trial Court that the remedy of the petitioners lies under Order IX Rule 13 of the Code, is improper, yet since the ultimate conclusion reached by the learned Trial Court is justified, therefore this Court is not inclined to interfere with the order impugned.

19. However, since the petitioners have re-appeared by filing an application under Order IX Rule 7 of the Code therefore in terms of the law laid down by the Hon'ble Supreme Court in the case of **Arjun Singh** (Supra) the petitioners shall definitely be entitled to participate in the proceedings that would be continued on and from the date when petitioners have re-appeared. The petitioners would therefore, be entitled to participate in the argument and in any other proceeding that may be taken up after the date of their such appearance.

20. With the aforesaid observation, **C.O. 544 of 2026** stands disposed of. There shall be no order as to costs.

21. Urgent photosat certified copy of this order, if applied for, be supplied to the

parties upon compliance of all requisite formalities.

**(Om Narayan Rai, J.)**