

Item No.-24
12.06.2026
Court No. 236
Rohan

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**RVW 195 of 2024
With
I.A. No.: CAN 1 of 2024
In
CO 640 of 2019**

**Sri Anil Krishna Paul
Versus
Sri Rabin Sarkar & Ors.**

Mr. Rahul Karmakar
Mr. Nitai Ch. Saha
Mr. Abhijit Ch. Majumder
... for the Review Petitioner

1. Affidavit of service as filed today on behalf of the review petitioner is taken on record.
2. None appears on behalf of the respondents.
3. On being asked by this Court, learned advocate for the review petitioner, upon instructions, submits before this Court that before the learned Trial Court, the Title Suit No. 109 of 2017 is still pending.
4. At the time of hearing, learned advocate appearing on behalf of the review petitioner, at the very outset, draws the attention of this Court to the order dated May 15, 2024 as passed in connection with CO 640 of 2019, whereby and whereunder, this Court while dismissing the said revisional application, affirmed the

impugned Order No. 13 dated December 19, 2018 as passed by the learned Civil Judge (Junior Division), 1st Court, Diamond Harbour in Title Suit No. 109 of 2017.

5. Further attention of this Court is drawn to page No. 81 and 82 of the CO 640 of 2019, being a copy of the petition as filed by the defendant No. 12 of the said suit, whereby a prayer was made before the learned Trial Court for directing the personal appearance of all the plaintiffs before the said Court which was rejected by the said impugned order dated December 19, 2018 by the said Trial Court.
6. It is submitted further that in the said application, it was the specific case of the defendants that most of the plaintiffs did not file Title Suit No. 109 of 2017 and they have not signed the plaint and even the *Vakalatnama*. Drawing the attention to page Nos. 84 and 85 of the said CO, being a copy of the written objection as filed by the plaintiffs against the said application for personal appearance as filed by the defendant No. 12, it is contended that in such written objection, the specific allegation of the defendant No. 12, who is the review petitioner before this Court, has not been specifically denied.
7. At this juncture, learned advocate for the review petitioner/defendant No. 12 draws the attention of this

Court to the provision of Order V Rule 3 of the Code of Civil Procedure, 1908.

8. For effective adjudication of the instant review petition, this Court proposes to quote Order V Rule 3 in verbatim and the same is as under:

“...3. Court may order defendant or plaintiff to appear in person. - (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.”

9. It is argued that the provision of Order V Rule 3(2) of the Code of Civil Procedure empowers a Court to require the personal appearance of the plaintiff in the event the Court sees reason to do the same. It is submitted that at the time of hearing of the said revisional application, due to *bona fide* mistake, the aforementioned provision of law could not be shown to this Court. It is, thus, submitted that for non-consideration of the aforementioned provision of the Code of Civil Procedure, an error occurred while passing the order dated May 15, 2024 in CO 640 of 2019, which may be rectified by allowing the instant review petition.

10. It is further submitted that at the time of hearing of the said CO, the factum of non-denial of the specific assertion of defendant No. 12 by the plaintiffs also could not be brought into the notice of this Court.
11. On careful perusal of the entire materials as placed before this Court and after giving due consideration over the provision of Order V Rule 3(2) of the Code of Civil Procedure, it appears to this Court that a Civil Court is empowered to ensure personal appearance of the plaintiffs on the day of appearance of the defendants, pursuant to the issuance of summons.
12. It appears to this Court that sufficient materials have been placed before this Court that before the learned Trial Court, specific assertions have been made by the defendant No. 1 by filing a petition stating *inter alia* that most of the plaintiffs have not signed either in the plaint or in the *Vakalatnama*.
13. This Court has perused the copy of the written objection as filed by the plaintiffs against such petition wherein, no specific denial has been made with regard to the allegations as raised by the defendant No. 12. This Court finds no positive assertion in the said written objection on behalf of the plaintiffs regarding their signature either on the plaint or in the *Vakalatnama*.

14. Such being the position, it appears to this Court that the present review petitioner is successful in making out a case for invoking the power of Order XLVII Rule 1 of the Code of Civil Procedure.
15. Accordingly, the prayer for review is allowed.
16. Consequently, the order passed by this Court on May 15, 2024 in connection with CO 640 of 2019 is hereby recalled.
17. Consequently, CO 640 of 2019 is hereby allowed.
18. Consequently, the impugned Order No. 12 dated December 19, 2018 as passed by the learned Civil Judge (Junior Division), 1st Court, Diamond Harbour in Title Suit No. 109 of 2017 is hereby set aside.
19. Consequently, all the plaintiffs, in connection with Title Suit No. 109 of 2017 as pending before the learned Trial Court, are directed to appear personally, positively on July 3, 2026 before the learned Trial Court, failing which, the learned Trial Court shall issue non-bailable warrant of arrest against the plaintiffs.
20. With the aforementioned observations, the instant review petition, being **RVW 195 of 2024**, is **disposed of**.
21. With the disposal of the instant review petition, all pending interlocutory applications are disposed of.

22. Before parting with, liberty is given to the learned advocate-on-record for the review petitioner to communicate the server copy of this Court to the learned Trial Court forthwith and the learned Trial Court is directed to act on the server copy of this order.
23. Learned advocate-on-record for the review petitioner is further directed to communicate the server copy of this order to all the plaintiffs of the Title Suit No. 109 of 2017 by speed-post and to file proof of service thereto before the learned Trial Court on the day of appearance of the plaintiffs as fixed by this Court.
24. Department is once again reminded to carry out necessary amendment in the cause-title of the review petition as directed by this Court on April 2, 2026.

(Partha Sarathi Sen, J.)