

07.04.2026
Sl. 15
Subadip
Ct.No.-4

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

CO 17 of 2026

**Soumen Das & Ors.
Vs.
Sanjana Agarwal & Anr.**

Mr. Bapi Sarkar,
Mr. Roumyadip Saha.

...for the petitioner

Mr. Subham Ghosh,
Mr. Mayank Roy.

...for the respondent

Heard on: 07.04.2026

(In court :-)

1. The present application is filed under Article 227 of the Constitution of India challenging the impugned order dated 07.02.2026 (Order No.52) passed by the learned Trial Court in connection with Title Suit No. 35 of 2018.

2. By passing the impugned order the petition filed by the petitioner (defendant in the suit) under Order 9 Rule 7 C.P.C. was rejected.

3. Being aggrieved by and dissatisfied with the said impugned order the present application is filed at the behest of the petitioner/defendant.

4. A suit for specific performance of contract was instituted by the plaintiff (opposite party herein) against the defendant (petitioner). As reflected in the impugned order, the defendant was not present at the time of the proceedings, and consequently, the suit was posted for ex-parte hearing. During the ex-parte proceedings, the plaintiff adduced one witness, who was examined in the absence of the defendant and thereafter discharged.

5. Upon becoming aware of the ex-parte proceedings, the defendant filed an application under Order IX Rule 7 of the Code of Civil Procedure on 03.10.2018, seeking to vacate the ex-parte hearing and to permit him to contest the suit. It is the petitioner's stand that, along with the said application, a written statement was also filed on 03.10.2018. The Trial Court, by its order dated 16.01.2019, accepted the written statement subject to the payment of a cost of Rs. 300/- payable to the plaintiffs, thereby allowing the defendant to participate in the proceedings on the condition of compliance with the cost order.

6. It is further contended on behalf of the petitioner that, subsequent to filing the written statement and the application, a miscommunication

arose between the petitioner and his learned Advocate, which resulted in the petitioner being unable to appear before the Court for a substantial period. The learned Trial Court, however, disbelieved the grounds stated in the petition filed by the defendant and rejected the application, proceeded to continue the matter ex-parte.

7. Learned Counsel for the petitioner has submitted that the defendant was at all times aware of the suit and was desirous of contesting the matter. The failure to appear before the Court was solely due to the unforeseen problems between the petitioner and his learned Advocate, which caused the defendant to remain unrepresented for an extended period. In light of these circumstances, it is submitted that the application filed under Order IX Rule 7 of the C.P.C. deserves to be allowed, thereby vacating the ex-parte proceedings and permitting the defendant to contest the suit on its merits.

8. Per contra, the learned Advocate appearing for the opposite party/plaintiff contends that there is no illegality or material irregularity in the impugned order dated 07.08.2026 passed by the learned Trial Court. It is submitted that the petitioner/defendant has failed to assign sufficient reasons in the petition

filed under Order IX Rule 7 of the Code of Civil Procedure (C.P.C.), and, therefore, the rejection of the petition by the Trial Court does not suffer from any infirmity.

9. It is further contended that the mere filing of a written statement, even if accepted by the Trial Court, does not, in itself, constitute a ground for entertaining an application under Order IX Rule 7 C.P.C. According to the learned Advocate, acceptance of the written statement cannot automatically entitle the petitioner/defendant to set aside an ex-parte proceeding unless sufficient cause is demonstrated.

10. In support of this contention, reliance has been placed upon the decision of the Hon'ble Supreme Court in ***H. Guruswamy & Ors. -Vs- A. Krishnaiah Since Deceased by LRs***, reported in **2025 SCC Online SC 54**.

11. On the basis of these submissions, it is argued that the petition filed by the petitioner/defendant under Article 227 of the Constitution of India challenging the impugned order lacks merit and is not sustainable in law. Consequently, it is urged that the application may

be rejected outright, and the impugned order of the learned Trial Court may be affirmed in its entirety.

12. I have anxiously considered the rival submissions advanced by both parties and have carefully perused the materials on record.

13. It appears from the record that the defendant filed a written statement on 03.10.2018 along with an application under Order IX Rule 7 of the Code of Civil Procedure (C.P.C.) seeking to vacate the ex-parte proceedings. It is pertinent to note that due to non-appearance of the defendant, the learned Trial Court had posted the suit for ex-parte hearing, during which the plaintiffs adduced one witness, who was examined ex-parte and subsequently discharged.

14. The order of the Trial Court dated 16.01.2019 records that the written statement filed by the defendant may be accepted, subject to the payment of a cost of Rs. 300/- to the plaintiffs. The Court further directed that the next date be fixed for compliance with the payment of the said cost. It appears from the subsequent order dated 09.09.2019 that the cost was duly paid and the money receipt was filed on record.

15. From the above, it is evident that the defendant entered appearance in the proceedings and, after the suit had been posted for ex-parte hearing, filed an application under Order IX Rule 7 along with the written statement, demonstrating a clear intention to contest the case. The written statement was accepted, subject to the compliance with the cost order.

16. These facts establish that the defendant had actively taken steps to participate in the proceedings and had complied with the conditions imposed by the Trial Court, thereby placing the written statement on record for consideration during the contested hearing.

17. The learned Trial Court dismissed the application filed by the petitioner/defendant under Order IX Rule 7 of the Code of Civil Procedure solely on the ground that the petitioner had not taken any steps in the matter for a period of approximately three years. However, as appears from the petition filed under Order IX Rule 7, the petitioner's inaction during this period was attributable to non-communication with his then learned Advocate. On account of this miscommunication, the petitioner was unable to take appropriate steps before the

Court, which ultimately led to the posting of the suit for ex-parte hearing.

18. It is evident from the record that the petitioner had filed a written statement along with the application under Order IX Rule 7, thereby demonstrating a bona fide intention to contest the suit and to vacate the ex-parte proceedings. The Trial Court, while accepting the written statement, imposed certain condition, which was duly complied with by the petitioner. Consequently, the written statement is duly recorded on the file and has been accepted by the Court, reflecting the petitioner's genuine desire to participate in the proceedings.

19. In case of **H. Guruswamy (supra)**, the Apex Court observed that while the length of delay is a relevant factor to be considered when condoning delay, the Court must examine whether the litigant has assigned sufficient cause for such delay. In the cited case, the Apex Court held that the length of delay is a relevant factor and that unless the appellant or litigant can show bona fide cause for the delay, condonation cannot be granted. It is held by the Apex Court that though courts generally adopt a liberal approach in condoning delay to advance substantial justice, such discretion cannot

be exercised in a routine or mechanical manner. Each case must be decided on its own facts. If sufficient cause is shown, opportunity should be given. The judgment also reiterates that where a party is able to show bona fide reasons, courts should lean in favour of giving an opportunity to contest the matter on merits.

20. In the instant case, it has been submitted on behalf of the petitioner that the problem arose due to the previous Advocate retaining documents and failing to communicate with the petitioner. It is a well-settled proposition of law that a litigant should not suffer on account of the negligence or lapse of an Advocate representing them. The petitioner had clearly shown willingness to contest the case, as evidenced by the filing of the written statement and the application under Order IX Rule 7.

21. Under Order IX Rule 7 CPC, the defendant is only required to show 'good cause' for non-appearance, and where such cause is demonstrated, and no prejudice would be caused to the opposite party, the Court ought to permit the defendant to participate in the proceedings so that the matter may be decided on merits.

22. It is well settled that the scope and object of Order IX Rule 7 of the Code of Civil Procedure are to advance the cause of justice by enabling a defendant, who had failed to appear when the suit was called on for hearing, to re-enter the proceedings upon showing "good cause" for such non-appearance. The provision does not contemplate a rigid or technical approach; rather, it vests a discretionary power in the Court, to be exercised judiciously and in furtherance of substantial justice.

23. The expression "good cause" employed in Order IX Rule 7 CPC is to be construed liberally so as to ensure that a party is not denied the opportunity of being heard on mere technicalities. The defendant is not required to establish a case on merits at this stage, nor to demonstrate a sufficient cause of the same rigour as may be required under provisions relating to setting aside an ex parte decree. It is sufficient if the explanation offered for non-appearance is bona fide, plausible, and free from any element of deliberate negligence or malafide intention.

24. Once the Court is satisfied that the defendant was prevented by good cause from

appearing at the relevant stage, the normal rule is to permit such defendant to participate in the proceedings from the stage at which he seeks to rejoin. This approach is consistent with the fundamental principle that disputes should, as far as possible, be adjudicated on merits rather than being disposed of on procedural defaults.

25. Equally important is the consideration of prejudice to the opposite party. Where allowing the application under Order IX Rule 7 CPC would not result in irreparable prejudice or injustice to the plaintiff, and any inconvenience caused can be adequately compensated by costs, the balance tilts in favour of granting such relief. Courts have consistently held that procedural laws are handmaids of justice and ought not to be applied in a manner that defeats substantive rights.

26. Therefore, in a case where the defendant demonstrates good cause for earlier non-appearance and seeks to participate in the proceedings at a stage where no serious prejudice would be caused to the opposite party, the Court ought to exercise its discretion in favour of allowing the application. Such an approach not only upholds the principles of natural justice but also ensures that the lis is

decided comprehensively and conclusively on its merits, after affording both parties a fair opportunity of hearing.

27. Considering the above facts, it is apparent that permitting the petitioner/defendant to contest the suit would not prejudice either party. Any inconvenience or delay caused by the petitioner can be adequately compensated by the imposition of an appropriate cost.

28. It is further observed that the Trial Court rejected the petition solely on the ground of delay, notwithstanding the petitioner's bona fide intention to contest the matter. This constitutes an illegality and a material irregularity.

29. Accordingly, the impugned order dated 07.02.2026 passed by the learned Trial Court, insofar as it rejected the petitioner's application under Order IX Rule 7 solely on the ground of delay, is not sustainable under law and deserves to be set aside.

30. The application filed by the petitioner under Article 227 of the Constitution of India is hereby allowed.

31. The impugned order dated 07.02.2026, passed by the learned Trial Court, is set aside.

32. Consequently, the petition filed by the defendant under Order IX Rule 7 of the Code of Civil Procedure is allowed, subject to the payment of a cost of Rs. 10,000/- (Rupees Ten Thousand) by the defendant to the plaintiff within two weeks from the date of this order. Upon compliance with the payment of the said cost, the defendant shall be granted the opportunity to contest the suit before the Trial Court.

33. It is further noted by the learned Advocate for the plaintiff that the suit is presently at the stage of final hearing. The learned Trial Court is accordingly requested to ensure that all necessary steps are taken to expedite the proceedings, while providing full and fair opportunity to both parties to present their case.

34. The Trial Court is expected to conduct the proceedings in a prompt and efficient manner to ensure a conclusive adjudication of the suit at the earliest possible time.

35. Let a copy of this order be sent down to the Trial Court immediately for necessary compliance.

36. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)