

Mat 98/23 (CIS 98/23)

Order dated 22.04.2025

Today is fixed for exparte hearing.

The petitioner files appearance through their ld counsel.

Ld advocate for the petitioner is present.

The OP moves the record “in person” and files an application praying for vacating the order of exparte hearing passed against him on 04.03.2025. Copy of the application is served upon the other side.

It is submitted by OP that he could not appear before this court in time due to his illness. It is further submitted that OP will suffer irreparable loss and injury if he is not allowed to contest the case.

The petitioner raises objection to the prayer for setting aside exparte hearing against the OP .

It is laid down under order 9 rule 7 CPC that where the court had adjourned the hearing of the suit exparte and the defendant had appear before such hearing commences and assign good cause for his previous non appearance; he may upon such terms as the court direct as to cost or otherwise be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

In the present case the suit has not been heard in its entirety . Such can made out from the fact that evidence of the petitioner is yet to begin. Now it appears that the OP intends to contest this suit and he could not appear on previous occasion for no fault of his own since he was suffering from illness and he is required to be heard for arriving at a just and fair decision of this case.

Thus for ends of justice, the prayer for recall order of exparte hearing is allowed.

Hence, it is

ORDERED

the prayer of the OP dated 22.04.2025 for setting aside exparte order is allowed on contest but as last chance.

Fixing 09.06.2025 for PH.

The OP is directed to be present on next date fixed failing which the liberty granted to him shall be vacated.

Addl. Dist. & Sessions Judge,
FTC-I, Alipurduar.

Additional Dist. & Sessions Judge,
1st Fast Track Court, Alipurduar.

