

**Present**  
**Mr. Justice Nozrul Islam Chowdhury**

**and**

**Mr. Justice Mohammad Ullah**

**Civil Revision No. 1702 of 2012**

Md. Mojibur Rahman Gazi  
.....Defendant-Petitioner

-Versus-

Abdul Latif Sardar and another  
.....Plaintiff-Opposite Parties.

Mr. Khijir Ahmed, Advocate with  
Mr. Dider Alom, Advocate  
.....For the petitioner.

None appears  
..... For the Plaintiff-Opposite Parties.

Hearing on 24.1.2013 and 13.2.2013

and

**Judgment on 14.2.2013**

**Mohammad Ullah, J.**

On an application under section 115(1) of the Code of Civil Procedure this Rule, at the instance of the defendant-petitioner, was issued calling upon the plaintiff-opposite party No. 1 to show cause as to why the impugned order dated 10.5.2012 passed by the learned Joint District Judge, Chandpur in Civil Suit No. 06 of 2011 allowing an application dated 10.5.2012 filed by the plaintiff under section 151 of the Code of Civil Procedure to deposit the balance consideration money of

contract should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

By the Rule issuing order dated 03.6.2012 operation of the impugned order dated 10.5.2012 and further proceedings of the above suit were stayed for a period of 3 (three) months and it was extended on 14.8.2012 for a further period of 6 (six) months.

The relevant facts for disposal of the rule are briefly stated below:

The opposite party No.1 as plaintiff on 10.01.2011 instituted Civil Suit No. 6 of 2011 in the 1<sup>st</sup> Court of Joint District Judge, Chandpur impleading the petitioner and opposite party No. 2 as defendants seeking a decree for specific performance of contract. The plaintiff's case, in brief, is that the schedule land belonged to the defendant No.1, who proposed to sell the same to the plaintiff and plaintiff agreed to purchase the same at a consideration of Tk. 81,00,000/- and the defendant No.1 received Tk. 10,00,000/- as earnest money and a registered bainapatro dated 08.10.2009 was executed between them. It was stipulated that balance consideration of Tk. 71,00,000/- would be paid within 07.04.2010 and after receipt of the balance consideration, the defendant would execute and register sale deed in favour of the plaintiff. But the defendant took time on various pretexts and the plaintiff on 30.03.2010 approached the defendant to execute and register the sale deed but the defendant No. 1 delayed the matter for going to perform Hajj and thereafter, the plaintiff

on December, 2010 again approached the defendant to execute and register the sale deed as per terms of the bainapatro. But the defendant denied to execute the same, which constrained the plaintiff to file the suit for specific performance of contract. After filing the suit the plaintiff filed an application for injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

The petitioner entered appearance and on 15.04.2012 filed an application under Order 7 Rule 11 (d) of the Code of Civil Procedure praying for rejection of plaint stating inter alia that the plaintiff failed to deposit the balance consideration money amounting to Tk. 71,00,000/- at the time of filing of the suit and as such the plaint is liable to be rejected.

The plaintiff prayed for adjournment for filing written objection against the prayer for rejection of the plaint and also prayed for  $1\frac{1}{2}$  months time to deposit the balance consideration of bainapatro. Accordingly, on 26.04.2012 the date was fixed for filing written objection against the application for rejection of plaint filed by the defendant. But the plaintiff again sought for adjournment and next date was fixed on 10.05.2012 and on that date the plaintiff filed an application under section 151 of the Code of Civil Procedure to allow him to deposit the balance consideration of the bainapatro and the learned Joint District Judge, by his impugned order dated 10.05.2012 allowed the plaintiff to deposit the

balance consideration and the next date was fixed on 06.06.2012 for filing written objection and hearing the application for rejection of plaint.

Against the said order dated 10.05.2012 passed by the learned Joint District Judge, the defendant approached this Court and the Rule was issued and order of stay was passed as stated above.

Mr. Khijir Ahmed, learned Advocate appearing with Mr. Dider Alom on behalf of the defendant- petitioner submits that the very specific provision of proviso (b) of section 21A of the Specific Relief Act, provides that the balance consideration is required to be deposited at the time of filing of the suit for specific performance of contract and as such there is no scope for a purchaser to make deposit of the balance consideration money beyond the statutory period of limitation. Consequently, allowing the plaintiff to make deposit of balance consideration money is liable to be set-aside as being barred under section 21A of the Specific Relief Act.

The learned Advocate for the petitioner submits further that the defendant filed an application for rejection of plaint invoking Order 7 Rule 11(d) of the Code of Civil Procedure and the learned Joint District Judge, by his order dated 15.04.2012 fixed for hearing the said application for rejection of plaint and kept the application in the record filed by the plaintiff praying time for depositing balance consideration. But subsequently on 10.05.2012 the learned Joint District Judge, most illegally

allowed the plaintiff to deposit the balance consideration of the bainapatro which is tantamount to rejection of the application for rejection of plaint filed by the defendant-petitioner.

The learned Advocate for the defendant-petitioner lastly submits that the plaint is liable to be rejected under Order VII Rule II(d) of the Code of Civil Procedure as the plaintiff failed to make statutory deposit at the time of filing of the suit.

In support of his submission the learned Advocate for the petitioner placed reliance on the case of Imran (Md) Vs.- Shamim Kamal and others reported in 60 DLR (2008) 597.

None appears for the plaintiff-opposite party No. 1 although notice has been served upon him.

We have heard the learned Advocate for the petitioner, perused the impugned order and other materials on record and have gone through the decision referred to, wherefrom it transpires that the suit was filed on 19.01.2011 without depositing the balance consideration of the registered bainapatro dated 08.10.2009 and the plaintiff for the 1<sup>st</sup> time on 15.04.2012 prayed  $1 \frac{1}{2}$  months time for depositing the balance consideration. In the meantime the defendant filed an application for rejection of plaint and the learned Joint District Judge, ought to have taken a decision about maintainability of the suit at first. But it appears that the learned Joint District Judge, without hearing the application for

rejection of plaint allowed the plaintiff to deposit the balance consideration of the bainapatro upon allowing an application filed by the plaintiff under section 151 of the Code of Civil Procedure by his impugned order dated 10.05.2012 and fixed 6.6.2012 for depositing the balance consideration of contract. But the specific provision of section 21A of the Specific Relief Act provides that the balance consideration money is required to be deposited at the time of filing of the suit.

The Specific Relief Act, 1877 has been amended by adding section 21A by Act 27 of 2004 which runs as follows:

*“21A. Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, no contract for sale of any immovable property can be specifically enforced unless-*

*(a) the contract is in writing and registered under the Registration Act, 1908, whether or not the transferee has taken possession of the property or any part thereof; and*

*(b) the balance amount of consideration of the contract is deposited in the court at the time of filing the suit for specific performance of contract.”*

The above amended provision of section 21A of the Specific Relief Act, came into effect from 1.7.2005.

In view of the language used in section 21A of the Specific Relief Act, 1877 (as amended) with a non-obstinate clause the ouster of jurisdiction is manifestly clear in entraining suit for specific performance of contract filed after 01.07.2005 without depositing the balance consideration money in the court at the time of filing of the suit.

In the instant case admittedly the contract for sale was registered on 8.1.2009 and the suit was filed on 19.1.2011 without depositing the balance consideration of the contract. Now the question is whether non-depositing of the balance consideration of the contract at the time of filing of the suit, the plaint is liable to be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure or in other words whether the plaintiff is entitled to make deposit the balance consideration of the contract long after filing of the suit. On a careful reading of section 21A of the Specific Relief Act it appears that the provision for depositing the balance consideration money is a condition precedent failing which it would not be possible to enforce the contract by filing a suit.

We find support of the above contention in the case of Imran (Md) Vs- Shamim Kamal and others reported in 60 DLR 597. In the said reported decision it has been held that:

*“The very specific provisions of section 21A(b) provides that the balance consideration money is required to be deposited at the time of filing of the suit. In view of the above there is no scope for a purchaser to make deposit of the consideration money beyond the statutory period of limitation. Consequently the application submitted for allowing the plaintiff appellant to make deposit of the balance consideration money is rejected as being time barred.”*

Similar views were also expressed in the case of Faquir Ashraf Vs.- Mrs. Bilkis Banu reported in 2 ALR (2012) 21.

In the above facts and circumstances of the case, the provisions of law, and the decisions referred to above, we hold that after the

amendment of the Specific Relief Act, 1877 by Act No. XXVII of 2004 incorporating a new section, namely, section 21A which came into effect from 1<sup>st</sup> July, 2005 and the same being a mandatory provision of law the plaintiff has no other alternative but to deposit the balance amount of the consideration money of the contract in the court below at the time of filing of the suit, and the same having not been deposited in the court at the time of filing of the suit, the court below most illegally allowed the plaintiff to deposit the balance consideration of the contract and thereby the court below committed an error of law resulting in an error in the decision occasioning failure of justice.

In the above facts and circumstances of the case and the provision of law, we find merit in the Rule. Accordingly, the Rule is made absolute however without any order as to costs. The impugned order dated 10.05.2012 passed by the learned Joint District Judge, Chandpur in Civil Suit No. 6 of 2011 is hereby set-aside.

Now the question is whether the plaint of the suit is liable to be rejected as submitted by the learned Advocate for the petitioner.

Although allowing the plaintiff to deposit the balance consideration money of the contract is tantamount to rejection of the application filed by the defendant for rejection of plaint, the settled principle of law is that the question of maintainability of the suit should be decided at first. We have already decided that the plaintiff is not competent to deposit the



balance consideration of the registered contract long after filing of the suit, so we have to consider the question of maintainability of the suit as well.

It is well settled that the rejection of plaint is not confined to the provision of Order 7 Rule 11 of the Code of Civil Procedure. In an appropriate case while the proceeding itself is barred or an abuse of the process of the court, the court having recourse of section 151 will be competent to reject the plaint.

Moreover, when the ultimate result of the suit is as clear as day light such suit should be buried at its inception. So that no further time is consumed in fruitless litigation. Thus we feel it proper to reject the plaint of the suit as it is barred under section 21A of the Specific Relief of Act, 1877.

Accordingly, the plaint of Civil Suit No. 6 of 2011 pending in the court of learned Joint District Judge, Chandpur is rejected under section 151 of the Code read with under Order VII Rule II(d) of the Code of Civil Procedure.

Send copy of this judgment to the learned Joint District Judge, Chandpur.

**Nozrul Islam Chowdhury, J.**

I agree.