

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION**

**(CIVIL REVISIONAL JURISDICTION)**

Present

**Mr. Justice Md. Emdadul Huq**

**Civil Revision No. 3406 of 2012**

Md. Aman Ullah Dewan

.....Petitioner.

-Versus-

Md. Abdur Rob Akonda & others

.....Opposite parties.

Mr. Mosharaf Hossain, Advocate

..... For the petitioner.

Mr. Md. Abdul Quddus Talukder, Advocate

..... For the opposite partes.

**Hearing on :** The 24<sup>th</sup> November and 7<sup>th</sup> December, 2014.

**Judgment on :** The 7<sup>th</sup> December, 2014

In this Civil Revision under section 115(4) of the Code of Civil Procedure, 1908 (**shortly the Code, 1908**) leave was granted and Rule was issued about sustainability of the judgment and order dated 05-09-2012 by which the learned Additional District Judge, Chandpur allowed Civil Revision No. 20 of 2011 and thereby dismissed Pre-emption Miscellaneous Case No.8 of 2007 on setting aside the order dated 22-03-2011 passed by the learned Assistant Judge, Faridganj, who allowed the pre-emptor to deposit additional pre-emption money after institution of the case under section 96 of the State Acquisition and Tenancy Act, 1950 (**shortly the Act, 1950**).

The present petitioner, as pre-emptor, claims himself to be a co-sharer by inheritance and filed the above noted case for getting pre-emption of some land transferred by a kabala dated 09-01-2007. He filed the case on 9-04-2007 and also

deposited the consideration of the kabala being Tk. 90,000/- and 10% thereof as compensation.

During pendency of the case the pre-emptee filed an application on 27-02-2011 for dismissal of the case on the ground of non-compliance with the new section 96(3) as introduced by the State Acquisition and Tenancy (Amendment) Act, 2006 (**shortly the Amending Act, 2006**) requiring deposit of not only the consideration of the kabala but also the compensation at the rate of 25% and an additional 8% as interest on the consideration.

Thereafter the pre-emptee on 27-02-2011 filed an application for a permission to deposit the additional compensation and interest. He pleaded the ground that his advocate was not aware of the requirement of the new law.

The trial court allowed the application by order dated 23-03-2001 and the pre-emptor deposited the remaining money.

Then the pre-emptee filed the above noted Revision challenging the trial Court's order. The learned Additional District Judge after contested hearing allowed the Revision and passed the impugned judgment on setting aside the order passed by the trial Court and dismissed the pre-emption case.

At the hearing of this Revision, Mr. Mosharaf Hossain, the learned Advocate for the petitioner (pre-emptor) submits that, although the new sub-section 96(3) requires deposit of the entire pre-emption money at the time of filing the case, other provisions of the new section 96, particularly sub-section (4) and (5), permit subsequent deposit of rent and improvement cost and these provisions may be followed in relation to the initial deposit of compensation and interest.

In support of his submission Mr. Hossain, the learned Advocate refers to the case of Neaz Begum –vs- Garijan and others, reported in PLD (1966) (W.P) Peshwar-5.

Mr. Hossain, the learned advocate further submits that the pre-emptor will not suffer any loss because of the permission given by the trial about the delayed deposit and that the pre-emptor should not suffer due to the ignorance of the concerned Advocate.

In reply Mr. Abdul Kader Talukdar, the learned advocate for the pre-emptee, submits that the appellate court did not commit any error of law in holding that the mandatory provision of the amendmend section 96(3) of the Act, 1950 has not been complied with and that the effect of such non compliance is dismissal of the case itself.

Mr. Talukar, the learned advocate next submits that the Amending Act, 2006 came into force on 20-09-2006 and therefore it is applicable to the instant transfer made on 09-01-2007 and hence to the instant case instituted on 09-04-2007.

In support of his submission Mr. Talukdar, the learned advocate, refers to the case of Akhtarun Nessa and another – vs- Habibullah and others, reported in 31 DLR (AD) (1979), page- 88 ( para-28).

The legal issue raised in this case is whether subsequent deposit of part of the pre-emption money namely the remainder of the enhanced rate of the compensation and the interest as introduced by the Amending Act, 2006, which came into force before the transfer took place, will render the case liable to be dismissed.

Before addressing this legal issue, it is necessary to look into a technical legal aspect of the case. The trial court's order dated 22-03-2011 allowing deposit of the additional pre-emption money was challenged by the pre-emptee by filing an application the District Judge and it was registered as a Revision not as an Appeal.

The parties or the District Judge did not notice that according to the new section 96(15) and also the old section 96(13) of the Act, 1950, any order passed by the trial court under section 96 is appealable and not subject to Revision.

However the materials on record show that the learned Additional District Judge heard both sides and disposed of the case (Revision) on merit and recorded his findings and decision in his own way. So this Revision may be treated as an Appeal. Because of such treatment none of the parties will be prejudiced.

Next comes the legal issue raised in this Revision. It appears that admittedly the kabala was executed on 09-01-2007 and as stated in the pre-emption application itself the kabala was also registered on the same date.

It is also admitted that the pre-emptor, at the time of filing the case on 9-4-2007, did not deposit the requisite compensation at the rate of 25% and the interest at the rate of 8% of the consideration of the kabala as required by amended section 96(3) introduced by the Amending Act, 2006.

It appears that the new section 96(3) is mandatory. Because it clearly provides for the consequence of non compliance thereof. The consequence is nothing but dismissal of the case. The said sub-section (3) is quoted below: (*underlines added*)

“96.(1).....(2).....

(3) An application under sub-section (1) shall be dismissed unless the applicant or applicants, at the time of making it, deposit in the Court:

(a) *the amount of the consideration money of the sold holding or portion or she of the holding as stated in the notice under section 89 or in the deed of sale, as the case may be ;*

(b) compensation at the rate of twenty five per centum of the amount referred to in clause (a); and

(c) an amount calculated at the rate of eight per centum simple annual interest upon the amount referred to in clause (a) for the period from the date of the execution of the deed of sale to the date of filing of the application for preemption.

The new provision was introduced by the Amending Act, 2006 which came into force on the date of its publication in the gazette on 20-09-2006. This is evident from section-1(2) of the said Act. It provides that ইহা অবিলম্বে কার্যকর হইবে. So there is no doubt that the regulating provision in the instant situation is the new section 96(3), which is a mandatory provision, and the consequence of non-compliance thereof, is dismissal of the case. Ignorance of the new law on the part of the pre-emptor's Advocate is not an excuse for non compliance of the mandatory provision.

It is noted that similar provision was there in the old section 96(3).

The case of Aktarun Nessa and others –vs.-Habibullah and others, reported in 31 DLR(AD)(1979), page-88 is applicable to present situation. In this case their lordships of

the Appellate Division observed that failure to deposit the entire money renders the case liable to be dismissed.

The above noted Peshwar Case (PLD) (1966) (WP) (Peshwar-5) as referred to by Mr. Hossain, the learned advocate for the pre-emptor, is with regard to deposit of deficit court fee. It is not applicable in view of the mandatory provision of section 96(3).

The other point as raised by Mr. Hossain with regard to sub-sections (4) and (5) of section 96 relate to different aspects of the case, namely the payment of rent or making of improvement by the pre-emptee after purchase. These are subject to proof by evidence. Deposit of such money by the pre-emptors are not on the same legal footing as the statutory requirement of deposit of the entire pre-emption money at the time of filing the case.

The trial court's order allowing delayed deposit is legally erroneous. The learned Additional District Judge did not commit any error of law in setting aside the trial court's order.

In view of the above, I hold that the Rule has no merit and it is liable to be discharged.

In the result, the Rule is discharged.

No order as to costs.

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Habib/B.0