

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Miftah Uddin Choudhury

First Miscellaneous Appeal No.06 of 2013

In the matter of:

Chand Mohammad and others

... Petitioners

-Versus-

Md. Mohoshen Ali Mondal and others

... Respondents

Mr. Dewan M. A. Obayed Hossain, Advocate

... For the appellants.

None appears

... For the respondents.

Heard and Judgment on 16.09.2014.

This appeal has been preferred by the defendant/appellant against the order dated 27.06.2012, passed by the learned Special District Judge, First Court, Rajshahi, in Miscellaneous Case No.09 of 2009, arising out of Title Appeal No.155 of 2007, rejecting the application under Section 41 Rule 19(A) of the Code of Civil Procedure.

The fact necessary for disposal of the appeal in brief that appellants of this appeal preferred Title Appeal No.155 of 2007, in the Court of learned

District Judge, Rajshahi against the judgment and decree passed in a suit against them. The said appeal was transferred to the learned Special District Judge, First Court, Rajshahi, and it was fixed for hearing on 20.08.2009. On that day none appeared for the appellants, and as such the appeal was dismissed for default. Thereafter the appellants filed the instant Miscellaneous Case No.09 of 2009, under Order 41 Rule 19(A) of the Code of Civil Procedure for readmission of the said appeal, but by the impugned order the learned Special District Judge, First Court, Rajshahi, rejected the said Miscellaneous Case. The claim of the appellants stated in their application for readmission in brief, that the appellant No.2 is their tadbirkar and has been serving in a college. For his official purpose on the date fixed for hearing he went to Dhaka and for boycott of court by lawyers of the local Bar his learned Advocate could not appear before the Court and as such the appeal was dismissed for default. In rejecting the instant Miscellaneous Case the learned Special District Judge found that the appellants could not prove by filing any documentary evidence that their tadbirkar

went to Dhaka on the particular day, but the boycott of Court by members of local Bar has not been denied by anybody.

Hearing the learned Advocate of the appellants and on perusal of the impugned order I find that the learned District Special Judge committed illegality in rejecting the Miscellaneous Case because in appeal presence of lawyer is vital and presence of party is not so necessary. Apparently, the learned members of the local Bar boycotted the Court on the particular day and in such circumstances it was not possible for the lawyer engaged for the appellants to appear before the Court to conduct any case.

Accordingly, this appeal is hereby allowed. The impugned order dated 27.06.2012, passed by the learned Special District Judge, First Court, Rajshahi, in Miscellaneous Case No.09 of 2009, is hereby set aside.

The learned Special District Judge is hereby directed to readmit the appeal as prayed for.

MASUD
B.O.