

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 3217 OF 2016

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Saleh Ahmed and others

... Petitioners

-Versus-

Foyzen Nesa and others

... Opposite parties

None appears

.... For the petitioners.

Mr. N. A. M. Abdur Razzaque, Advocate

.... For the opposite party Nos.1, 2

and 8.

Heard and Judgment on 05.09.2024.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 17.07.2016 passed by the learned Additional District Judge, 4th Court, Sylhet rejecting the prayer for restoration filed in Misc. Case No.01 of 2016 filed by the plaintiff petitioner for restoration of Misc. Case No.02 of 2014 by setting aside the order dated 04.04.2016 in its original file and number should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted Arbitration Case No.31 of 2008 for setting aside Salishi Award dated 12.09.2005 alleging that the above arbitrators or Salishders passed above award being unlawfully influenced by the defendants who were locally powerful and rich people.

Above case was dismissed for default on 10.02.2014. For restoration of above Arbitration case the petitioner filed Miscellaneous Case No.02 of 2014 under Section 151 of the Code of Civil Procedure which was dismissed for default. The petitioner filed Misc. Case No.1 of 2016 for setting aside above order of dismissal and restoration of above Miscellaneous Case No.02 of 2014. The learned Additional District Judge, 4th Court, Sylhet rejected above petition under Section 151 of the Code of Civil Procedure.

Being aggrieved by and dissatisfied with above order of the learned Additional Session Judge, 4th Court, Sylhet above petitioner as petitioner moved to this Court and obtained this Rule.

No one appears on behalf of the petitioner at the time of hearing of this Rule.

Mr. N. A. M. Abdul Razzaque, learned Advocate for the opposite party Nos.1, 2 and 8 submits that the petitioner filed above arbitration case for setting aside the arbitral award. But he did not take any step for

hearing of the case on merit. As such the same was dismissed for default. The petitioners filed Miscellaneous Case No.02 of 2014 for restoration of above case which was also dismissed for default. In his petition under Section 151 of the Code of Civil Procedure the petitioner could not show any reasonable cause for setting aside the order of dismissal dated 04.04.2016 passed in Miscellaneous Case No.02 of 2014 and the learned Additional District Judge on correct appreciation of the materials on record rightly rejected above petition under Section 151 of the Code of Criminal Procedure which calls for no interference.

I have considered the submissions of the learned Advocate for the opposite party Nos.1, 2 and 8 and carefully examined all materials on record.

It turns out from the impugned order that the petitioner submitted a petition under Section 151 of the Code of Civil Procedure for setting aside the order of dismissal dated 04.04.2016 passed by the learned Additional District Judge in Miscellaneous Case No.02 of 2014 alleging that due to an error committed by his appointed Advocate and his clerk to obtained the correct date of the case caused above dismissal. The petitioner did not have any latches in taking necessary steps in above Miscellaneous Case.

The opposite party did not submit any written objection against above petition filed by the petitioners under Section 151 of the Code of Civil Procedure. The learned Additional District Judge could not find that above claim of the petitioner as to commission of mistake by his appointed Advocate Md. Ali was not true. The learned Additional District Judge rejected above petition in fact without assigning any cogent reason or ground.

The learned Advocate for opposite parties also concedes that the ends of justice will be met if above Miscellaneous Arbitration Case filed by the petitioners is disposed of on merit.

On consideration of above facts and circumstances of the case and materials on records I hold that the learned Additional District Judge committed an error in rejecting the petition of the petitioner filed under Section 151 of the Code of Civil Procedure which is not tenable in law.

In above view of the facts and circumstances of the case and materials on record I find substance in this application under Section 115 of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 17.07.2016 passed by the learned Additional District Judge, 4th Court, Sylhet in Misc. Case No.01 of 2016 is hereby set aside.

The learned Additional District Judge, Sylhet is directed to proceed with the disposal of the case expeditiously preferably within a period of 5(five) months from the date of receipt of this judgment.

MD. MASUDUR RAHMAN
BENCH OFFICER