

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

Present:

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 3444 of 2005**

Dr. M.S. Ali Waqf Estate, represented by its  
Mutwali Md. Asaduzzaman

..... Petitioner

-Versus-

Nishat Muhammad

..... Opposite Party

Mr. Tabarak Hossain, Senior Advocate

....for the Petitioner

None appears

.... for the -Opposite Party

**Heard on: 27.10.2024, 28.10.2024 and 29.10.2024**

**Judgment on: 30.10.2024**

In the instant civil revisional application filed under Section 25 of the Small Cause Courts Act, 1887, this Court on 21.08.2005 issued a Rule calling upon the opposite party to show cause as to why the judgment and order dated 10.08.2005 passed by the Senior Assistant Judge, 6<sup>th</sup> Court of Assistant Judge, and S.C.C. Judge, Dhaka in S.C.C. Suit No. 41 of 2002 allowing the application under Section 17(7) of Code of Civil Procedure and reviving the suit upon setting aside the *ex parte*

decree passed in S.C.C. Suit No. 41 of 2002 to its file and number should not be set aside.

At the time of issuance of the Rule, this Court passed an interim order staying operation of the judgment and order dated 10.08.2005.

When the Rule was taken up for hearing, Mr. Tabarak Hossain, the learned Senior Advocate appearing for the plaintiff petitioner, filed an application under Order 23 Rule 1 of the Code of Civil Procedure (CPC) for withdrawal of the suit. It is stated in the said application that during pendency of the Rule, the tenant on his own volition vacated the suit premises and moved elsewhere and the plaintiff petitioner demolished the shop house situated on the suit premises and started construction of a multistoried building thereon. It is further stated that since the subject matter of the suit is not in existence and the tenant has vacated the suit premises the plaintiff-petitioner does not want to continue with the suit and as such, begs to withdraw the suit as whole.

On hearing the learned Counsel and perusal of the application for withdrawal of the suit, I find substance in the application. Accordingly, the same is allowed.

In the result, S.C.C. Suit No. 41 of 2002 of the 6th Court of Assistant Judge, Dhaka is withdrawn as per prayer of the plaintiff petitioner. The Rule is disposed of accordingly.