

**District- Rajbari**

**In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)**

Present:

Mr Justice Md Atoar Rahman

**Civil Revision No 3789 of 2016**

Mst Nurunnahar Iqbal and others

...plaintiff-appellant-petitioners

- versus-

Md Rustom Ali Bepari and others

...defendant-respondent-opposite  
parties

Mr Md Sumon Ali, Advocate

....for plaintiff-appellant-petitioners

Mr Md Abdus Sabur Khan, Advocate

... for the defendant-respondent-opposite  
parties

**Heard on: 06.02.2024 and 11.02.2024**

**Judgment on: 21.03.2024**

This Rule was issued upon an application under section 115(1) of the Code of Civil Procedure, 1908 calling upon the opposite party Nos 1 to 5 to show cause as to why the impugned judgment and decree dated 03.08.2016, passed by the learned Additional District Judge, Rajbari in Title Appeal No 42 of 2015, dismissing the appeal and affirming the judgment and decree dated 16.03.2015, passed by the learned Senior Assistant Judge, Sadar, Rajbari in Title Suit No 49 of 2008, dismissing the suit should not be set aside and/or passed

such other or further order(s) as to this court may seem fit and proper.

During issuance of the Rule the parties were directed to maintain status quo regarding transfer of the suit land.

The facts for the purpose of disposal of the Rule are that the petitioners as plaintiffs instituted Title Suit No 49 of 2008 in the Court of Senior Assistant Judge, Sadar, Rajbari impleading the present opposite parties as defendants for specific performance of contract stating *inter alia* that the defendant opposite party No 1 Md Rustom Ali Bepari having inherited the suit land entered into a registered contract for sale of the same with them (plaintiff-petitioners) and received taka 3,70,000.00 as earnest money out of total consideration money of taka 3,75,000.00. Thereafter they (plaintiff-petitioners) requested him (defendant-opposite party No 1) to receive the balance amount of the consideration money at taka 5,000.00 and to execute and register the deed of sale, but he denied to do so. Hence, the suit was instituted for specific performance of contract.

The defendant Nos 1, 3 to 5 and 6 contested the suit by filing three sets of written statements denying all the material assertions made in the plaint.

Learned Judge of the trial court after conclusion of the trial considering the evidence on record and the facts and circumstances of the case dismissed the suit by the judgment and decree dated 16.03.2015, against which the plaintiff-petitioners preferred an appeal being Title Appeal No 42 of 2015 in the Court of District Judge, Rajbari. On transfer the title appeal was heard by the learned Additional District Judge, Rajbari who by the impugned judgment and decree dated 03.08.2016 dismissed the appeal and affirmed the judgment and decree passed by the trial court.

Being aggrieved by and dissatisfied with the above judgment and decree passed by the lower appellate court, the plaintiff-appellants moved to this court with an application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and the order for maintaining status quo.

Mr Md Sumon Ali, the learned Advocate appearing on behalf of the plaintiff-appellant-petitioners having referred to the case of *Ashraf Ali Vs Etim Ali*, reported in 11 DLR (185) submits that the courts below dismissed the suit mainly relying on the minors' contract being void. But both the courts below failed to consider that in an executed contract where the minors' part has been performed and nothing is left to be executed by the minors such a contract is enforceable in law by the minors as it is a contract for the benefit of

the minors being completed by sale in their favour. As such, the learned Judge of the trial court having wrong conception of law dismissed the suit and similarly the learned Judge of the appellate court also having committed an error of law resulting in an error in such decision occasioning failure of justice dismissed the appeal, which is liable to be set aside.

Mr Md Abdus Sabur Khan, the learned Advocate appearing on behalf of the opposite party Nos 2, 3, and 4 opposes the Rule.

I have heard the submissions placed by the learned Advocates for both the sides and perused the record along with the impugned judgment and other connected papers.

It appears that the learned Judges of both the courts below dismissed the suit as well as the appeal holding that the contract for sale in question itself is void-ab-initio as the plaintiffs were minors at the time of execution of the contract and, as such, as per section 11 of the Contract Act, 1872 said contract is not enforceable.

I have gone through the case of *Ashraf Ali Vs Etim Ali*, reported in 11 DLR, 185, referred to the learned Advocate for the petitioners.

In the above case one of the points raised in support of the Rule was that the contract in question to which a minor was a party,

and stood void under the Contract Act, 1872 for want of reciprocity and mutuality. In support of his contention the learned Advocate for the petitioner of that case relied upon the decisions of the Privy Council case of *Mohori Bibi Vs Dharmodas Ghose*, of *Mir Sarwarjan Vs Fakbrudiin Mahomed Chawdhury* and the case of *Gobinda Kurup Vs Bakku and others*. His lordship elaborately discussing a judgment passed by a Full Bench of Madras High Court in the case of *AT Rghava Chariar Vs OM Srinivas Rghava Chariar*, (wherein the decision passed in the case of *Mohori Bibi Vs Dharmodas Ghose* was explained and discussed) was pleased to discharge the Rule making following observations:

*“There is difference between executory contract and executed contract. If in executed contract the minor’s part has been performed and nothing is left to be executed by the minor, i.e., no obligation is left to be discharged by the minor and to be enforced against him, such a contract is enforceable by the minor, as it is a contract for the benefit of the minor, such as completed by sale or mortgage in favour of the minor and is enforceable in law. There may be some difficulty in case of a transfer by way of lease to a minor. It is because of the obligation to pay rent by the minor or other covenants in the lease creating obligation yet to be discharged by the minor. Sections 10 and 11 of the Contract Act enacted for the benefit and protection of the minor cannot be made to operate*

*against the minor. It is true the contract in which the minor is a party cannot be enforced against the minor, but that does not mean the major party who with his eyes wide open to the fact of the minority of the other side entered into a contract with him, and, after taking advantage of such a contract, cannot be allowed to go back from his part of the contract and repudiate it.”*

In the present case the plaintiff-petitioners were minors at the time of the execution and registration of the deed of contract in question for sale of the immovable property. The defendant-opposite party No 1 being a major entered into the contract with the minor plaintiff-petitioners and almost their (minors’) entire part has been performed and they have sought enforcement of the right created by the contract in their favour. For better appreciation of the matter section 11 of the Contract Act, 1872 is quoted below:

*“11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, who is of sound mind, and is not disqualified from contracting by any law to which he is subject”*

It appears that the above section is for protection of minor’s right, because, as per the provisions of this section a minor is not capable to enter into a contract and a contract by a minor is void. But where a minor enters into a contract and in such contract the

other party who is major and capable to enter into the contract knowingly contracts with the minor cannot deny the enforcement of the contract on the ground of minority of his counterpart, if such enforcement is for the welfare and benefit of the minor and he (minor) is willing to enforce the contract. Thus, it cannot be said that the contract in question is not enforceable by the minors, as it is for their benefit and the other party to the contract who was major during execution of the contract ie the defendant-opposite party No 1 should not be allowed to take advantage on the plea of minority of the other side to go back from his part of the contract and repudiate the same.

In view of the matter and considering the facts and circumstances of the case, I am of the clear opinion that the provisions of section 11 of the Contract Act, 1872 do not contradict to protect the minor's right and the present suit was instituted by the minors being party to the contract in order to protect their benefit and, as such, the contract is not barred by such provisions of law (section 11 of the Contract Act) and it is enforceable by law, if the same is not otherwise barred.

There is another vital legal aspect in this case which is, the present suit for specific performance of contract was instituted on 17.03.2008 and having been directed by the court the plaintiffs

subsequently on 19.03.2008 deposited balance amount of the consideration money of the contract.

It appears that at the time of filing of the suit the balance amount of consideration of the contract was not deposited in the court. Section 21A of the Specific Relief Act, 1877 was inserted by section 2 of the Specific Relief (Amendment) Act, 2004 which came into force on 01.07.2005. For better appreciation of the matter the newly inserted section is quoted below:

*“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 the contract.”*

It has already been seen that after coming into force of the above section the suit was filed on 17.03.2008. In the case of *Abul Kalam Vs Md Mohiuddin*, reported in 69 DLR (AD) 239 during



pendency of the suit for specific performance of contract having taken permission of the trial court balance amount of consideration money was deposited. Nevertheless the Hon'ble Appellate Division was pleased to hold that the deposition of the balance consideration of the contract before filing a suit for specific performance of contract is a condition precedent and that having not been done in the case, that suit is barred under section 21A(b) of the Specific Relief Act, 1877.

In the light of the above mentioned decision taken by the Hon'ble Apex Court, I am of the view that there was no scope to give direction or permission to deposit the balance amount of consideration to the plaintiff-appellants after filing the suit and, as such, the suit is hopelessly barred under section 21A(b) of the Specific Relief Act, 1877.

It has already been seen that both the courts below dismissed the suit as well as the appeal holding that the contract for sale in question itself is void-ab-initio as the plaintiffs were minors at the time of execution of the contract for sale, therefore, as per the provisions of section 11 of the contract Act, 1872 such contract was not enforceable. But I have already decided that there is no bar to enforce the contract in question on minor's ground. As such, I do not subscribe to the point of view taken by both the courts bellow

for dismissing the suit as well as the appeal, although ultimate result of the same is correct, as the suit for specific performance of contract is barred by section 21A(b) of the Specific Relief Act.

In view of the forgoing discussions, I do not find any merit in the instant Rule and, as such, the same is liable to be discharged.

Resultantly, the Rule is discharged without any order as to cost. The decision dismissing the appeal in the impugned judgment and decree passed by the lower appellate court is hereby affirmed. The plaintiffs-appellants-petitioners will be entitled to withdraw the money deposited in the trial court.

Let the lower courts' records along with a copy of this judgment be sent to the concerned courts below immediately.