

**District: Cox's Bazar**

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

**Present:**

**Mr. Justice Sardar Md. Rashed Jahangir**

**Civil Revision No. 76 of 2017**

In the matter of :

Mvi. Sirajul Mustafa and others

...Petitioners

-Versus-

Master Omar Qader and others

...Opposite-parties

Mr. Moteen Uddin Anwar, Advocate

..... For the petitioners

Mr. Mohammad Rezaul Karim, Advocate

..... For the opposite-parties

**Heard on : 30.11.2023 and**

**Judgment on : 17.12.2023**

The Rule was issued calling upon the opposite party Nos. 1-3 to show cause as to why the judgment and order dated 05.10.2016 passed by the Additional District Judge, Cox's Bazar in Civil Revision No. 18 of 2006, allowing the revision with cost of Tk.2000.00 (Taka two thousand) upon reversing the judgment and order dated 05.06.2006 passed by the Joint District Judge, First Court, Cox's Bazar in Other Class Suit No. 59 of 2002, rejecting the application for amendment of written statement filed on behalf of defendant Nos.1-3 under Order VI, rule 17 read with section 151 of the Code of Civil Procedure should not be set-aside and or

such other or further order or orders as to this Court may seem fit and proper.

The petitioners, the pro-forma opposite-party Nos. 5-18 and the predecessor of pro-forma opposite-party Nos. 19-22 as plaintiffs filed Other Class Suit No. 59 of 2002 before the Joint District Judge, First Court, Cox's Bazar praying for certain declaration as to the entitlement of the plaintiffs into the enjoyment of usufruct of the waqf property and for further declaration that defendant No. 1 is not entitled to be mutawalli of the waqf estate in question and for further declaration that the defendant No. 1 is barred in law to make any claim over the waqf property due to the judgment of Title Suit No. 28 of 1955 and for correction of B.S. khatian etc..

The defendant Nos.1-3 made appearance by filing power and written statement on 11.06.2003 denying all the averments of the plaint and prayed for dismissal of the suit. On 24.04.2006, the defendant Nos.1-3 filed an application under Order VI, rule 17 read with section 151 of the Code of Civil Procedure for amendment of written statement contending, *inter alia*, that due to inadvertence and bonafide mistake some necessary and important facts and statements could not be incorporated in the original written statement and now those are required to be incorporated by way of amendment. Learned Joint District Judge, First Court, Cox's Bazar after hearing by his order dated 05.06.2006 rejected the application for amendment of written statement. Having aggrieved by the said rejection order, the defendants being petitioners preferred Civil Revision No. 18 of 2006 before the District Judge, Cox's Bazar and on transfer the

revision was heard by the Additional District Judge, Cox's Bazar, who after hearing by his judgment and order dated 05.10.2016 allowed the revision with cost of Tk.2000/- (Taka two thousand) upon reversing the judgment and order dated 05.06.2006 passed by learned Joint District Judge, First Court, Cox's Bazar in Other Class Suit No. 59 of 2002.

Being aggrieved by and dissatisfied with the said order dated 05.10.2016 of the Additional District Judge, Cox's Bazar, the plaintiffs as petitioners filed the instant revisional application and obtained the Rule.

Mr. Md. Ali Akbar Khan Rigan, learned Advocate appearing on behalf of Mr. Moteen Uddin Anwar, learned Advocate for the petitioner with leave of the Court and submits that the defendant Nos. 1-3 in their written statement dated 11.06.2003 under paragraph no. 7 admitted the assertions of plaint made in paragraph Nos. 1-3 and now they are not allowed to incorporate any controversial statement in their written statement by way of amendment. He next submits that the defendants failed to show any cogent reason to file this application for amendment of written statement at a belated stage or in spite of due diligence they could not file the amendment application in the earliest opportunity and thus the revisional Court below committed error of law in allowing the revisional application even with a cost of Tk.2000/- (Taka two thousand). He further submits that the revisional Court below committed error of law in allowing the application for amendment with inadequate cost in view of the facts and circumstances of the suit.

On the other hand, Mr. Md. Mohi Uddin, learned Advocate appearing on behalf of Mr. Mohammad Rezaul Karim, learned Advocate

for the opposite-parties submits that the revisional Court below justly and legally allowed the application for amendment of written statement as much as the proposed amendment does not change the nature and corrector of the original suit and the same is necessary for determination of the real controversy between the parties. He next submits that the language employed in rule 17 of Order VI vesting upon the Court a wide discretion to allow the parties to amend their pleadings, in particular, the written statements at any stage of proceeding and the Court of law are very liberal in allowing such amendment unless the same is not prejudicial to the other party, in other words, if the acquired rights of the other party having not been defeated by the proposed amendment. Referring 2(two) judgments, one is the case of Managing Committee, N.M.C. Model High School and others vs. Obaidur Rahman Chowdhury and others reported in 31 DLR(AD)133 and the other one is the case of Tohfa Khatun and others vs. Moulavi Mukhlisur Rahman and others reported in 49 DLR 315, in support of his case Mr. Mohiuddin praying for discharging the Rule.

Heard learned Advocates for both the parties, perused the revisional application along with the annexures; having gone through the cited judgments.

It appears that the plaintiffs filed the suit before the Joint District Judge, First Court, Cox's Bazar and the defendant Nos. 1-3 made their appearance by filing written statement on 11.06.2003. On 24.04.2006, the date was fixed for pre-emptory hearing and the defendant Nos.1-3 filed the application for amendment of their written statement stating, *inter alia*,

that due to inadvertence some necessary facts and statements could not be incorporated in the original written statement, which is very much necessary for the purpose of determining the real controversy between the parties; but the Joint District Judge after hearing rejected the application for amendment of written statement holding that the same has been filed at a belated stage. On revision filed by the defendants on being aggrieved by the said order, the revisional Court below allowed the revisional application and thereby allowed the application for amendment of written statement, on the finding that through the proposed amendment the basic nature and corrector of the original written statement has not been changed in any manner and if the proposed amendment is allowed the plaintiffs shall not be prejudiced in any manner. It was also held that since the proposed amendment has been filed at the stage of pre-emptory hearing, thus, considering the said facts the amendment was allowed with a cost of Tk.2000/- (Taka two thousand).

Under the scheme of the Code of Civil Procedure, the parties of any suit require to incorporate or state all the material facts and necessary particulars in their pleadings to enable the Court to find out a just and legal decision considering all the possible controversies within the scope of the pleadings. The provisions of Order VI, rule 17 requires further that due to inadvertence or bonafide mistake if any party could not incorporate the necessary facts and statements in his or her pleadings or by the subsequent development it is necessary for either of the parties to amend their pleadings for the ends of justice; such prayer of amendment should be considered liberally, unless it changes the basic nature and

corrector of the suit as well as the pleadings of the parties and if from the facts and circumstances of the particular case, it would be plainly inequitable to refuse such a prayer of amendment, the Court shall not hesitate but to allow the same, as has been done by the revisional Court below. In this regard reference can be made to the judgment of our Apex Court passed in the case of Managing Committee, N.M.C Model High School and others vs. Obaidur Rahman Chowdhury and others reported in 31 DLR(AD)133.

In view of the facts and circumstances, I do not find any illegality in the judgment and order of the revisional Court below.

Accordingly, the Rule is discharged without any order as to cost.

Learned Joint District Judge, First Court, Cox's Bazar is hereby directed to hear and dispose of the substantive suit as expeditiously as possible.

Communicate the judgment at once.