

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

Present:

Mr. Justice S. M. Saiful Islam

Civil Revision No. 2115 of 2017

IN THE MATTER OF:

An application under section 115(4) of the
Code of Civil Procedure.

And

IN THE MATTER OF:

Ahedul and others

---- Plaintiff-Petitioners.

-Versus-

Md. Mojibur Rahman and others

---- Defendant-Opposite Parties.

Mr. Golam Rabbani, Advocate

---- For the Petitioners.

Mr. Mohammad Al-Amin, Advocate

--- For the Opposite Parties.

**Heard On: 12.01.2026, 18.01.2026,
25.01.2026, 26.01.2026, 02.02.2026 and
17.02.2026.**

Date of Judgment: 24.02.2026.

S. M. Saiful Islam, J.

This Rule on leave was issued upon an application under section 115(4) of The Code of Civil Procedure, 1908 calling upon the opposite parties to show cause as to why the impugned

judgment and order dated 04.06.2017 passed by the learned District judge, Lalmonirhat in Civil Revision No. 02 of 2017 in rejecting the application and affirming the order dated 15.03.2017 passed by the learned Joint District Judge, 1st Court, Lalmonirhat in Other Suit No. 08 of 2017 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts relevant for the disposal of this Rule is that the petitioners as plaintiffs filed Other Suit No. 08 of 2017 praying for setting aside the preliminary decree dated 15/01/2015 passed in Other Suit No. 22 of 2013. Other Suit No. 22 of 2013 was filed by the present defendant-opposite party and the present petitioners were impleaded as defendant Nos. 3-15 in that suit. Petitioners claim that the summons were not served upon them in that suit and the defendant- opposite party got *ex parte* decree against the petitioners in that suit. The petitioners' further claim that they came to know about the decree when the opposite party filed Execution Case No. 04 of 2016 and being informed they filed that Other Suit No. 08 of 2017 in the Joint District judge, 1st Court, Lalmonirhat. Petitioners also filed an application under Order 21 Rule 29 of the Code of Civil Procedure for stay of the Execution Case No. 04 of 2016. Learned Joint District Judge rejected the application by an order dated 15.03.2017.

The Trial Court held that the summons upon the plaintiff-petitioners were served, on their refusal to accept, by affixing a copy thereof on the door of their residence which is an approved mode of service under Order 5 Rule 17 of the Code of Civil Procedure. The Court further held that the summons upon the defendant Nos. 19 and 20 of that suit were also served in the same manner, but that defendant Nos. 19 and 20 contested the suit being aware of that summons. The Trial Court accordingly decided that there was no cogent reason to believe that the summons upon the plaintiff-petitioners was not duly served.

Being aggrieved by that order, petitioners preferred Civil Revision No. 02 of 2017 before the learned District Judge, Lalmonirhat. Learned District Judge, Lalmonirhat rejected the revisional application by the impugned order dated 04/06/2017.

Being aggrieved and dissatisfied with the order dated 04/06/2017, the petitioners filed this revisional application and obtained the Rule.

At the time of issuance of the Rule on 28.10.2024, further proceedings of the Execution Case No. 04 of 2016 was stayed for a period of one year and later on it was extended till disposal of the Rule.

Learned Advocate Mr. Golam Rabbani, appearing on behalf of the plaintiff-petitioners, submits that both the Courts

below committed errors of law, resulting errors in the decision occasioning failure of justice in holding that the summons was properly served on the petitioners. He further submits that the learned Courts below failed to consider that the defendant-opposite party committed fraud upon the court in not properly serving the summons on the plaintiff-petitioners and the learned Courts below did not consider whether the postal summons were duly served or not. He also submits that the plaintiff-petitioners are owner and possessor of the suit land and they have been possessing the suit land for long period of time. He also submits that the Defendant-Opposite Party obtained decree in the Other Suit No. 22 of 2013 by practicing fraud upon the plaintiff and for that reason plaintiff-petitioners have filed Other Suit No. 08 of 2017 for setting aside the judgment and decree of the Other Suit No. 22 of 2013. He also submits that if the plaintiff-petitioners are dispossessed from the suit land in the Execution Case No. 04 of 2016, they will suffer irreparable loss. For these reasons, learned advocate for the plaintiff-petitioners prays for making the Rule absolute directing the Court below to stay the proceeding of Execution Case No. 04 of 2016 till disposal of the Other Suit No. 08 of 2017 and also further direction to dispose of the Other Suit No. 08 of 2017 expeditiously.

On the other hand, learned Advocate Mr. Mohammad Al-Amin, appearing on behalf of the defendant-opposite party submits that the Trial Court has rightly rejected the application for stay and the revisional Court also has rightly affirmed the order of the trial Court. He asserts that the summons were duly served upon the plaintiff petitioners and they being aware of the Other Suit No. 22 of 2013, refrained from contesting the suit. He further submits that the defendant-opposite party obtained decree in that suit on contest against two defendants and after that decree appeal was filed and appellate Court also confirmed the decree of the trial Court. He also submits that the plaintiff-petitioners filed the Other Suit No. 08 of 2017 to frustrate a valid decree obtained by the defendant-opposite party and they filed the application for stay only to delay the execution of that decree. He further submits that the Defendant-opposite party should be allowed to enjoy the fruit of the decree they obtained through long legal battle. He also asserts that the Revisional Court or the Trial Court has not committed any error of law in the impugned judgment and, it has not occasioned any failure of justice. Hence he prays for discharge of the Rule.

Heard the learned Advocates for both the parties. Perused the impugned judgment and order, revisional application and annexures therewith.

On perusal of record it appears that the plaintiff petitioners filed the Other Suit No. 08 of 2017 for setting aside the preliminary decree dated 15/01/2015 passed in the Other Suit No. 22 of 2013 alleging that in that suit summons were not duly served upon the plaintiff-petitioners. Plaintiff-petitioners also filed an application for stay of the execution of the decree under Order 21 Rule 29 of the Code of Civil Procedure. Learned Trial Court rejected the application for stay after details discussion on the service of summons in the Other Suit No. 22 of 2013. Learned Court held,

“On perusal of summons it is found that present plaintiffs (as defendants No. 3, 5, 7, 8, 9, 13, 14, and 15), namely, Ahedul Islam, Naju Mia, Rahila, Dulali, Shefali, Abdul Majid, Shafiqul Islam Afjal Hossain and contesting defendants No. 19 Pulin Barmon and No. 20 Brojendra Nath refused to take summons. For their refusal copy of summons were affixed respectively on the door of their way to home which is another approved mode of service under Order 5 Rule 17 of the Code of Civil Procedure. Regarding service of summons contesting defendants No. 19 Pulin Barmon and No. 20 Brojendra Nath and non-contesting present plaintiffs under same umbrella and footing cause their summons were affixed on the door. Since defendant Nos. 19 and 20 contested the suit being aware of the suit by summon affixed on their door, there is no cogent reason to believe that summons of

the present plaintiffs were not duly affixed on their door way to home. From above perusal of records and discussion it transpires that summons were duly served in approved manner upon the present plaintiffs in original Suit No. 22/13.”

Thus it appears from the order of the Trial Court that, upon examining the service returns of the summons the Trial Court did not find any *prima facie* proof of non-service of summons and therefore rejected the application for stay, relying on the decision of our Apex Court in the case of *Jabed Ali Vs. Abdus Sobhan* reported in 55 DLR (AD) 64.

Regarding the service of summons in the Other Suit No. 22/2013, learned Revisional Court in the impugned order held,

“অন্য ২২/২০১৩ নম্বর মোকদ্দমায় এ দরখাস্তকারীগণের নামীয় সমন জারীর বিষয়টি একটি question of fact যা বর্তমান রিভিশনে বিবেচনার কোনো সুযোগ নেই। কোনো রিভিশনে তর্কিত আদেশ প্রদানে ন্যায় বিচার বিস্ত্রিত করে কোনো আইনগত ত্রুটি সংঘটিত হয়েছে কিনা কেবল সেটিই নিরূপণীয়। বিজ্ঞ নিম্ন আদালত এই দরখাস্তকারীদের নামীয় ২২/২০১৩ নম্বর অন্য মোকদ্দমায় জারীকৃত সমন নথি পর্যালোচনান্তে সঠিক হিসাবে গন্য করায় তাতে হস্তক্ষেপ করার কোনো সুযোগ নেই। তদুপরি অন্য ২২/২০১৩ নম্বর মোকদ্দমার সমনজারী রিটার্ন বিশ্লেষণে দেখা যায় এ দরখাস্তকারীগণের নামীয় সমন গ্রহন করতে তারা অস্বীকার করায় উক্ত সমন তাদের বসত ঘরের সদর দরজায় লটকিয়ে জারী করা হয়েছে যা Code of Civil Procedure এর ৫ আদেশের ১৭ নিয়ম মোতাবেক সঠিক হয়েছে। উক্ত সমন জারীর রিটার্ন এ অন্য- ২২/২০১৩ নম্বর মোকদ্দমার ৪ নং বিবাদী হারুন মিয়া স্বহস্তে স্বাক্ষর করে সমন গ্রহন করেছিলেন। উক্ত হারুন মিয়া বর্তমান দরখাস্তকারী অহেদুল ও নজুমিয়া এর সহোদর ভ্রাতা। একই জমি সম্পর্কে একজন সহোদর ভ্রাতা

সমন প্রাপ্তির মাধ্যমে মোকদ্দমার বিষয়ে অবহিত হয়ে থাকলে অপর সহোদর ভ্রাতা উক্ত মোকদ্দমার বিষয়ে আদৌ অবহিত না থাকার কোনো বাস্তব অবস্থা অনুমান করা যায় না। এমতাবস্থায় ২২/২০১৩ নম্বর অন্য মোকদ্দমায় সমনজারি সম্পর্কে তর্কিত আদেশে বিজ্ঞ নিম্ন আদালত কর্তৃক প্রদত্ত অভিমত অযৌক্তিক বিবেচনা করা যায় না।”

Thus it appears that the plaintiff-petitioners challenged the decree in the Other Suit No. 22/2013 and prayed for stay of execution of that decree, alleging that the summons were not duly served upon them in that suit. Whether the summons upon the plaintiff-petitioners in the Other Suit No. 22 of 2013 were duly served or not are to be finally decided at the time of trial of the Other Suit No. 08 of 2017. But both the Courts below, on perusal of record and upon examining the service returns of summons, did not find any *prima facie* proof of non service of summons and consequently rejected the application for stay of execution. Where there is no such proof of non-service of summons, decree holder should be allowed to enjoy the fruit of the decree and for filing a subsequent suit, further proceeding of the execution case should not be stayed. Learned Trial Court has correctly relied on the decision of the case of *Jabed Ali Sheikh Vs. Md. Abdus Sobhan* [55 DLR (AD) 64]. Accordingly, I do not find any illegality or legal infirmity or impropriety in the impugned judgment and order.

In the facts and circumstances, I find no merit in the Rule and the Rule is liable to be discharged.

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

The order of stay passed earlier by this Court is hereby vacated.

Concerned section of this Court is hereby directed to send down the lower Court records to the concerned Court below along with a copy of this judgment and order forthwith.