

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

Civil Revision No. 3268 of 2017

In the matter of:

M/S. Jamuna Oil Company Ltd.
...Petitioner.

-Vs-

Present
Mr. Justice Mamnoon Rahman

Joinab Begum and others.
...Opposite parties.

Mr. Nusrat Alam Chisty, Adv. with
Mr. Md. Rakibul Hasan, Adv.
...For the petitioner.

None appears.
...For the opposite parties.

Heard & Judgment on: The 4th June, 2024

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite party No. 1 to show cause as to why the judgment and order dated 24.04.2017 passed by the learned 3rd Additional District Judge, Chittagong in Other Class Appeal No. 321 of 2006 rejecting the application, should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

No one appears on behalf of the opposite party to oppose the rule.

I have heard the learned Advocate for the petitioner, perused the revisional application, grounds taken thereon, necessary papers and documents annexed herewith as well as Lower Court's Record.

On perusal of the same, it transpires that the petitioner as plaintiff instituted Other Class Suit No. 157 of 1994 in the court of

Joint District Judge, 2nd Court, Chittagong impleading the opposite party as defendants. The trial court proceeded with the suit by framing Issues. The trial court after hearing the parties and considering the facts and circumstances vide judgment and order dated 29.06.2006 dismissed the suit. The present petitioner preferred appeal before the learned District Judge, Chittagong being Other Class Appeal No. 321 of 2006. The lower appellate court after hearing the parties and considering the facts and circumstances vide the impugned judgment and order dated 25.06.2008 allowed the appeal by setting aside the judgment and decree passed by the trial court and decreed the suit. Subsequently, it transpires that there was an error in the decree regarding the number of the B.S. Khatian and B.S. Dag for which the petitioner pressed an application under section 152/153/151 of the Code of Civil Procedure, 1908 before the appellate court. The appellate court however rejected the same vide the impugned judgment and order dated 24.04.2017 against which the petitioner moved before this court and obtained the present rule.

Admittedly when a court of law passed a final order the court of law itself become *functus officio* and cannot interfere or change or modify in the order which has already been passed. Section 152 of the Code of Civil Procedure, 1908 runs as follows;

“Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be

corrected by the court either of its own motion or on the application of any of the parties”.

Section 153 of the Code of Civil Procedure, 1908 runs as follows;

“The court may at any time, and on such terms as to costs or otherwise as it thinks fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding”.

So, it transpires that despite passing a final order or become *functus officio* a court of law has the ample authority to amend or correct clerical or arithmetical mistake to adjudicate the real question in controversy. In the present case in hand, it transpires from the papers and documents, especially Exhibit that the plaintiff petitioner filed B.S. Khatian No. 399 corresponding to B.S. Dag No. 2003. But inadvertently in the plaint has been written B.S. Khatian No. 311 and B.S. Dag No. 2006. On meticulous perusal of the L.C. Records, it further transpires that the petitioner-plaintiff before the trial court also filed an application for amendment of plaint to rectify the clerical errors as mentioned hereinabove dated 05.11.1998 which was duly received by the trial court. On further perusal of the order sheet of the trial court, it transpires that the trial court vide Order No. 34 dated 05.11.1998 passed an order regarding the finding

of the aforesaid application for amendment which is a pure clerical one. So, on meticulous perusal of the application for amendment, order sheet as well as the Khatian, it transpires that inadvertently the B.S. Khatian number was recorded as 311 instead of 399 and B.S. Dag Number was recorded as 2006 instead of 2003 which are required to be amended in the judgment and decree for ends of justice.

Accordingly, the instant rule is made absolute and the impugned judgment and order dated 24.04.2017 is hereby set aside. The lower appellate court is directed to amend/correct the judgment and decree passed by the courts below forthwith.

Send down the Lower Court's Record to the concerned court below with a copy of the judgment at once.

(Mamnoon Rahman,J:)

Emdad. B.O.