Present:
Mr. Justice Md. Iqbal Kabir
And
Mrs. Justice Jesmin Ara Begum

Civil Revision No. 2518 of 2017

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil Procedure
-And-

IN THE MATTER OF:

Hosne Ara
... Defendant No.2-Petitioner
Versus
Government Haji Mohammad Mohsin College and others
...Opposite Parties

Mr. Sheikh Zulfiqur Bulbul Chowdhury, Advocate with
Mr. Mohammad Shahidul Alam, Advocate
... For the Petitioner

Mr. Farid Uddin Khan, Advocate
…. For the Opposite Party No.1

Judgment on 23.10.2025

Jesmin Ara Begum, J:

This Rule was obtained by the defendant No.2/petitioner upon making a revisional application under section 115(1) of the Code of Civil Procedure against the Order No.85, dated 23.03.2017 passed by the learned Joint District Judge, 1st Court, Chattogram in Other Class Suit No.152 of 2004 rejecting the applications under section 10 and Order 22 Rule 4(3) along with section 151 of the Code of Civil Procedure.

At the time of the issuance of the Rule, this Court stayed all further proceedings of Other Class Suit No.152 of 2004, pending in the First

Court of Joint District Judge, Chattogram, for a period of 03 (three) months from the date.

Short facts narrated for disposal of the Rule are that the opposite party No.1, bing plaintiff, filed Other Class Suit NO.152 of 2004 before the Court of Jointg District Jduge, 1st Court, Chattogram for declaration of the ex-parte judgment and decree dated 27.05.2004 in Other Suit No.43 of 2000 as illegal and not binding upon plaintiff-opposite party No.1 and also to declare BS Khatian No.29 wrong, illegal, baseless and not effective which was recorded in the name of the father of defendant-petitioner and in the name of opposite party Nos.4 and 5.

Defendants Nos 2,3, and 7 contested the Other Class Suit No.152 of 2004 by filing three separate written statements. However, during trial the defendant No.2-petitioner filed two applications one under section 10 and another one under Order 22, Rule 4(3) along with section 151 of the Code of Civil Procedure, 1908 praying for the stay of the suit as another suit has already been pending being Other Suit No.75 of 1998 in the same Court between the same parties relating to the same subject matter and also praying for abatement of the suit as the only defendant had been died on 12.10.2008 and no one has been substituted till date.

After hearing the learned Advocates for both parties, the learned Joint District Judge, 1st Court, Chattogram rejected both the petitions filed under section 10 and Order 22, Rule 4(3) along with section 151 of the Code of Civil Procedure by the impugned order dated 23.03.2017.

Feeling aggrieved by and dissatisfied with the impugned order dated 23.03.2017 passed by the learned Joint District Judge, 1st Court, Chattogram in other Class Suit No.152 of 2004, the defendant No.2-petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure before this Court and obtained the present Rule and order of stay.

Mr. Sheikh Zulfiqur Bulbul Chowdhury, the learned Advocate appearing on behalf of the petitioner, submits that before instituting the Other Class Suit No.152 of 2004, another suit between the same parties on the same subject matter had already been filed, being Other Class

Suit No.75 of 1998 in the same Court. However, he submits that staying the subsequent suit under section 10 of the Code of Civil Procedure is the only rightful legal step in this respect.

On the other hand, Mr. Farid Uddin Khan, the learned Advocate appearing on behalf of the plaintiff-opposite party No.1, submits that section 10 of the Code of the Civil Procedure is not applicable here as the prayers, matter in issue, parties, and subject matter of the two suits are different. He also submits that the learned trial Court rightly rejected the application under Order 22 Rule 4(3) of the Code of Civil Procedure, because the name of the dead defendant No.1 has been struck out from the plaint. However, he submits that the claim of the defendant No.2-petitioner is not tenable in the eyes of the law.

We have heard the learned Advocates for the parties, perused the impugned order, the revisional application, the counter-affidavits along with the materials on record, and other relevant documents.

In this case we have to determine whether the provision laid down in section 10 of the Code of Civil Procedure is applicable here and whether the suit is abated as per provisions under Order 22 Rule 4(3) along with section 151 of the Code of Civil Procedure.

In order to appreciate the contentions of the learned Advocate of the petitioner and to determine the applicability of the provision of section 10 of the Code of Civil Procedure, it is necessary to examine the relevant provision of section 10 of the Code of Civil Procedure, which reads as follows.

Section 10 of the Code of Civil Procedure.

> No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating order the same title where such suit is pending in the same or any other Court in Bangladesh having jurisdiction to grant the relief claimed, or in any Court beyond the limits of Bangladesh and having like jurisdiction, or before the Supreme Court.

On perusal of the aforesaid provisions, it transpires that the important essential conditions for stay of the subsequent suit under section 10 of the Code of Civil Procedure are that 1) The matter in issue in the subsequent suit is directly and substantially in issue in the previous suit 2) The parties or their representative in the subsequent suit are parties in the previous suit 3) Such parties must be litigating under the same title in both the suits.

There cannot be an order of stay, if any one of these conditions is not fulfilled. When all the conditions are not fulfilled, the subsequent suit should not be stayed by following the mandatory provisions of section 10 of the Code of Civil Procedure.

In the instant case, it is evident from the record that the Other Class Suit No.152 of 2004 was filed by the opposite party No.1 for declaring that the exparte judgment and decree dated 27.05.2004 is unlawful and not binding upon him with a further declaration that B.S. khatian No.29 is null and void, but the Other Class Suit No.75 of 1998 was preferred by the petitioner for declaration of title with a further declaration that R.S. Khatian No.48 is null and void and not binding upon them. So the matter in issue of the two suits is different.

On the other hand, the parties of the two suits are not totally the same, even though the suit lands of the two suits are also not similar as regards their measurements. Hence, the conditions to apply section 10 of the Code of Civil Procedure i.e., this similarity of matter in issue, the same parties, and the same subject matters are not present in the two suits, which leads to holding that section 10 of the Code is not applicable here to stay the subsequent suit.

Mr. Sheikh Zulfiqur Bulbul Chowdhury, the learned Advocate for the petitioner, also claimed that the impugned order is not tenable in the eye of law as it is not a speaking order. The learned Advocate for the petitioner also contends that the learned trial Court did not reject the application for stay of subsequent suit by the impugned order. In this respect, he argued that his own Civil Revision is a premature one. To

justify his claim, we have perused the impugned order No.85, dated 23.03.2017, which is embodied here:

> "পক্ষগন হাজিরা দিয়াছে। ৯/৬/১৬ ইং তারিখের বাদীর দরখাস্ত পেশ করা হইল। দরখাস্ত ও নথি পর্যালোচনা করিলাম। ১নং বিবাদী ১৪/২/০৫ ইং তারিখ হাজির হইয়া জবাব দাখিল করে নাই।অত্র মামলার ২নং বিবাদী জবাব দাখিল করিয়া প্রতিদ্বন্দ্বিতা করিতেছে। এমতাবস্থায় দরখাস্ত মঞ্জুর করা গেল। আর্জি হইতে ১নং বিবাদীর নাম আর্জি হইতে কর্তন করা হোক। ২নং বিবাদীর ১০ ধারার দরখাস্ত পেশ করা হইল। শুনিলাম। অ-১৫২/০৪ ও অ-৭৫/৯৮ নং মামলা দুটি পাশাপাশি শুনানীতে বিবাদীর দরখাস্ত নথিতে রাখা হোক। ২নং বিবাদীর ৯/৬/১৬ ইং তারিখের দরখাস্ত পেশ করা হইল। শুনিলাম। দরখাস্ত ও নথি পর্যালোচনা করিলাম। ১নং বিবাদীর নাম আর্জি হইতে কর্তন করা হয়। এমতাবস্থায় এবেট করার দরখাস্ত নামঞ্জুর করা হইল। ৩নং বিবাদী পক্ষকে P-W-1/2/3 কে recall করার প্রার্থনা করিয়াছে। শুনিলাম। প্রার্থনা মঞ্জুর করা গেল। আগামী ০৪/৫/১৭ ইং F.H. এর জন্য।"

We have examined the impugned order carefully. On our examination, it appears that though the order itself is not a totally speaking order, the order clearly shows that the learned trial Court disposed of the matter by directing that both the suits should be tried simultaneously. When an order of simultaneous trial of both suits is passed on an application under section 10 of the Code of Civil Procedure for staying the subsequent suit, such type of order clearly indicates that the prayer for staying the later suit is not allowed. As it is clear before us that required conditions to apply section 10 of the Code of Civil Procedure are not totally present in this case but as the parties and suit lands of the two suits are to some extend related to ensure justice between the parties and to avoid complexity in decision the Court has inherent power to direct that both the suits should be tried simultaneously. The proposition of law is by now well settled that mere technical ground is not fatal if, in law, the order is sustainable. Thus, the impugned order, though not speaking, suffers no illegality and needs no interference by this Court.

Moreover, the last part of the impugned order is clear. As the name of the dead defendant No.1 has been struck out from the plaint question of abating the suit under Order 22 Rule 4(3), read with section 151 of the Code of Civil Procedure, does not exist.

From the above discussion, we are of the view that the learned Court below rightly passed the Order No.85, dated 23.03.2017, and the impugned order suffers from no illegality in the question of judicial decision, which needs no interference by this Court.

In the result, the Rule is **discharged** without any order as to costs.

The impugned order No.85 dated 23.03.2017, passed by the learned Joint District Judge, 1st Court, Chattogram, in Other Class Suit No.152 of 2004, is hereby affirmed.

The learned trial Court below is hereby directed to dispose of the suit expeditiously, as early as possible, in accordance with the law.

However, the order of stay granted at the time of issuance of the Rule stands recalled and vacated based on affirming the impugned order.

Communicate the judgment and order.

Md. Iqbal Kabir, J:

I agree.

Md. Anamul Hoque parvej
Bench Officer