

Present:*Mr. Justice Md. Kamrul Hossain Mollah***CIVIL REVISION CASE NO.3836 OF 2015****IN THE MATTER OF:**

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

IN THE MATTER OF:

Abdul Latif and others

...Plaintiffs-petitioners

Versus

Abdur Rahim @ Rupia and others

... Defendant-Opposite parties

No one appears

... For the petitioners

Mrs. Anjuman Ara Begum, Advocate

... For the Opposite parties

**Heard on 14.08.2023 and
Judgment on: 17.08.2023****Md. Kamrul Hossain Mollah,J:**

On an application filed by the petitionerS, under Section 115(4) of the Code of Civil Procedure, leave was granted and this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 20.05.2015 passed by the learned Additional District Judge, Narsingdi in Civil Revision No.10 of 2013 arising out of order dated 17.04.2011 passed by he learned Joint District Judge, 2nd Court, Narsingdi in Sunny Case No.4 of 2010 setting aside the ex-parte decree dated 01.09.2009 should not

be set-aside and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court stayed all further proceedings of the judgment and order dated 20.05.2015 passed by the learned Additional District Judge, Narsingdi in Civil Revision No.10 of 2013 arising out of order dated 17.04.2011 passed by the learned Joint District Judge, 2nd Court, Narsingdi in Sunny Case No.4 of 2010 setting aside the ex-parte decree dated 01.09.2009.

Facts necessary for disposal of the case in short is that the plaintiff-petitioners filed Title Suit No.16 of 2008 before the learned Joint District Judge 2nd Court Narshindi for declaration of title and recovery of Khas Possession and the learned Trial Judge after completing all the formalities decreeing the suit on expartee vide his judgment and decree dated dated 08.09.2009. On 08.06.2010 the defendant-opposite parties filed Miscellaneous Case No.04 of 2010 under order 9 rule 13 of the Code of Civil Procedure. Then, on 03.08.2010 the opposite parties filed a petition for staying all further proceeding of Title Execution Case No.01 of 2009 in Miscellaneous Case No.04 of 2010. On 19.09.2010 the learned Joint District Judge, 2nd Court Narsingdi after hearing allowed the application dated 03.08.2010 and stayed all further proceeding of Title Execution CaseNo.01 of 2009. On 10.02.2011 the plaintiff-petitioners filed an application for vacating the order of stay granted earlier on 19.09.2010. Then, on 18.09.2011 the petitioners filed an application for “দখলী পরোয়ানা

জারীর নিমিত্তে পুলিশ কোর্স নিয়োগের প্রার্থনা।” and the said application was allowed by the learned Court vide order No.24 dated 18.09.2011. Further, on 30.10.2011 the opposite parties filed an application for re-calling order No.24 dated 18.09.2011 and after hearing both the parties the learned Court stayed order No.24 dated 18.09.2011 and dismissed the Title Execution Case No.01 of 2009. The relevant portion of the order dated 30.10.2011 exactly as follows:- “যেহেতু মিস ০৪/২০১০ মঞ্জুর হয়েছে কাজেই ডিক্রিদার ভুল বুঝাইয়া ১৮.০৯.২০১১ এর আদেশ নিয়েছে। কাজেই ১৮.০৯.২০১১ এর আদেশ স্বগিত। যেহেতু মূল একতরফা ডিক্রির অস্তিত্ব না থাকায় ডিক্রিজারী মামলা খারিজ করা হল।” Thereafter, the plaintiff-petitioner filed Civil Revision No.02 of 2012 against the order dated 30.10.2011 before the learned District Judge, Narsingdi and after hearing the learned Judge rejected the Civil Revision No.02 of 2012 by his judgment and order dated 10.05.2012. On 17.04.2011 the learned Judge after hearing both the parties allowed the Miscellaneous Case No.04 of 2010 with cost in its original file and number vide order No.25 (impugned order). Thereafter, the petitioner filed Civil Revision No.10 of 2013 before the learned District Judge, Narsingdi and after hearing the learned District Judge, Narsingdi rejected the said Civil Revision by his judgment and order dated 20.05.2015.

Being aggrieved by and dissatisfied with the judgment and order dated 20.05.2015 passed by the learned Additional District Judge, Narsingdi in Civil Revision No.10 of 2013, the plaintiff-petitioners filed

this revisional application under section 115(4) of the Code of Civil Procedure and obtained the present Rule and order of stay.

No one appears on behalf of the plaintiff-petitioners to press the Rule.

Mrs. Anjuman Ara Begum, the learned Advocate appearing for the opposite parties submits that the instant Civil Revision is seriously barred by limitation. On 08.06.2010 the defendant-opposite parties filed Miscellaneous Case No.04 of 2010 under order 9 rule 13 of the Code of Civil Procedure. Then, on 03.08.2010 the opposite parties filed a petition for staying all further proceeding of Title Execution Case No.01 of 2009 in Miscellaneous Case No.04 of 2010. On 19.09.2010 the learned Joint District Judge, 2nd Court Narsingdi after hearing allowed the application dated 03.08.2010 and stayed all further proceeding of Title Execution Case No.01 of 2009. On 10.02.2011 the plaintiff-petitioners filed an application for vacating the order of stay granted earlier on 19.09.2010. Then, on 18.09.2011 the petitioners filed an application for “দখলী পরোয়ানা জারীর নিমিত্তে পুলিশ ফোর্স নিয়োগের প্রার্থনা।” and the said application was allowed by the learned Court vide order No.24 dated 18.09.2011. Further, on 30.10.2011 the opposite parties filed an application for re-calling order No.24 dated 18.09.2011 and after hearing both the parties the learned Court stayed order No.24 dated 18.09.2011 and dismissed the Title Execution Case No.01 of 2009. The relevant portion of the order dated 30.10.2011

exactly as follows:- “যেহেতু মিস ০৪/২০১০ মঞ্জুর হয়েছে কাজেই ডিক্রিদার ভুল বুঝাইয়া ১৮.০৯.২০১১ এর আদেশ নিয়েছে। কাজেই ১৮.০৯.২০১১ এর আদেশ স্বগিত। যেহেতু মূল একতরফা ডিক্রির অস্তিত্ব না থাকায় ডিক্রিজারী মামলা খারিজ করা হল।” Thereafter, the plaintiff-petitioner filed Civil Revision No.02 of 2012 against the order dated 30.10.2011 before the learned District Judge, Narsingdi and after hearing the learned Judge rejected the Civil Revision No.02 of 2012 by his judgment and order dated 10.05.2012. On 17.04.2011 the learned Judge after hearing both the parties allowed the Miscellaneous Case No.04 of 2010 with cost in its original file and number vide order No.25 (impugned order). Thereafter, the petitioner filed Civil Revision No.10 of 2013 before the learned District Judge, Narsingdi and after hearing the learned Additional District Judge, Narsingdi rejected the said Civil Revision by his judgment and order dated 20.05.2015 rightly. Accordingly he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of Courts' below, the submission of the learned Advocate for the opposite parties, the papers and documents as available on the record.

It appears from the record the plaintiff-petitioners filed Civil Revision No.02 of 2012 against the order dated 30.10.2011 before the learned District Judge, Narsingdi. The learned District Judge, Narsingdi after hearing rejected the said Civil Revision by his judgment and order dated 10.05.2012. But, the plaintiff-petitioners did not file any revisional

application before the Hon'ble High Court Division. Rather, they filed the Title Suit No.16 of 2008 before the learned Joint District Judge, Narsingdi and the learned Judge passed the order dated 29.11.2012 in the said suit in which there is no scope to reconsideration and there is no scope to cancel the order dated 17.04.2011 in the Sunny Case No.04 of 2010 and there is no scope to restart the Title Execution Case No.01 of 2009.

Considering the above facts and materials on record, I think that the learned Additional District Judge, Narsingdi rightly passed the judgment and order dated 20.05.2015 in Civil Revision No.10 of 2013 is maintainable in the eye of law and I do not find any substance to interference into the said judgment and order and I find substance in the submission of the learned Advocate for the opposite parties.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and order dated 20.05.2015 passed by the learned Additional District Judge, Narsingdi in Civil Revision No.10 of 2013 dismissing the said Civil Revision arising out of order dated 17.04.2011 passed by the learned Joint District Judge, 2nd Court, Narsingdi in Sunny Case No.4 of 2010 setting aside the ex-parte decree dated 01.09.2009 is hereby upheld and confirmed.

The order of stay granted at the time of issuance of the Rule by this Court is hereby recalled and vacated.

Let a copy of this judgment and order be sent to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer