

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 380 of 2018

Most. Rahima Begum being dead her
heirs; Most. Mahmuda Begum and others
... Petitioners

-Versus-

Mohammad Ali Sardar and others

...Opposite-Parties

Mr. Tabarak Hussain, Senior Advocate with
Ms. Urmee Rahman, Advocate

...For the Petitioners

Mr. Md. Shah Alam Sarker, Advocate

...For the Opposite-Party No. 1.

Judgment on 28th January, 2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioners calling upon the opposite parties to show cause as to why the Order No. 157 dated 08.10.2017 passed by the learned Additional District Judge, 7th Court, Dhaka rejecting the application in Miscellaneous Case No. 14 of 2015 under Order 7 Rule 11 of the Code of Civil Procedure arising out of Dispute Appeal No. 04 of 2002 before the Deputy Registrar filed against the order dated 03.04.2002 passed in Dispute Case No. 02 of 2002 by the Arbitrator, District Co-operative Officer, Dhaka dismissing the same should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compus. The predecessor of the petitioners named Md. Badruzzaman Sarkar, as petitioner-judgment debtor filed Dispute Case No. 02 of 2002 before the District Co-operative Officer, Dhaka praying for release of the mortgaged property in the following terms;

“উপরোক্ত আইন, ঘটনা ও পারিপার্শ্বিক অবস্থার পরিপ্রেক্ষিতে আবেদনকারীর প্রার্থনা উপরোক্ত বর্ণনা মতে আইন মোতাবেক সকল রেকর্ড পত্র পরীক্ষা নিরীক্ষা করিয়া তথাকথিত নিলাম-মর ঘোষণা পত্র সহ নিলাম বাতিল করতঃ তপছিল বর্নিত ভূমি হইতে তথাকথিত নিলাম খরিদদারকে উৎখাত করিয়া সকল বাধা বিপত্তি দূরীকরনে অত্র আপত্তি বা আবেদনকারীকে তপছিল বর্নিত সম্পত্তি সহ বন্ধকী দলিল পত্র বুঝাইয়া দিয়া ন্যায় ও সুবিচার করিতে আজ্ঞা হয়।”

Dispute case was contested by opposite-party No. 1 by filing written objection. District Co-operative Officer (D.C.O) after hearing by its judgment and order dated 03.04.2002 rejected the case. Thereafter, the petitioners preferred Appeal No. 04 of 2002 before the Deputy Registrar, Dhaka who by a memo dated 15.01.2003 sent the appeal case to the learned District Judge,

Narsingdi requesting him to dispose of the appeal as it involves important question of law. The letter/memo is quoted below;

“উপর্যুক্ত বিষ-য়র প্রেক্ষিত জানা-না যা-চ্ছ যে, নিম্নস্বাক্ষরকারীর আদাল-ত বিচারাধীন আপীল মামলা নং ০৪/২০০২ বহু পূ-র্বকার ভূমি নিলাম বিক্রয় সংক্রান্ত একটি জটিল মামলা। মামলাটি নিষ্পত্তি করনার্থে ভূমি স্বত্ব আইন, তামাদি আইন এবং এতদ সংশ্লিষ্ট অন্যান্য আই-নর ধারা-উপধারার সুক্ষাতি সুক্ষ বিচার বি-শ্লষন করা অপরিহার্য। ভূমি সংক্রান্ত এই সমস্ত জটিল আই-নর ধারা-উপধারার সুক্ষাতি সুক্ষ বিচার বি-শ্লষন ক-র আ-লাচ্য মামলার ক্ষেত্রে ন্যায় বিচার নিশ্চিত করা সম্ভব হবে না বলে অত্র আদালত মনে করে।

বর্ণিত প্রেক্ষাপ-ট সমবায় সমিতি আইন/০১ এর ৫২(১)(খ) ধারানুযায়ী আ-লাচ্য আপীল মামলার আর্জি এবং তৎসংগে সংযোজিত কাগজ পত্রাদি এতদসংগে মাননীয় আদাল-ত প্রেরণ পূর্বক মামলাটি নিষ্পত্তি করার জন্য বিনীত অনু-রাধ করা হ-লা।”

After receipt of records of Miscellaneous Appeal Case No. 04 of 2002, learned District Judge, Narsingdi registered the same as Title Suit No. 01 of 2003 and transferred the same to the Joint District Judge, 1st Court, Narsingdi, wherein it was re-numbered as Title Suit No. 54 of 2005. Opposite-party in the said case moved an application under Section 24 of the Code of Civil Procedure before this Court for withdrawal of the case and transfer the same to the

District Judge, Dhaka. The case was allowed and Title Suit No. 54 of 2005 withdrawn from the court of Joint District Judge, Narsingdi and transferred the same to the learned District Judge, Dhaka. Eventually, the case was transferred to the court of learned Joint District Judge, 2nd Court, Dhaka for hearing and disposal, wherein it was re-numbered as Title Suit No. 715 of 2013. Opposite-party filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint. Learned Joint District Judge by order dated 12.10.2015 sent the records to the District Judge, Dhaka for necessary direction observing that the case is under Somobaya Samity Act and the case under that Act cannot be treated as title suit. Learned District Judge after receipt of records by an order dated 09.11.2015 directed the concern section to register the case as miscellaneous case under Section 52(2) of the Co-operative Society Act. Accordingly, registered the same as Miscellaneous Case No. 14 of 2015 and transferred the same to the court of learned Additional District Judge, 7th Court, Dhaka for hearing and disposal. The opposite-party again filed an application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure

before the learned Additional District Judge, Dhaka praying for rejection of the plaint. The application was opposed by the present petitioners filing written objection. After hearing learned Additional District Judge allowed the same and rejected the plaint by order dated 08.10.2007.

Being aggrieved by and dissatisfied with the order of the learned Additional District Judge, the present petitioners moved this Court by filing this revisional application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Tabarak Hussain, learned Senior Advocate with Ms. Urmee Rahman, learned Advocates appearing for the petitioners submit that this is a matter arising out of a dispute case filed by the predecessor of the petitioners under Section 50 of the Co-operative Society Act. D.C.O. rejected the case then the petitioners preferred Appeal Case No. 04 of 2002 before the Deputy Registrar, Dhaka who sent the appeal case to the learned District Judge, Narsingdi by memo dated 15.01.2003 for hearing and disposal as the matter involves important question of law. However, by consecutive transfer the case ultimately came to the learned District Judge,

Dhaka and it went to the court of learned Additional District Judge, Dhaka for hearing and disposal, wherein, opposite-party filed an application under Order 7 Rule 11 of the Code praying for rejection of the plaint. He submits that learned Additional District Judge failed to find that there is no plaint in the proceeding and no suit or case has been filed by the petitioners before any civil court directly seeking any relief. Rather this miscellaneous case arises out of a memo dated 15.01.2003 written by Deputy Registrar (Bichar), Dhaka forwarding the Appeal Case No. 04 of 2002 to the learned District Judge, Narsingdi for hearing and disposal under Section 52 of the Co-operative Society Act. Here the petitioners are not plaintiffs and the opposite-party is not defendant. Therefore, in the absence of any plaint provisions of Order 7 Rule 11 is not attracted, but the case was wrongly rejected under Rule 11 of Order 7 holding that no civil suit is maintainable before the civil court under Co-operative Society Act.

He submits that it was sent to the learned District Judge for decision, learned District Judge ought to have given a decision on the point of law or can opine to Deputy Registrar about merit of the

case. It cannot reject the reference under Order 7 Rule 11 of the Code, as such, learned Additional District Judge has committed an error of law in the decision occasioning failure of justice.

Mr. Md. Shah Alam Sarker, learned Advocate appearing for the opposite party No. 1 finds it difficult to defend this Rule by referring any provisions of law. But he tried to impress upon the court by referring a decision in *Baitul Aman Co-operative Housing Society Limited and another Vs. Muhammad Shamsur Rahman and others* reported in *33 DLR (AD) 311*, submitting that dispute to be settled by the Registrar not by civil court and finally argued that since the matter relating to the Co-operative Society, claim of the petitioners lies before the District Co-operative Officer not before the civil court, as such, by rejecting the plaint the court below committed no error in the decision occasioning failure of justice.

Heard the learned Advocates of both the parties, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, application in Dispute Case No. 02 of 2002, written objection thereto, judgment and order of the District Co-operative Officer, memo of appeal in Appeal Case No. 04 of 2002,

memo dated 15.01.2003 written by Deputy Registrar to the learned District Judge, Narsingdi, application under Order 7 Rule 11 read with Section 151 of the Code, written objection thereto and the impugned judgment and order of the court below.

Upon perusal of lower court records, it appears that predecessor of petitioners Md. Badruzzaman Sarkar and his brother Fazlur Rahman took loan of Tk. 4,000/- from the Dhaka Co-operative Land Mortgaged Bank on 03.09.1965 placing the landed property as security against loan. The loanee by installment made part payment of the loan to the society, but defaulted in paying regular installments. The society initiated a proceeding against them before the District Co-operative Officer and following Award it was put in execution, wherein the property in question was placed in auction on 11.08.1984. After coming to know about auction Badruzzaman Sarkar by filing a representation before the Honab'le President of Bangladesh on 21.08.1984 prayed for cancellation of said auction on the ground stated therein. Hon'ble President sent the application to the Ministry of Local Government, Rural Development and Co-operative for holding enquiry and disposal of

the same. The matter was kept abeyance for uncertain period, consequently, after waiting long time the applicant filed an application on 06.06.2000 to the Registrar Co-operative Societies for taking action on the basis of aforesaid memo of the Hon'ble President. Registrar sent the same to the District Co-operative Officer, Dhaka for enquiry and submitting report by its memo dated 20.07.2000. D.C.O entrusted the matter to Thana Co-operative Officer, Sutrapur for enquiry and submit report. Accordingly, Co-operative Officer, Sutrapur furnished a report after enquiry. After receipt of report Registrar Co-operative Societies directed the applicant to file a regular dispute case before D.C.O. Then they filed Dispute Case No. 02 of 2002 which was dismissed by the District Co-operative Officer on 03.04.2002. As per provisions of law the petitioners preferred Appeal Case No. 04 of 2002 before the Deputy Registrar (Bichar), Dhaka who sent the appeal case to the learned District Judge, Narsingdi for disposal by its memo dated 15.01.2003. Thereafter, the case was transferred to the learned District Judge, Dhaka wherein, it was wrongly registered as Title Suit No. 01 of 2003 and transferred the same to the learned Joint

District Judge, 1st Court, Dhaka for hearing and disposal, wherein it was re-numbered as Title Suit No. 54 of 2005. Opposite-party filed an application under Order 7 Rule 11 of the Code praying for rejection of the plaint. The petitioners filed written objection. Learned Joint District Judge, 2nd Court, Dhaka after hearing by its order dated 12.10.2015 sent the case to the learned District Judge observing that the case is involved Co-operative Society, as such, any reference made by appeal authority under the Co-operative Society Act to the learned District Judge cannot be registered as title suit. Learned District Judge, Dhaka after receipt of the case again directed the concern section to register the case as miscellaneous case. The section registered the same as Miscellaneous Case No. 14 of 2015 and transferred the same to the learned Additional District Judge, 7th Court, Dhaka for hearing and disposal, wherein, the opposite-party again filed an application for rejection of the plaint which was objected to. The learned court below after hearing by its impugned judgment and order dated 08.10.2017 allowed the application and rejected the miscellaneous case.

Now, the question before us whether a reference made by Deputy Registrar (Bichar) Co-operative Society, Dhaka to the concerned District Judge under Section 52(1)(Kha) of the Co-operative Societies Act can be termed as title suit and the appeal memo filed by the petitioners can be treated as plaint in suit. Order 7 Rule 11 of the Code provides that the plaint shall be rejected in the following cases;

(a).....

(b).....

(c).....

(d) where the suit appears from the statement in the plaint to be barred by any law.

The provision quoted above is applicable in plaint in suit. Order 6 Rule 1 defines pleading which includes plaint and written statement and Rules 2 and 3 provide what are to be stated in the plaint and a model has been given in appendix as reference. In the instant case we find nothing which attracts Orders 6 and 7 of the Code. We simply find that a dispute case was initiated by the petitioners before the D.C.O under Section 50 of the Co-operative

Society Act. The case was dismissed then they preferred Appeal Case No. 04 of 2002 before the Deputy Registered (Bichar), Dhaka who has option either to dispose of the appeal by himself or in the event of involvement of complicated and important question of law he can refer the matter to the concern District Judge for opinion or for disposal of the appeal. Accordingly, Deputy Registrar (Bichar), Dhaka sent the appeal to the concern District Judge by its memo dated 15.01.2003 for disposal of the same observing that the case/appeal involves important question of law.

After receipt of record, learned District Judge, Narsingdi as well as subsequently, the District Judge, Dhaka ought to have understood the true meaning of sending the case for decision and registered the same as miscellaneous case under Section 52 of the Co-operative Society Act and disposed of the same in accordance with law. But both the learned District Judges wrongly registered the case as title suit, but when it was transferred to the court of Joint District Judge by the District Judge, Dhaka for hearing and disposal and an application for rejection of the plaint was filed, learned Joint District Judge rightly held that a proceeding under Co-operative

Societies Act cannot be registered as title suit. Accordingly, sent back the record to the learned District Judge, Dhaka for necessary order who after receipt of record, ultimately, registered the case as Miscellaneous Case No. 14 of 2015 and transferred the same to the learned Additional District Judge, 7th Court, Dhaka for hearing and disposal, wherein an application under Order 7 Rule 11 of the Code of Civil Procedure was filed by the opposite party for rejection of the case. The learned Additional District Judge after hearing allowed the application under Order 7 Rule 11 of the Code and rejected the case. Learned Additional District Judge utterly failed to find that in the instant case there is no pleading at all neither in the form of plaint nor in the form of written statement.

It is merely a reference made by a Co-operative Officer having appellate jurisdiction to the learned District Judge for his opinion and or for disposal of the appeal in accordance with law. I failed to understand how a judge holding the post and position of Additional District Judge failed to understand provisions of law and most unfortunately allowed an application under Order 7 Rule 11 of the Code of Civil Procedure without going through the entire facts

and circumstances of the case. If any proceeding arises out of dispute case under Co-operative Societies Act those are the appropriate procedures to be followed by the D.C.O then Deputy Registered (Bichar), in the way they have done. Though both the learned District Judges one after another committed error and wrongly registered the reference as title suit, but after killing a substantial time learned District Judge, Dhaka could understand from the order passed by the learned Joint District Judge, 2nd Court, Dhaka that they did mistake by registering the case as title suit instead of registering the same as miscellaneous case and accordingly did so. But the Additional District Judge wrongly rejected the case treating the case as plaint in suit.

In view of the observations made hereinabove, I must observe that judicial Officer who has been entrusted with the judicial activities and to decide dispute between the litigants must go through the provisions of law at first before entering into the merit of the case as well as disposal of the same. Their non application of mind generally and in some cases put the litigants

into unnecessary sufferings both mental and financial. Therefore, they ought not to have repeated the same in future.

Taking into consideration the above, I find merit in the Rule as well as in the submissions of the learned Advocate for the petitioners.

In the result, the Rule is made absolute, however, without any order as to costs.

The judgment and order passed by the learned Additional District Judge, 7th Court, Dhaka is hereby *set aside*.

The case is hereby sent back to the court below for hearing and passing judgment afresh on merit. The court below is hereby directed to dispose of the case within 03(three) months from the date of receipt of this judgment and order positively without allowing any unreasonable adjournment to the parties to the proceedings.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.