

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 1141 of 2010

Abdur Razzak and others

... Petitioners

-Versus-

Md. Jahurul Islam and others

...Opposite-parties

Mr. Mohammad Kofil Uddin Khan, Advocate

...For the petitioners

No one appeared.

...For the opposite-parties.

Heard and Judgment on 31st July, 2024.

In this application under Section 115(1) of the Code of Civil Procedure, Rule was issued calling upon the opposite party Nos. 1-3 to show cause as to why the impugned judgment and order dated 11.03.2010 passed by the learned District Judge, Manikgonj in Miscellaneous Appeal No. 26 of 2009 disallowing the appeal and affirming the judgment and order dated 06.10.2009 passed by the learned Assistant Judge, Singair, Manikgonj in Miscellaneous Case No. 01 of 2009 rejecting the application under Order 9 Rule 13 of the Code of Civil Procedure 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 compass. The opposite-party Nos. 1-3, as plaintiff, filed Title Suit No. 325 of 2008 in the Court of Assistant Judge, Singair, Manikgonj against the present petitioners, as defendant, for decree of declaration of title and recovery of possession. By Order No. 1, the trial court, in usual practice issued summon notices for service upon the defendants and fixed on 16.10.2008 for return of summon notices after service. On the date fixed the process server submitted report after service of summons upon the defendants. Thereafter, the trial court fixed on 27.11.2008 for ex parte hearing of the suit and on the date fixed took the matter for ex parte hearing and decreed the suit in favour of plaintiff as prayed for. Thereafter, present petitioners filed Miscellaneous Case No. 01 of 2009 under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree. The miscellaneous case was resisted by plaintiff-opposite parties by filing written objection. The trial court by its judgment and order dated 06.10.2009 rejected the miscellaneous case.

Being aggrieved by and dissatisfied with the impugned judgment and order of the trial court, the petitioners preferred

Miscellaneous Appeal No. 26 of 2009 before the Court of learned District Judge, Manikgonj. The appellate court after hearing by the impugned judgment and order dated 11.03.2010 dismissed the appeal affirming the judgment and order of the trial court. At this juncture, the petitioners, moved this Court by filing this application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Mohammad Kofil Uddin Khan, learned Advocate appearing for the petitioners submits that admittedly summon notices were served upon the defendants and the suit was fixed for return of summons after service vide Order No. 2 dated 16.10.2008. Because of talk of compromise of the matter in dispute between the parties, on that date the defendants did not appear. The trial court instead of fixing next date for filing written statement fixed the suit directly for hearing ex parte without giving any time to the defendants to file written statement as provided by law. However, when the defendants came with an application for setting aside the ex parte decree, the trial court ought to have considered the application liberally allowing the same affording an opportunity to the defendants to file written

statement and get the suit heard on merit. Similarly, the appellate court took the matter very stringently and by the impugned judgment and order dismissed the appeal, as such, both the courts below committed an illegality in passing the judgment and order.

Learned Advocate for the opposite-parties did not appear to oppose the Rule, however, the opposite-party namely, Md. Jahurul Islam along with petitioner are physically present in Court as apprised by the learned Advocate for the petitioners who consented to make the Rule absolute and restore the suit in its original position and number, so that they will be able to file an application for compromise, already done between the parties.

Heard the learned Advocate for the petitioners, have gone through the revision application and the impugned judgment and order passed by both the courts below.

It appears that the suit was filed in the year 2008 and vide Order No. 1 it was registered as Title Suit No. 325 of 2008 and by the said order summon notices were issued for service of the same upon the defendants fixing next date on 16.10.2008 for service return. On the date fixed the court received the summons after

service and noted the same in order sheets vide Order No. 2. Since the summons duly served upon the defendants, the court ought to have fixed next date for filing written statement affording an opportunity to the defendants. If on the date fixed the defendants failed to appear and file written statement then the court could have proceeded with ex parte hearing by fixing next date, but the trial court vide Order No. 1 issued summon notices to the defendants, vide Order No. 2 noted service of summons and vide Order No. 3 heard the suit ex parte and decreed the same vide Order No. 3 in a very hot haste manner. The very conduct of the trial court seems to be so enthusiastic in disposing the suit any how within a very very short time leaving other matters pending for disposal for years together. Such conduct of the courts below is highly unexpected as the judges' should keep in mind that "justice hurried is justice buried".

By order dated 27.11.2008 the suit was decreed in violation of Rule 4(2) of Order 20 of the Code of Civil Procedure which provides that judgment shall contain a concise statement of case, the point for determination, decision thereon, and the reasons for such decision.

But the trial court while decreeing the suit ex parte complied nothing as provided in law. On that ground also the ex parte order dated 27.11.2008 is liable to be set aside.

However, since both the parties appearing in person said that the matter has already been settled out of Court and they are willing to file an application for compromise, I think that the ex parte decree is required to be set aside and the suit be restored in its original position and number.

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 of both the courts below are hereby set aside. Miscellaneous Case No. 01 of 2009 is allowed and the ex parte judgment and order dated 27.11.2008 is hereby set aside and Title Suit No. 325 of 2008 is hereby restored in its original position and number. The trial court is hereby directed to proceed with the hearing and dispose of the same as early as possible.

Order of *stay* granted at the time of issuance of the Rule stands vacated.

Communicate a copy of the judgment to the Court concerned at once.

Helal-ABO