

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 3981 of 2009

Dabiruddin Mondal being dead his legal heirs: 1. Md. Mosharraf Hossain and others

... Petitioners

-Versus-

Sree Dinesh Chandra Shaha and another

...Opposite-parties

Mr. Zainul Abedin (Tuhin), Advocate for
Mr. Zafar Sadeque, Advocate

...For the petitioners

Mr. Md. Abul Kashem, Advocate for
Mr. Mohammad Shafiqur Rahman, Advocate

...For the opposite-party Nos.1-2.

Judgment on 29th May, 2025.

In this application under Section 115(4) of the Code of Civil Procedure, by granting leave to revision to the petitioners, Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 29.07.2009 passed by the learned Additional District Judge, 1st Court, Naogaon in Civil Revision No.46 of 2004 allowing the same and thereby reversing the judgment and order dated 10.05.2004 and 25.05.2004 passed by the learned Senior Assistant Judge, Sadar, 1st Court, Naogaon in S.C.C. Suit No.05 of 2003 rejecting the application under Order 7 Rules 11 and 10(2) 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 compus. The petitioner, as plaintiff, instituted Small Causes Court (SCC) Suit No.05 of 2003 in the Court of Senior Assistant Judge, and Small Causes Court, Sadar, 1st Court, Naogaon against the opposite parties for a decree of eviction of tenants in the following terms:

“(ক) আরজীর বর্ণিত যাবতীয় করণাধীন ১ ও ২ নং বিবাদীদ্বয়কে তপশীল বর্ণিত দোকান ঘর হইতে উচ্ছেদ পূর্বক তাহা বিবাদীগণকে খাস দখলের ডিক্রী দিতে মর্জি হয়।

(খ) বক্রিয়া ভাড়া ও ক্ষতিপূরন বাবদ পরবর্তীতে বিবাদীগণের বিরুদ্ধে মোকদ্দমা আনয়নের অনুমতি দিতে।”

The opposite parties, as defendant, appeared in suit and filed an application on 25.04.2004 under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, praying for rejection of plaint in suit on the ground of limitation as the suit was filed after 12 years. The petitioners, as plaintiff, opposed the application for rejection of plaint. The trial court after hearing both sides by order dated 12.05.2004 rejected the application. Thereafter, the opposite

parties, as defendant, came with another application under Order 7 Rule 10(2) of the Code of Civil Procedure praying for return of the plaint on the ground that an appeal being No.135 of 2003 filed by the defendants before the appellate court against the judgment and decree passed in Title Suit No.26 of 1987 is pending for disposal, as such, the plaint is liable to be returned to the plaintiff. The trial court by its order dated 25.05.2004 rejected the application.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, the defendants in suit filed Civil Revision No.46 of 2004 before the learned District Judge, Naogaon. Eventually, said revision was transferred to the court of learned Additional District Judge, 1st Court, Naogaon for hearing and disposal, who after hearing by the impugned judgment and order dated 29.07.2009 allowed the revision and rejected the plaint in suit by reversing the judgment and order of the trial court. At this juncture, the petitioners moved this Court by filing this revisional application under Section 115(4) of the Code of Civil Procedure seeking leave to revision and obtained the present Rule and order of stay.

Mr. Mr. Zainul Abedin (Tuhin), learned Advocate appearing for Mr. Zafar Sadeque, learned Advocate for the petitioners at the very outset submits that the opposite parties filed application for return of the plaint on the ground of pendency of an appeal filed by them against the present petitioners, as respondents. For pendency of earlier suit there is a provision for staying subsequent suit under Section 10 of the Code of Civil Procedure, but the opposite parties did not file such application before the trial court, but filed an application under Order 7 Rule 10 of the Code for return of plaint on the ground of pendency of an appeal. It is argued that a plaint is liable to be rejected if from the statement made therein shows that the suit is barred by any law, but in this case no ground stated in the application as to why the plaint is liable to be rejected. The revisional court also failed to give any reason for rejection of plaint. However, he submits that the opposite parties moved before the revisional court against order of rejection of an application under Order 7 Rule 10 of the Code, but the revisional court rejected the plaint in suit under Order 7 Rule 11 of the Code for which the petitioners did not file any revision. Moreover, any order passed by

S.C.C. Court is revisable by filing revision before the High Court Division not before District Judge. On that ground also the order passed by the revisional court lacking jurisdiction and as such, it has committed error of law in the decision occasioning failure of justice.

Mr. Md. Abul Kashem, learned Advocate appearing for Mr. Mohammad Shafiqur Rahman, learned Advocate for the opposite party Nos.1 and 2 very candidly submits that the revisional court lacking jurisdiction to sit over the order passed by the S.C.C. Court, but has taken ground that mistake done by the learned Advocate for the petitioner in filing revision before the court of learned District Judge instead of filing before this Court. He submits that the defendants in suit rightly filed application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint on the ground of limitation as appearing from the statement made in the plaint and said application was rejected. The defendants ought to have moved revision before this Court against that order, but unfortunately, the revision was moved against the order of rejection of application under Order 7 Rule 10 of the Code before the learned District

Judge, Naogaon. He submits that this revision may be disposed of on the ground of law and jurisdiction of the revisional court below.

Heard the learned Advocates of both the sides, have gone through the revisional application, plaint in suit, application under Order 7 Rule 11 and Order 7 Rule 10 of the Code of Civil Procedure and the impugned judgment and order of both the courts below.

It is simple suit for ejectment of tenant filed by the petitioners, as plaintiff, before the S.C.C. Court. The Court is to see whether the defendants are tenants and defaulters, making them liable to be evicted. For ejectment of a tenant the question of limitation will come into play if the tenant denied his tenancy and claimed title in the property and could establish title by an independent suit. In the instant case though the tenant claimed title in the suit property at the first instance and filed Title Suit No.26 of 1987 renumbered as Other Class Suit No.113 of 2003 which was dismissed on contest with the present petitioners, as defendant. Then they preferred Title Appeal No.135 of 2003 which was also dismissed and then preferred Civil Revision No.46 of 2004 before

this Court in which the Rule was discharged. Because of long run litigation between the parties the present petitioners did not file any suit for eviction. However, whether instant suit is barred by limitation and period of limitation should be counted from which date are matter to be decided by the trial court at the time of hearing on evidence, as the question is mixed question of law and fact. Mere allegation of the defendants that the suit is barred by limitation and on that ground plaint in suit cannot be rejected in limini. The trial court while rejecting both the applications under Order 7 Rules 10 and 11 of the Code rightly held that those applications are not entertainable at this stage. The defendants ought to have moved before the High Court Division in revision against the order of the S.C.C. Court, but they moved in revision before the learned District Judge who disposed of the revision rejecting the plaint in suit, whereas, the defendant in suit did not prefer any revision against that order, rather the revision was preferred against order of rejection of an application for return of plaint. Moreover, it has no jurisdiction to sit over the order passed by the S.C.C. Court. The revisional court below unfortunately,

failed to find that an order passed by S.C.C. Court is revisable by the High Court Division. Therefore, the order under challenge is also lacking from want of jurisdiction.

Accordingly, I find that the revisional court below unfortunately failed to appreciate true meaning of Rule 11 Order 7 of the Code of Civil Procedure and wrongly rejected the plaint in suit calling for interference by this Court.

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 order of stay stands vacated.

The impugned judgment and order of the revisional court is hereby set aside.

The S.C.C. Court is hereby directed to dispose of the suit as early as possible giving top most priority preferably within 06(six) months from the date of receipt of this judgment and order.

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

Helal/ABO