

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Single Bench:

Mr Justice Abdur Rahman

Civil Revision No. 2741 of 2018

In the matter of:

Md. Abul Karim Molla

.....Preemptor-Respondent

Petitioner

-Versus-

Md. Sadek Ali Molla and others

....Preemptees- Appellants

Opposite parties

Mr Md. Shamsur Rahman, with

Ms Rina Begum, Advocate

.....For the Petitioner

Mr Md. Habibur Rahman, Advocate

...For the opposite party 1

Date of Hearing: 26.7.2026, 02.08.2026 and 03.08,2026 A.D.

Date of Judgment: 10.08.2026 A.D., Monday;

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JUDGMENT:

Abdur Rahman, J:

This revisional application, at the instance of the petitioners, has been filed under section 115(1) of the Code of Civil Procedure, 1908. At the time of issuance of the Rule, the following order was passed:

"Let a Rule be issued calling upon the opposite party No.1 to show cause as to why the judgment and order dated 04.06.2018 passed by the learned Additional District Judge, 3rd Court, Bogura in Miscellaneous Appeal No.181 of 2014 allowing the appeal and sending back the case on remand to trial Court and setting aside the judgment and order dated 26.11.2013 passed by the learned Assistant Judge, Gabtoli, Bogura in Pre-emption Case No.22 of 2006, should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper. "

Concomitantly, this Court was also pleased to stay operation of the impugned judgment and order dated 04.06.2018 passed by the learned Additional District Judge, 3rd Court, Bogura in Miscellaneous Appeal No.181 for a period

of 6(six) months from date; however, the stay order was extended from time to time.

The material facts giving rise to the instant Rule, as discernible from the revisional application and the materials on record, may briefly be stated as follows:

The pre-emptor-petitioner instituted Pre-emption Case No. 22 of 2006 before the learned Assistant Judge, Gabtali, Bogura, against the pre-emptee-opposite parties, seeking pre-emption in respect of the land described in the schedule to the case. The case of the pre-emptor, in substance, is that the suit property originally appertained to C.S. Khatian No. 13 and M.R.R. Khatian No. 16 and was owned by his father, opposite party No. 2, and opposite party No. 3, namely Obiron and Manik Molla. It was further asserted that opposite party No. 3 sold 7½ decimals of land and Jobeda Khatun also sold 7½ decimals of land in favour of opposite party No. 2, the father of the pre-emptor, by registered Kabala Deeds Nos. 8974 and 1174, respectively. Thereafter, opposite party No. 2 mutated 0.34 acres of land in his name in Mutation Case No. 672(9-1)/80-81 dated 22.12.1980.

The further case of the pre-emptor is that opposite party No. 2 subsequently transferred 0.06 acres of land in his favour by way of Heba-bil-Ewaz Deed No. 1068 dated 26.01.2004, whereby the petitioner became a co-sharer in the suit property. It was also asserted that opposite party No. 2 sold 1 decimal of land to opposite party No. 11 and that certain other portions of the property were also acquired by him. The heirs of opposite party No. 3 and Jobeda Bibi, being opposite party Nos. 4-10, thereafter sold 9¼ decimals of land to the pre-emptor-petitioner by registered Kabala Deed No. 3571 dated 09.07.2006.

According to the petitioner, however, opposite party No. 2 sold 5 decimals of land to opposite party No. 1 by registered Kabala Deed No. 3229 dated 27.06.2006. The petitioner claimed that he came to know of the said transfer on 03.07.2006 and thereafter obtained a certified copy of the impugned deed and instituted a pre-emption case seeking pre-emption of the land transferred thereunder. Hence, the pre-emption case.

Opposite party No. 1, the pre-emptee, contested the case by filing a written objection, denying the material allegations made in the application. His specific case was that opposite party No. 2 had not executed the alleged Heba-bil-Ewaz Deed No. 1068 dated 26.01.2004 in favour of the pre-emptor-petitioner and that the petitioner had neither acquired any valid right, title or interest in the suit land nor was he in possession thereof. It was further contended that the petitioner had no legal status as a co-sharer by inheritance or otherwise so as to maintain the pre-emption case. On such grounds, opposite party No. 1 prayed for dismissal of the case.

Upon completion of the necessary formalities and recording of evidence, the learned trial Court concluded the trial and, by judgment and order dated 26.11.2013, was pleased to allow the pre-emption case.

Being aggrieved by and dissatisfied with the said judgment and order, opposite party No. 1 preferred Miscellaneous Appeal No. 181 of 2014 before the learned District Judge, Bogura. The appeal was subsequently

transferred to the learned Additional District Judge, 3rd Court, Bogura, for hearing and disposal.

During the pendency of the appeal, the pre-emptee-appellant filed an application under Order XLI Rule 22, read with section 151 of the Code of Civil Procedure, seeking, *inter alia*, a remand of the case to the learned trial Court for the purpose of adducing further evidence. Upon hearing the parties, the learned appellate Court allowed the said application with costs of Tk. 2,000/-, and remanded the case to the learned trial Court, thereby setting aside the judgment and order dated 26.11.2013 passed by the learned trial Court.

Being aggrieved by the aforesaid judgment and order of remand, the pre-emptor-respondent-petitioner has invoked the revisional jurisdiction of this Court under section 115 of the Code of Civil Procedure, 1908.

Mr Md. Shamsur Rahman, learned Advocate, assisted by Ms Rina Begum, learned Advocate, appearing on behalf of the pre-emptor-petitioner, submits that the learned appellate Court, without properly appreciating the facts and

circumstances of the case and by misconstruing the scope and ambit of Order XLI Rule 22 of the Code of Civil Procedure, illegally and improperly directed remand of the case. According to him, the learned appellate Court failed to appreciate that the pre-emptee had already been afforded sufficient opportunity before the trial Court to adduce evidence in support of his defense, but, despite having such opportunity, he chose not to examine any witness on his behalf.

Learned Advocate further submits that the learned appellate Court committed a material error of law in setting aside the judgment and order dated 26.11.2013 and remanding the case to the trial Court merely to afford the opposite party another opportunity to adduce evidence. Such an order, according to him, amounts to permitting an unsuccessful litigant to fill up the lacuna in his case after conclusion of the trial, which is impermissible in law and has caused serious prejudice to the petitioner.

He further submits that the negligence or laches of the pre-emptee or his learned Advocate cannot be allowed to

operate to the prejudice of the pre-emptor, particularly when the case had already been finally adjudicated on the basis of the evidence produced by the parties. The appellate Court, instead of remanding the matter, could itself have exercised the powers available to it under the Code and, if necessary, could have called for or taken additional evidence in accordance with law.

Learned Advocate also submits that on 24.11.2014 the pre-emptor had filed an information slip relating to the purchase of stamp from the Treasury Office, Bogura, and that another photocopy of the information slip was filed on 29.10.2017. Nevertheless, the learned appellate Court erroneously observed that the original information slip was not available on the record. According to him, such finding was contrary to the materials available on record and demonstrated non-application of judicial mind.

Learned Advocate lastly submits that an order of remand is an exceptional measure and should not be made as a matter of course. Referring to the decisions reported in **53 DLR (AD) 110** and **54 DLR (AD) 74**, he submits that remand

cannot be ordered for the purpose of enabling a party to fill up the lacuna in his pleadings or evidence. He therefore prays that the impugned judgment and order of remand be set aside and the learned appellate Court be directed to dispose of the appeal on its own merits in accordance with law.

Per contra, Mr Md. Habibur Rahman, learned Advocate appearing for opposite party No. 1, submits that the learned trial Court, without properly considering the genealogy of the original owners, the subsequent transactions through which the parties claimed title and the relevant provisions of section 24 of the Non-Agricultural Tenancy Act, 1949, erroneously allowed the pre-emption case. According to him, the learned trial Court committed serious errors in appreciating both the law and the evidence, which materially affected the decision.

Learned Advocate further submits that the learned appellate Court, upon careful consideration of the materials on record and the circumstances in which the pre-emptee had failed to adduce evidence before the trial Court, rightly considered it necessary, in the interest of justice, to provide the parties with an opportunity to place the relevant evidence

before the Court. He therefore submits that the impugned order of remand does not suffer from any illegality warranting interference by this Court in its revisional jurisdiction.

He further submits that although the pre-emptee had cross-examined P.W.1, he could not examine any witness before the trial Court. The learned Advocate, however, candidly submits that such failure occurred due to the negligence or ineffective conduct of the learned Advocate who was then engaged in the case. According to him, unless an opportunity is afforded to the pre-emptee to adduce the necessary evidence, the real controversy between the parties may remain unresolved and substantial justice may thereby be defeated.

Learned Advocate finally submits, in the alternative, that if this Court is not inclined to sustain the order of remand to the trial Court, the case may at least be remanded to the learned appellate Court for fresh hearing of the appeal, with an opportunity to both parties to adduce and produce such evidence and documents as may be necessary for complete and effective adjudication of the controversy.

I have perused the revisional application, the judgment and order impugned herein, the materials available on record and the submissions advanced by the learned Advocates for the respective parties.

From the judgment of the learned appellate Court, it appears that the principal reason assigned for remanding the case was that, although the pre-emptee had cross-examined P.W.1, he did not adduce any evidence of his own before the trial Court. The learned appellate Court recorded, in substance, that the appellant had failed to adduce evidence and produce documents despite having sufficient opportunity, but that the appellant subsequently claimed that such failure was attributable to the conduct of his then learned Advocate. On that basis, the appellate Court considered it expedient, in the interest of justice, to afford the appellant an opportunity to produce the necessary documents and adduce evidence and also sought recall of P.W.1.

In my view, the mere failure of a party to adduce evidence despite having sufficient opportunity to do so cannot, by itself, constitute a lawful ground for remanding a

suit or proceeding. A litigant is ordinarily bound by the consequences of his own omission, negligence or failure to avail himself of an opportunity duly afforded by the Court. The appellate process cannot routinely be converted into a mechanism for providing a party a second opportunity to remedy deficiencies in the case that he deliberately or negligently failed to cure at the trial stage.

It is equally well settled that **remand is not a matter of right; rather, it is an exceptional procedural course to be adopted only when the circumstances of the case demonstrate that a fresh adjudication is genuinely necessary for determining the real controversy between the parties.** The power of remand must, therefore, be exercised judicially, cautiously and upon the existence of compelling circumstances.

The decisions reported in **53 DLR (AD) 110** and **54 DLR (AD) 74**, as relied upon by the learned Advocate for the petitioner, reinforce the settled principle that remand should not ordinarily be ordered for the purpose of enabling a party to fill up the lacuna in his case or to rectify an omission in

adducing evidence when adequate opportunity had already been afforded.

At the same time, the Court must not lose sight of the fact that an appellate Court is ordinarily the final Court of fact and possesses broad powers under the Code of Civil Procedure to deal with the appeal effectively and to ensure that the real controversy between the parties is determined.

An appeal is, in law, a continuation of the original proceedings, and the appellate Court is not merely a passive reviewing forum. Where the ends of justice so require, and the statutory requirements are satisfied, the appellate Court may exercise the powers conferred upon it by the Code, including the power to take additional evidence or to call for evidence where such evidence is legally admissible and necessary for a proper adjudication of the dispute.

Thus, where the defect complained of can effectively be cured by the appellate Court itself, remand to the trial Court ought not to be resorted to mechanically. **The appellate Court should ordinarily endeavour to decide the controversy itself**

rather than unnecessarily prolong the litigation by sending the matter back to the Court of first instance.

The underlying principle is one of judicial economy as well as finality of litigation. A remand necessarily entails reopening of proceedings, further recording of evidence, additional expense and prolonged uncertainty. It should therefore be ordered only where the defect in the original adjudication is such that the appellate Court cannot effectively determine the matter within the existing framework of the appeal.

In the present case, it appears from the record that the pre-emptee had participated in the trial and had cross-examined P.W.1. He was, therefore, not deprived of an opportunity of contesting the case. His failure to examine witnesses or produce documents in support of his defence, despite having sufficient opportunity, cannot ordinarily furnish a lawful basis for directing a *de novo* trial.

More importantly, the learned appellate Court was the final Court of facts and was competent, subject to the

provisions of the Code, to consider whether any additional evidence was genuinely necessary for the just disposal of the appeal. If the appellate Court was of the view that a particular document or testimony was essential for resolving any material issue, it ought first to have considered whether the same could be received or procured at the appellate stage in accordance with law. The wholesale remand of the case to the trial Court, merely because one party desired an opportunity to adduce evidence which he had failed to produce earlier, was therefore not justified.

The alternative submission of the learned Advocate for opposite party No. 1 that the matter may, at least, be remanded to the learned appellate Court for fresh hearing requires separate consideration.

There is a fundamental distinction between a remand intended to cure a genuine defect in adjudication and a remand intended merely to afford a negligent litigant another opportunity to improve his case. The former may be justified where substantial justice so demands; the latter is impermissible.

The revisional jurisdiction of this Court under section 115 of the Code of Civil Procedure is supervisory and corrective in nature. It is not intended to substitute the revisional Court's own assessment of evidence for that of the competent subordinate Court as though this Court were exercising ordinary appellate jurisdiction. Nevertheless, where the subordinate Court has acted with material irregularity, misconstrued the governing legal provision, failed to exercise jurisdiction vested in it, or has adopted a procedure resulting in substantial failure of justice, this Court is competent to interfere.

In the instant case, the learned appellate Court appears to have proceeded principally on the consideration that the pre-emptee had not been able to adduce evidence before the trial Court and that, in the interest of justice, he should be afforded another opportunity. Such reasoning, without identifying any specific material issue that could not be adjudicated on the evidence already available, does not provide a sufficient legal basis for a remand to the trial Court.

However, having regard to the rival submissions and the nature of the controversy, I am of the view that the learned appellate Court ought to reconsider the appeal itself after examining whether any legally admissible additional evidence is genuinely necessary for determining the real controversy. If, upon such consideration, the appellate Court finds that any particular evidence or document is indispensable for a just decision of the appeal, it may deal with the same strictly in accordance with the provisions of the Code of Civil Procedure.

The Court must, however, ensure that such opportunity is not allowed to become a device for reopening the entire trial or for enabling either party to fill up lacunae resulting from negligence or deliberate omission.

It is well settled that **the object of procedural law is to facilitate the administration of justice, not to obstruct it; but at the same time, procedural indulgence cannot be extended so far as to destroy the finality of proceedings or confer an unfair advantage upon a litigant who failed to act with due diligence.**

In the facts and circumstances of the present case, I find that the learned appellate Court erred in directing a remand to the trial Court without adequately considering whether the alleged deficiency could be effectively addressed at the appellate stage. The impugned order of remand, therefore, cannot be sustained in its present form.

The proper course, in my considered view, is to set aside the impugned judgment and order and restore the appeal to the learned appellate Court for fresh consideration in accordance with law. The appellate Court shall, after hearing both sides, determine the appeal on its own merits. If it finds that additional evidence is indispensable for a just determination of any material issue, it may exercise the appropriate power available under the Code of Civil Procedure, subject to the settled limitations governing such power.

It is made clear that the opportunity so afforded shall not be construed as an unrestricted license to either party to introduce evidence merely for the purpose of filling up lacunae or improving an otherwise deficient case. The

appellate Court shall exercise its discretion judiciously and only to the extent necessary for securing a fair and effective adjudication of the real controversy.

The settled doctrine of judicial precedent, founded upon the principles of consistency, certainty and predictability in the administration of justice, requires that established principles governing the exercise of revisional and remand jurisdiction be consistently adhered to, save in exceptional circumstances warranting departure therefrom. Judicial consistency and certainty would be undermined if remand were ordered routinely whenever a litigant seeks an opportunity to adduce evidence which he failed to produce at the trial stage. The exceptional nature of remand must, therefore, be preserved.

For the reasons stated above, I find substance in the contention of the learned Advocate for the petitioner that the learned appellate Court fell into an error of law in remanding the case to the learned trial Court merely to afford the pre-emptee an opportunity to adduce evidence which he had

failed to produce despite having sufficient opportunity during trial.

At the same time, considering the nature of the dispute and the submissions of the parties, I am of the view that the ends of justice would be adequately served if the appeal itself is restored to the learned appellate Court for fresh hearing and disposal in accordance with law, rather than directing a *de novo* trial before the learned trial Court.

Accordingly, having found merits, the Rule is made **absolute**, without any order as to costs.

The impugned judgment and order passed by the learned Additional District Judge, 3rd Court, Bogura, in Miscellaneous Appeal No. 181 of 2014, whereby the judgment and order dated 26.11.2013 passed by the learned Assistant Judge, Gabtali, Bogura, in Pre-emption Case No. 22 of 2006 was reversed, and the case was remanded to the trial Court, is hereby **set aside**.

The learned appellate Court is directed to restore Miscellaneous Appeal No. 181 of 2014 to its appropriate file

and number and to hear and dispose of the same afresh, in accordance with law, as expeditiously as possible, preferably within a period of **6(six) months** from the date of receipt of the record and a copy of this judgment.

The learned appellate Court shall afford both parties reasonable opportunity of hearing. If either party seeks to adduce additional evidence, the same shall be considered strictly in accordance with law and only upon satisfaction that such evidence is necessary for a just and effective adjudication of the appeal.

The order of stay, if any, granted earlier by this Court, stands **recalled and vacated**.

Let the Subordinate Courts Record (SCR), along with a copy of this judgment, be transmitted to the concerned Court forthwith.

Therefore, the Rule is made absolute subject to the aforementioned observations and directions.

Order accordingly.

(Abdur Rahman, J.)