

*Present:-*

*Mr. Justice Mahmudul Hoque*

**Civil Revision No.4418 of 2018**

Md. Manik Mal @ Abdul Gani Mal being  
dead his legal heirs: 1(a) Md. Iqbal Mal  
and others

... Petitioners

-Versus-

Md. Abul Kalam Azad Patari and others

...Opposite-parties

Mr. Monishankar Sarkar, Advocate for

Mr. Surojit Bhattacharjee, Advocate

...For the petitioners

Mr. Garib Newaz, Senior Advocate with

Ms. Maksuda Akhter, Advocate

...For the opposite-party No. 1.

**Judgment on 14<sup>th</sup> 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 party No.1 to show cause as to why the judgment and order dated 09.08.2018 passed by the learned Additional District Judge, Bhola in Civil Revision No.11 of 2014 disallowing the same and thereby affirming the judgment and order dated 14.05.2014 passed by the learned Senior Assistant Judge, Sadar, Bhola in Pre-emption Case No.12 of 2010 rejecting the application dated 14.05.2014 filed by the pre-emptee 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 opposite-party No.1, as pre-emptor, filed Pre-emption Case No.12 of 2010 in the Court of Senior Assistant Judge, Sadar, Bhola against the opposite party No.1, as pre-emptee along with other opposite parties seeking pre-emption of the case property. As per Process Server's report, opposite party Nos.228, 238, 242, 256, 260, 268 and 269 were not found present in the address, consequently, returned summons without service. The pre-emptor filed an application on 13.04.2014 praying for serving notices upon them at their last known address by affixing the same on the notice board of local Union Parishad and on the door of the Court. The opposite party No.1-pre-emptee and seller opposite party No.2 filed an application on 14.05.2014 for rejection of the application filed by the pre-emptor on 13.04.2014. The trial court heard both the applications and after hearing by its order dated 14.05.2014 rejected the application filed by the opposite party Nos.1 and 2 and fixed for

taking step regarding service of summons upon opposite party Nos. 228, 238, 242, 256, 260, 268 and 269.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, the opposite party No.1 filed Civil Revision No.11 of 2014 before the Court of learned District Judge, Bhola, Eventually, the revision was transferred to the Court of learned Additional District Judge, Bhola for hearing and disposal who after hearing by the impugned judgment and order dated 09.08.2018 rejected the same. At this juncture, the pre-emptee-opposite party No.1, moved this Court by filing this application under Section 115(4) of the Code seeking leave to revision and obtained the present Rule and order of stay.

Mr. Monishankar Sarkar, learned Advocate appearing for Mr. Surojit Bhattacharjee, for the petitioners submits that the pre-emptor in his application clearly stated that opposite party Nos.228, 238, 242, 256, 260, 268 and 269 left this country for India and permanently residing there as national of India. But in the pre-emption application the pre-emptor has given the address of those opposite parties in Bangladesh, consequently, summon notices have

not been served upon them. He submits that the law provides that address of any defendant or opposite parties should be given in the plaint or application as his last residing address. But the pre-emptor knowing fully well that those opposite parties are now living in India and without giving their present address issued notice for service upon them at the address in Bangladesh, as such, the trial court ought to have rejected the application filed by the pre-emptor for service of summons upon them, at their last known address without giving address of the opposite parties in India, as such, both the courts below committed illegality and error of the law in the decision occasioning failure of justice.

Mr. Garib Newaz, learned Senior Advocate appearing for the opposite-party No.1 at the very outset submits that neither the opposite party No.1, pre-emptee nor opposite party No.2-vendor could supply present address of those opposite parties to the court. They only stated that those persons are living in India in the District 24 Porgana without mentioning name of village/ward or any other definite address. He submits that law provides that the address of the defendant should be given as last known address of the defendants.

Accordingly, as per record being they are co-sharer in the holding their proper address in Bangladesh have been given in the application where the process server found them absent. Accordingly, the pre-emptor filed application for service of summons upon them by affixing summon on the notice board of local Union Parishad and notice board of the Court concerned. The pre-emptee filed an application for rejection of that application, as such, the order passed by the trial court was not at all liable to be challenged in revision.

He argued that the pre-emptor rightly given the address of the opposite parties as their last known address. If any of the opposite parties found absent in the address available on record as known to the pre-emptor there is provision for alternative service of summons upon them under Order V Rule 20 of the Code of Civil Procedure. Accordingly, the pre-emptor filed application before the trial court on which the trial court fixed the case for taking step on 24.06.2014. Therefore, the courts below committed no illegality and error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the parties, have gone through the revisional application, application in pre-emption case, application filed by the pre-emptor, application filed by the pre-emptee and the impugned judgment and order of the trial court as well as the revisional court.

In the instant pre-emption case there are 431 opposite parties. Except opposite party Nos.228, 238, 242, 256, 260, 268 and 269, upon all other opposite parties summon notices were duly served. These opposite parties reported to be residing in India having no tress at all, but in the pre-emption application their address have been given as per record of right. Summons upon them returned unserved with the comment that they found absent at the address. Consequently, the pre-emptor filed an application for service of summons upon them under Order V Rule 20 of the Code of Civil Procedure. The pre-emptee filed application for rejection of the said application. The trial court after hearing by its order dated 14.05.2014 rejected the application filed by the pre-emptee. In revision the revisional court observed that at the time of filing revision, the pre-emptee purchaser and seller by filing an application

prayed for dispensing with the service of summon and notices upon opposite party Nos.3-341 as they are non-contesting opposite parties, among them, the aforesaid opposite parties are present. It is also observed that for alternative services upon aforesaid opposite parties how the pre-emptee and seller would be affected.

I have gone through the order passed by both the courts below. It is the principle of law that the plaintiff should give address of the defendants as his last known address. In the instant case, the pre-emptor did so. When they found absent in the address as per provision of law the pre-emptor prayed for alternative service of summons upon them. In the event of non-service of summons upon those opposite parties they can come with an application for setting aside ex parte order. But the pre-emptee will not in any way be prejudiced if aforesaid opposite parties not appeared in court or contest the pre-emption case, where the dispute is lying in between the pre-emptor and pre-emptee opposite party Nos.1 and 2. Moreover, the pre-emptee could not supply the proper address of those opposite parties.

Therefore, I find that the trial court and the revisional court committed no illegality in the decision occasioning failure of justice.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioners calling for interference of by this Court.

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

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

The trial court is hereby directed to dispose of the Pre-emption Case No.12 of 2010 within a shortest possible time giving top most priority preferably within 6(six) months from the date of receipt of this judgment and order without fail.

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