

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.2361 OF 2018

Md. Shamsheer Ali and others
..... Defendant-Petitioners

-VERSUS-

Mohiron Bibi being dead, his legal heirs:
Monowar Hossain and others
..... Plaintiff-Opposite Parties.

Ms. Sarker Tahmeena Begum, with
Ms. Marjana Sultana Manny, Advocates
----- For the petitioners.
Mr. Md. Saiful Islam, Advocate
..... For the opposite parties.

Heard on 27.11.2025

Judgment on 27.11.2025.

By this Rule, opposite parties were called upon to show cause as to why the impugned Judgment and order dated 12.04.2018 passed by the learned Additional District Judge, Kurigram in Miscellaneous Appeal No.28 of 2016 allowed the appeal and reversing the Judgment and order dated 25.05.2016 passed by the learned Senior Assistant Judge, Sadar, Kurigram in Miscellaneous Case No.03 of 2014 arising out of Other Class Suit No.107 of 2010 should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

Facts in a nutshell for disposal of the Rule are that the opposite parties herein, as plaintiffs, instituted Other Class Suit No. 107 of 2010 before the Senior Assistant Judge, Sadar, Kurigram, for a declaration of title and recovery of khash possession in respect of the land described in the schedule of the plaint. The defendant No. 1 contested the suit by filing a written statement denying all the material allegations made in the plaint. Subsequently, the learned Senior Assistant Judge, Kurigram Sadar, Kurigram, decreed the suit by ex parte judgment and decree dated 09.01.2015.

Thereafter, the petitioner herein, as petitioner, filed the Miscellaneous Case No.03 of 2014 before the Senior Assistant Judge, Sadar, Kurigram, under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex parte judgment and decree.

Subsequently, the learned Senior Assistant Judge, Sadar, Kurigram, by the Judgment and order dated 25.05.2016 allowed the Miscellaneous Case and set aside the ex parte Judgment and decree dated.

Being aggrieved, the opposite party herein, as appellant, preferred Miscellaneous Appeal No. 28 of 2016 before the District Judge, Kurigram.

Eventually, the learned Additional District Judge, Kurigram, by the Judgment and order dated 12.04.2018,

rejected the Miscellaneous Case under Order IX Rule 13 of the Code of Civil Procedure, in allowing the appeal and reversing those passed by the Trial Court.

Being aggrieved by and dissatisfied with the above Judgment and order 12.04.2018, the defendant, as petitioner, filed the present Civil Revision under Section 115(1) of the Code of Civil Procedure before this court and obtained the instant Rule and order of stay.

Ms. Marjana Sultana Manny the learned advocate appearing for the defendant-petitioner submits that the trial court below having consider the evident on record very judiciously, setting aside the ex-parte Judgment and decree but the appellate court below did not at all consider the same and misconstrue evidences on record rejected the application for restoration of the suit under Order IX Rule 13 of the Code of Civil Procedure.

Mr. Md. Saiful Alam, the learned advocate appearing on behalf of the opposite parties, submits that the appellate court below very rightly and judiciously found that the written statement submitted by the defendant was not a fake one. Moreover, the applicant failed to prove the same by adducing evidence. Therefore, the Rule is liable to be discharged.

We have considered the submission of the learned advocate of both parties, perused the impugned Judgment and order, and other materials on record.

Order IX Rule 13 of the Code of Civil Procedure provides that an ex parte decree can be set aside on two grounds: (I) that the summons was not duly served or (II) that any sufficient cause prevented him from appearing when the suit was called on for hearing.

From all the materials, events, facts, circumstances, oral and documentary evidence On record it appears that the trial court below while allowing the Miscellaneous Case and restored the suit saying that the summons of the other defendants receive by the defendant No. 3. Moreover, the defendant claimed that the plaintiff brought a fack vokalatnam and written statement in respect of the defendant instead of the real defendant obtained the ex-partee decree.

Upon reviewing the Judgment and order of both courts below, it appears that the petitioner successfully established sufficient cause for his non-appearance before the court when the suit was called on for a hearing of an ex parte decree. Therefore, it appears that the trial court set aside the ex-parte decree with good and sound reasons. On the contrary, the appellate court below, being

the last court of facts, did not at all advert to the finding of the learned Senior Assistant Judge setting aside the Judgment and order of the court below, and rejected the miscellaneous case.

Considering the above facts, circumstances of the case, and discussions made herein above, we are of the firm view that the learned Additional District Judge, Kurigram, did not correctly appreciate and construe the documents and materials on record in accordance with the law. Therefore, we find merit in this Rule.

Resultantly, the Rule is made absolute without any order as to cost.

The impugned Judgment and order dated 12.04.2018, passed by the learned Additional District Judge, Kurigram, in Miscellaneous Appeal No. 28 of 2016, allowing the appeal, are hereby set aside. And the Judgment and order dated 25.05.2016, passed by the learned Senior Assistant Judge, Sadar, Kurigram, in Miscellaneous Case No. 03 of 2014, is hereby affirmed.

The order of stay granted by this court stands vacated.
Communicate this Judgment at once.

.....
(MD. SALIM, J).