

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

Civil Revision No. 3749 of 2018

In the matter of:

Present

Mr. Justice Mamnoon Rahman

Mobarak Ali Howlader and others.

...Petitioners.

-Vs-

Abdul Aziz Howlader and others.

...Opposite parties.

Mr. Md. Mostafa, Adv.

...For the petitioners.

Mr. Md. Azizul Haque Howlader, Adv.

...For the opposite parties.

The 8th January, 2025

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite party No. 1 and 2 to show cause as to why the order dated 25.09.2011 passed by the learned Joint District Judge, 1st Court, Jhalakati in Title Appeal No. 38 of 1991 rejecting the prayer for recalling D.W. 1 and rejecting application for calling the records should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

I have heard the learned Advocates for the petitioners as well as opposite parties. I have perused the impugned judgment and order passed by the trial court as well as lower appellate court, revisional application, grounds taken thereon, supplementary affidavit filed by the petitioner as well as provisions of law.

On perusal of the same, it transpires that a substantive appeal is being pending before the lower appellate court arising out of judgment and decree passed by the trial court. It further transpires that the High Court Division in an application under section 115(1) of the Code of Civil Procedure, 1908 made the rule absolute and directed the lower appellate court to hear and dispose of the appeal and as per the observation made therein. It further transpires that during pendency of the appeal the present appellant petitioner pressed two applications one is for recalling the D.W. 1 for further examination as well as for calling the certain records. In the meantime, the D.W. 1 was died and also the learned Advocate for the petitioners submits that he will not press the rule so far it relates to recalling the witness. It also transpires from the impugned judgment and order that while sending back the case on remand the High Court Division gave a direction and fixed a periphery disposal of the appeal based upon the observation made in the civil revision so far it relates to certain deeds. However, considering the facts and circumstances, I am of the view that if the application for recalling the record be allowed the same will help the lower appellate court to adjudicate the matter in its entirety and which will not affect either parties in any circumstances.

As such, I am of the view that justice would be done if a direction be given upon the lower appellate court to hear and dispose of the appeal within a fixed period. Accordingly, the lower appellate court is directed

to hear and dispose of the appeal within 60(sixty) days from the date of receipt of the instant order without fail and without giving any adjournment to the parties. The lower appellate court is further directed to call the record as prayed for within 7(seven) days by way of Special Messenger and dispose of the appeal strictly in accordance with law and as per the direction given by the High Court Division.

The interim order passed at the time of issuance of rule is hereby vacated.

With this observation and direction the instant rule is disposed of. Communicate the order at once.

(Mamnoon Rahman,J:)

Emdad. B.O.