

**Present:**

**Mr. Justice Sheikh Abdul Awal**  
**and**  
**Mr. Justice Md. Mansur Alam**

**Civil Revision No. 1417 of 2019**

In the Matter of:

Shahena Aktar alias Rina

.....Plaintiff-petitioner.

-Versus-

Abdul Zafur alias Zahur Miah and others

...Defendant-judgment debtor opposite parties

Mr. Toufiq Anwar Chowdhury, Advocate  
..... For the Plaintiff petitioner.

Mr. Uzzal Bhwmick, Advocate.  
.....For the opposite party No.11

**Heard on 19.11.2024, 27.11.2024, 01.12.2024**  
**and Judgment on 02.12.2024**

**Sheikh Abdul Awal, J:**

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 13.08.2018 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet in Miscellaneous Case No. 19 of 2018 staying the Execution Case No. 06 of 2015 should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The brief fact relevant for disposal of this Rule is that the petitioner as plaintiff filed Title Suit No. 18 of 2005 for partitioning the suit land in the Court of the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet. Ultimately, the suit was decreed ex parte by ex parte judgment and decree dated 05.02.2007. Thereafter, the decree holder plaintiff in order to execute the decree filed Execution being Case No. 06 of 2015 and thereafter while the Execution case was in progress the defendant Nos. 11 and 12 filed Miscellaneous Case No. 19 of 2018 in the Court of the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet under Order IX, Rule 13 read with section 151 of the Code of Civil Procedure for setting-aside the ex-parte judgment and decree dated 05.02.2007. Soon thereafter the defendant Nos. 11 and 12 filed an application for staying all further operation of the execution case No. 06 of 2015. The learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet upon hearing the parties by his order No. 40 dated 13.08.2018 stayed all further operation of the execution case till disposal of the Miscellaneous Case No. 19 of 2018.

Aggrieved thereby the plaintiff-petitioner preferred this revision application and obtained the present Rule.

Mr. Taufiq Anwar Chowdhury, the learned Advocate appearing for the petitioner submits that in the case the summons were properly served upon the defendants although the defendants deliberately did not turn to contest the suit resulting the learned Joint District Judge passed the ex-parte judgment and decree in accordance with law after exhausting all the legal formalities and as such, institution of the Miscellaneous Case under Order IX, Rule 13 read with section 151 of the Code of Civil Procedure for

setting-aside the ex-parte judgment and decree only to deprive the plaintiff (decree-holder) from enjoying the fruit of the decree but the Executing Court without considering all these aspects of the case erroneously stayed all further proceeding of the Title Execution Case No 06 of 2015 and as such the same is liable to be set-aside. Mr. Chowdhury further submits the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet as executing court having failed to consider that the partition suit No. 18 of 2005 was filed on 17.02.2005 and final decree was drawn up on 08.04.2015 and after drawing up final decree, the application filed by the defendant Nos. 11-12 under order 9, Rule 13 was misconceived and motivated one and the same has been filed only to frustrate the execution case thereby reaching a wrong decision which occasioned a miscarriage of justice. Finally, the learned Advocate submits that the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet ought to have considered that the defendant Nos. 11-12 approached before the court with unclean hands with sole intention to drag the delivery of possession of the suit land and in failing to do so committed an error of law resulting in an error in the impugned decision occasioning failure of justice. The learned Advocate to strengthen his submission has relied on the case reported in 6MLR (AD) 234.

Mr. Uzzal Bhowmick, the learned Advocate appearing for the opposite party No. 11, supports the impugned judgment and order, which was according to him just, correct and proper. He submits that admittedly the judgment and decree was passed ex-parte and thereafter on knowing about the facts of the ex-parte judgment and decree the defendant respondent Nos. 11-12 filed Miscellaneous Case No. 19 of 2018 for setting-aside the ex parte

decree and in the facts and circumstances of the case, if the execution case arising out of ex parte judgment and decree is not stayed till disposal of the miscellaneous case, the whole purpose of the miscellaneous case under Order IX, Rule 13 read with section 151 of the Code of Civil Procedure for setting-aside the ex-parte judgment and decree will be frustrated. Finally, the learned Advocate submits, it is on record that in the title suit no summons was served upon the defendants, fraud was involved in obtaining the decree and that the defendants have every chance of success in the miscellaneous case under Order IX, Rule 13 of the Code of Civil Procedure and considering all these aspects of the case as revealed from the materials on record the learned Joint District Judge justly passed the order of stay of the execution case till disposal of the miscellaneous case, which should not be disturbed.

Having heard the learned Advocates for both the sides and perused the Civil Revision application, impugned order of the Execution Court and other papers as filed thereto.

On scrutiny of the record it is found that admittedly the partition suit being Title Suit No. 18 of 2005 was decreed ex parte by exparte the judgment and decree dated 05.02.2007 and thereafter, on knowing about the facts of the exparte judgment and decree the defendant respondent Nos. 11-12 filed the Miscellaneous Case No. 19 of 2018 under Order IX, Rule 13 read with section 151 of the Code of Civil Procedure for setting-aside the ex-parte judgment and decree and thereafter filed an application for staying all further operation of the execution case No. 06 of 2015 stating that the petitioners were minor at the time of hearing of the title suit and no summons were served upon

them and they were totally ignorant about the partition suit, unless all further operation of the execution case is stayed the petitioners will suffer irreparable loss and injury. The learned Judge of the executing Court after hearing the parties by the impugned order dated 13.08.2018 allowed the application in the following language:

“On perusal of the record of original suit no. 18/05 it is found that judgment debtor has filed a misc. case u/ord-IX rule 13 for setting aside the exparte Decree of original suit claiming that they were not informed the suit and they were minor during the filing of original suit. Now, the plea taken by judgment debtor in the petition u/ord- IX rule 13 is matter of evidence and has to be decided after taking evidences. So, the same has been primarily admitted and accordingly if this execution case is not stayed contradictory decision may hamper the right title interest of both parties.

Hence, this execution case is stayed till disposal of the misc, case no-19/18.”

This order certainly indicates that the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet considered all aspects of the matter and thereafter, recorded the order of stay. The reasonings given by the learned Joint District Judge appear to us to be proper and sound and we, do not find any reason to differ from it.

In a case of this nature justice demands to stay the execution case till disposal of the misc case under Order IX, Rule 13 read with section 151 of the Code of Civil Procedure. Therefore, we find no substance in either of the contentions as raised by the learned Advocate for the petitioner. The decision cited is distinguishable on facts.

However, in the facts and circumstances of the case, we feel it necessary to direct the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet before whom the case is pending to hear and dispose of the miscellaneous case expeditiously as early as possible preferably within 3 months from the date of receipt of this judgment and in the meantime further proceedings of the Execution case be stayed.

In the result, the Rule is discharged. There will be no order as to costs.

Let a copy of this judgment be communicated to the Court concerned at once.

**Md. Mansur Alam, J:**

I agree.