Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 1087 of 2019

Ruhul Amin and others

..... Petitioners

-Versus-

Md. Jahangir Hossain Patwari and others

..... Opposite-Parties

Mr. Mohammad Eunus, Advocate

… For the Petitioners

Mr. Md. Mizanul Hoque Chowdhury, Advocate

Judgment on 09.02.2025

In this revision Rule was issued granting leave to revision at the instance of the petitioner calling upon the opposite party Nos. 1-9 to show cause as to why the impugned judgment and order dated 27.02.2019 passed by the learned Senior District Judge, Bhola in Civil Revision No. 07 of 2017 allowing the same in part and affirming the order dated 20.06.2017 passed by the Senior Assistant Judge, Charfashion, Bhola in Title Suit No. 294 of 2008 rejecting the application for local investigation and recalling the P.Ws.1 and 2 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 relevant for disposal of this Rule, in short, are that the opposite party, as plaintiff, filed Title Suit No. 294 of 2008 in the court of

Senior Assistant Judge, Charfashion, Bhola for declaration of title in the suit property.

The petitioners, as defendant, contesting the suit by filing written statement and in usual course the suit was fixed for hearing and recording evidence of P.Ws. P.W.1 Abu Taher Rari as attorney of the plaintiff deposed before the court in support of plaint case on 08.05.2017, on that date examination in chief ended. Thereafter, the plaintiff filed an application for amendment of plaint which was allowed by the trial court. The defendant No. 1(Ka)-1(Ja) filed additional written statement on 20.06.2017 and on that date filed an application praying for recalling P.W.1 and P.W. 2 for further cross examination specifying some point and for local investigation by appointing a survey knowing Advocate commissioner. The trial court on the same day took the applications for hearing and after hearing by its order dated 20.06.2017 rejected both the applications holding that the defendants adopted dilatory tactics in disposing the case and trying to fill up the lacuna by recalling PWs.1 and 2 and observing that matter for investigation is not at all necessary as the defendant in their written statement claimed that there are house, road, various plants and tank situated on the suit property.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, the defendant filed Civil Revision No.07 of 2017 before the District Judge, who heard the revision and after hearing by the impugned judgment and order dated 27.02.2019 allowed the revision in part, allowing application for local investigation and affirming the judgment and order of the trial court relating to rejection of application for recalling the PWs-1 and 2. At this juncture, the petitioners moved this Court by filing this revisional application under section 115(4) of the Code of Civil Procedure seeking leave to revision and obtained the present Rule and order of stay.

Mr. Mohammad Eunus, learned Advocate appearing for the petitioners submits that a party to the suit may recall and examine witnesses and in that case, the court must give an opportunity to a litigant to place his case with relevant evidence, but the trial court as well as the revisional court most unfortunately observed that there is no provision for recalling a witness after closing of evidences. As such, both the court below has committed illegality and error of law in the decision occasioning failure of justice.

Mr. Md. Mizanul Hoque Chowdhury, learned Advocate appearing for the opposite parties submits that the trial court held that the defendant took several adjournments for hearing of the suit and cross examined the P.W. 1 and P.W. 2 at length and the attempt whatever taken by the defendant is only to delay disposal of the suit and fill up the lacuna in the name of recalling witnesses.

He submits that the revisional court in its order observed that in the event of recalling the witness of the plaintiff, the plaintiff shall be entitled to cross examine the DWs. In this situation after closing of evidence the defendant only to delay disposal of the suit and filling the lacuna filed application for recalling as the PWs, as such, both the courts below committed no illegality and or error in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application, plaint in suit, additional written statements, application for recalling P.Ws and impugned judgment and order of both the courts below.

Dispute arising out of impugned judgment and order is limited within a narrow compus. Whether, there is any provision of law for debarring any of the party to the proceeding from adducing evidences in support of their respective claim or recalling any witness for cross examination on the point specified in the application.

In the instant case, it appears that examination in chief of P.W.1 ended on 08.05.2017, on that day the plaintiffs by filing an application got their plaint amended. Normally a right accrued in favour of the defendant to file additional written statement on their behalf, accordingly, the defendants filed additional written statement on 20.06.2017 and filed another application for recalling P.W.1 and P.W. 2 to cross examine on some points as mentioned in the application and also filed an application for local investigation of the suit property. The trial court on the same day heard both the applications and rejected the same, against the order, the defendant moved before the revisional court, wherein, the revisional court by the impugned judgment and order allowed application for local investigation of the suit property, but affirmed the order passed by the trial court rejecting application for recalling P.Ws. Now the question has come whether both the courts below committed any illegality and or error

in the decision in refusing an application for recalling P.Ws. to cross examine on some specific points.

In a similar situation our apex court in the case of ***Mortuz Ali Khalifa vs. Jobeda @ Kalu Bibi and others*** reported in ***20 BLC (AD) 3,*** held that;

> *"court may recall and examine witness. It is cardinal principle of law that every party to a litigation must be given opportunity to place his case with relevant evidence. A party to the suit may be given the opportunity to call witnesses and produce any evidence at any time during the trial. The trial does not finish until pronouncement of judgment".*

Normally an application in the like form is not liable to be rejected on the ground of delaying disposal of the suit and on the ground of filling up lacuna of the defendants. It depends on facts and circumstances of each individual case, but in the instant case how the defendants were delaying disposal of the suit and what question has been put to fill up the lacuna on their part has not been reflected in the impugned order of the trial court. Curiously enough, learned District Judge sitting in revision on the impugned order observed that there is no provisions of law for recalling any witness after closing evidence, but failed to mention such provision of law which debars the party to the suit from taking any step for recalling witnesses.

In this situation, I must say that in refusing and rejecting the application for recalling P.Ws. both the courts below committed illegality and error of law in the decision occasioning failure of justice. Moreover, the very observations made by the trial court accusing the defendant that they are delaying disposal of the suit is untrue as by this time already eight years gone. Had the trial court allowed the application and recalled P.Ws. this suit could have been disposed of in the year 2017 before eight years, but because of rejecting the application and moving before the revisional court and this court disposal of the suit took eight years more. In every cases the trial court as well as the revisional court should take in consideration that the application filed by the party if allowed, there will be no injustice to other party or violation of any provisions of law, they must deal with those matters liberally giving pragmatic approach instead of giving pedantic approach putting the litigant to incur more expenses and to run door to door of the higher court and to save valuable time of the court.

In view of the above, I find that both the courts below dealt the matter in dispute in particular an application for recalling P.Ws. for cross examining PWs, very negligently calling for interference by this Court.

Taking into consideration the above, I find merit in the Rule as well as in the submissions of the learned Advocate for the petitioners.

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

The judgment and order of both the courts below so far it relates to rejection of an application for recalling P.Ws. are hereby set aside, application for recalling PWs. 1 and 2 is hereby allowed.

The trial court is hereby directed to allow the defendants to cross examine the P.Ws. on the point mentioned in the application only and dispose of the suit within 04 (four) months from the date of receipt of this judgment positively.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned at once.

Md. Akteruzzaman Khan (B.O)